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Title 3—

The President

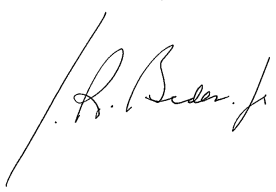
Memorandum of June 3, 2022

Delegation of Authority Under Sections 1209 and 1236 of the National Defense Authorization Act for Fiscal Year 2015, as Amended

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Defense the authority and functions vested in the President by sections 1209(l)(3) and 1236(o) of the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291, 128 Stat. 3292), as amended, to waive certain limitations on the cost of construction and repair projects in support of the Counter-ISIS campaign in Iraq and Syria, including making any determinations and submitting any congressional notifications required for such waivers.

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



THE WHITE HOUSE,
Washington, June 3, 2022

[FR Doc. 2022–12464
Filed 6–7–22; 8:45 am]
Billing code 5001–06–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0285; Project Identifier MCAI–2021–01448–A; Amendment 39–22066; AD 2022–11–16]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Operations) Limited and British Aerospace Regional Aircraft Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all British Aerospace (Operations) Limited Model Jetstream Model 3101 airplanes and British Aerospace Regional Aircraft Model Jetstream Model 3201 airplanes. This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as stress corrosion cracking of the primary flight control cable terminals. This AD requires repetitively inspecting the turnbuckle type control cable terminals in the rudder and elevator primary flight control circuits for corrosion, pitting, and cracking and, depending on the inspection results, replacing an affected cable assembly. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 13, 2022.

ADDRESSES: For service information identified in this final rule, contact BAE Systems (Operations) Ltd., Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 3300 488727; fax: +44 1292 675704; email: *RApublications@baesystems.com;* website: *https://www.baesystems.com/businesses/regionalaircraft/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0285.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0285; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all British Aerospace (Operations) Limited Model Jetstream Model 3101 and British Aerospace Regional Aircraft Model Jetstream Model 3201 airplanes. The NPRM published in the **Federal Register** on March 22, 2022 (87 FR 16118). The NPRM was prompted by MCAI originated by the Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom. CAA has issued AD G–2021–0017, dated December 21, 2021 (referred to after this as ''the MCAI''), to correct an unsafe condition on all BAE Systems (Operations) Limited Model Jetstream Series 3100 and Series 3200 airplanes. The MCAI states:

> There were reports of cable terminal failures on a variety of civil aircraft types (which did not include the Jetstream 3100 & 3200 series aircraft). These reports were initially made in the USA, Australia & New Zealand. Subsequent investigations identified that the failed terminals were made from the same material specification; MS21260, which calls up materials SAE303Se or SAE304 stainless steel. It is understood that these corrosion resistant steels are susceptible to Stress Corrosion Cracking (SCC) in service when subject to contamination.
>
> BAE Systems (Operations) Ltd recognises that SAE 303Se and 304 stainless steels are used in the primary flight control cable terminal of the Jetstream 3100 & 3200 series aircraft.
>
> The Jetstream 3100 & 3200 series aircraft feature a single path for the elevator and rudder primary control cable circuits. For the elevator circuit, a potential unsafe condition exists if an elevator cable terminal fails at any point in the primary elevator system aft of the dual flight controls in the cockpit, because this would result in a loss of primary elevator control. This is only considered unsafe during take-off after V1, where sufficient runway may not be available to brake the aircraft, or during an approach where there is insufficient altitude to recover control of the aircraft using the aircraft's elevator trim controls.
>
> For the rudder circuit, a potential unsafe condition exists if a rudder cable terminal fails at any point in the primary rudder system aft of the dual flight controls in the cockpit, because this would result in a loss of primary rudder control. This is only considered unsafe when landing in strong crosswinds or after an engine failure during take-off and initial climb, where vertical axis (yaw) control cannot be maintained using rudder trim or asymmetrical power.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0285.

In the NPRM, the FAA proposed to require repetitively inspecting the turnbuckle type control cable terminals in the rudder and elevator primary flight control circuits for corrosion, pitting, and cracking and, depending on the inspection results, replacing an affected cable assembly. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 27–JA181040, Original Issue, dated January 17, 2019. This service information specifies procedures for repetitively inspecting all threaded turnbuckle type control cable end terminals on certain part-numbered rudder and elevator primary flight control circuits for signs of corrosion, pitting, and cracking on the terminal fitting, and specifies replacing an affected cable assembly when the inspection results require it. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the MCAI

The MCAI and service information apply to Model Jetstream Series 3100 and Jetstream Series 3200 airplanes, which are identified on the FAA type certificates as Jetstream Model 3101 airplanes and Jetstream Model 3201 airplanes, respectively.

Although the service information specifies reporting inspection results to the manufacturer, this AD does not require that action.

Costs of Compliance

The FAA estimates that this AD affects 18 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340.	Not applicable ...	$340 per inspection cycle	$6,120 per inspection cycle.

The FAA estimates the following costs to replace a cable assembly based on the results of the inspection. The FAA has no way of determining the number of airplanes that might need this action:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Replacement of cable assembly	10 work-hours × $85 per hour = $850	$5,000	$5,850

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–11–16 British Aerospace (Operations) Limited and British Aerospace Regional Aircraft: Amendment 39–22066; Docket No. FAA–2022–0285; Project Identifier MCAI–2021–01448–A.

(a) Effective Date

This airworthiness directive (AD) is effective July 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to British Aerospace (Operations) Limited Model Jetstream Model 3101 airplanes and British Aerospace Regional Aircraft Model Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2720, Rudder Control System; and 2730, Elevator Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as stress corrosion cracking of the primary flight control cable terminal. The FAA is issuing this AD to detect and correct corrosion, pitting, or cracking in the primary flight control cable terminals. The unsafe condition, if not addressed, could result in failure of the primary flight control cable terminal and loss of airplane control.

(f) Compliance

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

(g) Required Actions

(1) Before any primary rudder or primary elevator flight control circuit cable accumulates 16 years since first installation on an airplane or within 12 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 24 months, inspect all threaded turnbuckle type control cable terminals for signs of corrosion, pitting, and cracking by following paragraph (2) in Section 2.B. Part 1 and Section 2.B. Part 2 of the Accomplishment Instructions in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 27–JA181040, Original Issue, dated January 17, 2019 (SB 27–JA181040). If the age of any primary rudder or primary elevator flight control circuit cable is unknown, do the inspection within 12 months after the effective date of this AD and thereafter at intervals not to exceed 24 months.

(2) If, during any inspection required by paragraph (g)(1) of this AD, there is pitting or cracking or corrosion that exceeds minimum damage limits, before further flight, replace the affected cable assembly with a new (zero hours time-in-service) cable assembly.

(3) Replacing a cable assembly does not terminate the inspections required by this AD. After replacing a cable assembly, do the inspection in paragraph (g)(1) of this AD before the cable assembly accumulates 15 years since first installation on an airplane and thereafter at intervals not to exceed 24 months.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD and email to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

(2) Refer to Civil Aviation Authority (CAA) AD G–2021–0017, dated December 21, 2021, for related information. You may examine the CAA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0285.

(j) Material Incorporated by Reference

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

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

(i) British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 27–JA181040, Original Issue, dated January 17, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact BAE Systems (Operations) Ltd., Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 3300 488727; fax: +44 1292 675704; email: *RApublications@baesystems.com;* website: *https://www.baesystems.com/businesses/regionalaircraft/.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on May 24, 2022.

Ross Landes,

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

[FR Doc. 2022–12182 Filed 6–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0150; Project Identifier MCAI–2021–00839–E; Amendment 39–22065; AD 2022–11–15]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 7000–72 and Trent 7000–72C model turbofan engines. This AD was prompted by in-service experience showing that certain high-pressure turbine (HPT) blades may prematurely deteriorate to an unacceptable condition when managed in accordance with the inspection intervals in the Time Limits Manual (TLM). This AD requires initial and repetitive on-wing borescope inspections (BSIs) of the HPT blades to detect axial cracking and, depending on the results of the inspections, replacement of the HPT blade set, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 13, 2022.

The Director of the Federal Register approved the IBR of a certain publication listed in this AD as of July 13, 2022.

ADDRESSES: For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this

material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0150. For Rolls-Royce service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx.*

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0150; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W121–40, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7116; email: *nicholas.j.paine@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0169, dated July 19, 2021 (EASA AD 2021–0169), to address an unsafe condition for all RRD Trent 7000–72 and Trent 7000–72C model turbofan engines.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to RRD Trent 7000–72 and Trent 7000–72C model turbofan engines. The NPRM published in the **Federal Register** on March 1, 2022 (87 FR 11355). The NPRM was prompted by in-service experience showing that certain HPT blades may prematurely deteriorate to an unacceptable condition when managed in accordance with the inspection intervals in the TLM. The manufacturer published Rolls-Royce (RR) Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK449, Revision 2, dated July 5, 2021 (the Alert NMSB) specifying procedures for performing initial and repetitive on-wing BSIs of the HPT blades to detect axial cracking. The Alert NMSB also specifies procedures for removing the engine from service to replace the HPT blade set before exceeding a specified number of flight cycles. The compliance time for the initial and repetitive BSIs of the HPT blades required by this AD meet the TLM inspection intervals for HPT blade, part number KH64485. In the NPRM, the FAA proposed to require accomplishing the actions specified in EASA AD 2021–0169, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD. The FAA is issuing this AD to address the unsafe condition on these products. See EASA AD 2021–0169 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. The commenters were Air Line Pilots Association, International (ALPA), Delta Air Lines, Inc. (DAL), and an individual commenter. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request to Add AD Reference to Paragraph (b)

DAL requested that the FAA add a reference to AD 2021–25–03, Amendment 39–21846 (86 FR 71135, December 15, 2021), (AD 2021–25–03), to paragraph (b), Affected ADs. DAL commented that AD 2021–25–03 requires the operator's maintenance program be updated to incorporate Revision 7 of the RR TLM. DAL noted that Revision 7 of the RR TLM, Chapter 05–20, defines the interval for the piece-part inspection of the HPT blade. DAL also commented that Note 2 in paragraph (5) of EASA AD 2021–0169 specifically states that the life limitation cancelled the inspection intervals currently defined in the TLM. DAL stated that this AD would partially supersede the requirements of AD 2021–25–03.

The FAA disagrees with adding reference to AD 2021–25–03 in paragraph (b) of this AD. Paragraph (b) of this AD identifies superseded or revised ADs, or other ADs if the requirements of those ADs are affected. The compliance times for the initial and repetitive on-wing BSIs of the HPT blades required by this AD are more restrictive than the inspection intervals specified in the TLM. This AD does not affect the requirements of AD 2021–25–03 and, as a result, AD 2021–25–03 is not an affected AD. The FAA did not change this AD as a result of this comment.

Request to Update Joint Aircraft Service Component (JASC) Code

DAL requested the FAA update paragraph (d), Subject, of this AD from JASC Code 7230 to JASC Code 7250. DAL commented that the required inspections and unsafe condition for the HPT fall under JASC Code 7250, not JASC Code 7230 as proposed in the NPRM.

The FAA agrees and has updated paragraph (d) of this AD.

Support for the AD

ALPA and an individual commenter supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2021–0169. EASA AD 2021–0169 specifies instructions for performing initial and repetitive on-wing BSIs of the HPT blades to detect axial cracking and, depending on the results of the inspections, removal from service of the engine for in-shop replacement of the HPT blade set. EASA AD 2021–0169 also specifies instructions for replacing HPT blades with a new HPT blade set before exceeding a specified number of flight cycles.

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

Other Related Service Information

The FAA reviewed RR Alert NMSB Trent 1000 72–AK449, Revision 2, dated July 5, 2021. This Alert NMSB describes procedures for performing initial and repetitive on-wing BSIs of the HPT blades to detect axial cracking. This Alert NMSB also specifies procedures for removing the engine to replace the HPT blade set before exceeding a specified number of flight cycles.

Interim Action

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

Costs of Compliance

The FAA estimates that this AD affects 16 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
BSI HPT Blades	4 work-hours × $85 per hour = $340	$0	$340	$5,440

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace HPT Blade Set	16 work-hours × $85 per hour = $1,360	$2,001,780	$2,003,140

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–11–15 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–22065; Docket No. FAA–2022–0150; Project Identifier MCAI–2021–00839–E.

(a) Effective Date

This airworthiness directive (AD) is effective July 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc) Trent 7000–72 and Trent 7000–72C model turbofan engines.

(d) Subject

Joint Aircraft Service Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by in-service experience showing that certain high-pressure turbine (HPT) blades may prematurely deteriorate to an unacceptable condition when managed in accordance with the inspection intervals defined in the Time Limits Manual. The FAA is issuing this AD to prevent failure of the HPT blades. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2021–0169, dated July 19, 2021 (EASA AD 2021–0169).

(h) Exceptions to EASA AD 2021–0169

(1) Where EASA AD 2021–0169 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) This AD does not require compliance with the ''Remarks'' section of EASA AD 2021–0169.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD,

if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Nicholas Paine, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7116; email: *nicholas.j.paine@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0169, dated July 19, 2021.

(ii) [Reserved]

(3) For more information about EASA AD 2021–0169, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0150.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on May 24, 2022.

Ross Landes,

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

[FR Doc. 2022–12181 Filed 6–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0381; Project Identifier MCAI–2021–01314–R; Amendment 39–22068; AD 2022–11–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, AS–365N2, AS 365 N3, SA–365N, SA–365N1, EC 155B, and EC155B1 helicopters. This AD was prompted by investigation results from an engine compartment fire, which determined some of the internal parts of the engine upper fixed cowling (engine cowling) were painted with finish paint on top of the primer layer. This AD requires a one-time inspection of certain part-numbered engine cowlings, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 13, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. Service information that is IBRed is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0381.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0381; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0265, dated November 23, 2021 (EASA AD 2021–0265), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Sud Aviation, Model SA 365 N, SA 365 N1, AS 365 N2, AS 365 N3, EC 155 B, EC 155 B1, AS 355 E, AS 355 F, AS 355F 1 and AS 355 F2 helicopters, all serial numbers.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, AS–365N2, AS 365 N3, SA–365N, SA–365N1, EC 155B, and EC155B1 helicopters. The NPRM published in the **Federal Register** on March 29, 2022 (87 FR 17955). The NPRM was prompted by investigation results from an engine compartment fire, which determined some of the internal parts of the engine cowling were painted with finish paint on top of the primer layer. The NPRM proposed to require a one-time inspection of certain part-numbered engine cowlings, and corrective actions if necessary, as specified in EASA AD 2021–0265.

The FAA is issuing this AD to detect finish paint inside the duct of the engine cowling. The unsafe condition, if not addressed, could result in fire

propagation in case of exposure to high temperature, damage to the helicopter, and injury to the occupants. See EASA AD 2021–0265 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed, except for minor editorial changes. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0265 requires a one-time inspection of certain part-numbered engine cowlings (*e.g.,* an affected part as defined in EASA AD 2021–0265) for finish paint and depending on the inspection results, accomplishment of applicable corrective actions. EASA AD 2021–0265 also allows an affected part to be installed on any helicopter, provided it is a serviceable part as defined in EASA AD 2021–0265. Corrective actions include repainting the affected part and replacing the affected part.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS355–53.00.38, ASB No. AS365–53.00.65, and ASB No. EC155–53A040, all Revision 0, and all dated October 27, 2021, which specify procedures for inspecting the inside of the duct of the engine cowling for finish paint and corrective actions.

Differences Between This AD and EASA AD 2021–0265

Service information referenced in EASA AD 2021–0265 specifies recording compliance with the applicable ASBs, whereas this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 93 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting each engine cowling takes about 1 work-hour for an estimated cost of $85 per helicopter and $7,905 for the U.S. fleet.

Repainting each engine cowling with primer takes about 8 work-hours for an estimated cost of $680 per helicopter.

Replacing an engine cowling with a ''serviceable part'' as defined in EASA AD 2021–0265 takes about 4 work-hours and parts cost up to $7,800 for an estimated cost of up to $8,140 per replacement.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–11–18 Airbus Helicopters: Amendment 39–22068; Docket No. FAA–2022–0381; Project Identifier MCAI–2021–01314–R.

(a) Effective Date

This airworthiness directive (AD) is effective July 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, AS–365N2, AS 365 N3, SA–365N, SA–365N1, EC 155B, and EC155B1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7110, Engine Cowling System.

(e) Unsafe Condition

This AD was prompted by investigation results from an engine compartment fire, which determined some of the internal parts of the engine upper fixed cowling (engine cowling) were painted with finish paint on top of the primer layer. The FAA is issuing this AD to detect finish paint inside the duct of the engine cowling. The unsafe condition, if not addressed, could result in fire propagation in case of exposure to high temperature, damage to the helicopter, and injury to the occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0265, dated November 23, 2021 (EASA AD 2021–0265).

(h) Exceptions to EASA AD 2021–0265

(1) Where EASA AD 2021–0265 requires compliance in terms of flight hours (FH), this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0265 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2021–0265 specifies ''in accordance with the instructions of paragraph 3.B of the applicable ASB,'' for this AD replace ''in accordance with the instructions of paragraph 3.B of the applicable ASB'' with ''in accordance with the Accomplishment Instructions, paragraphs 3.B.2.a. through 3.B.2.b. of the applicable ASB.''

(4) Where paragraph (2) of EASA AD 2021–0265 specifies to repaint or replace the affected part, replace the text ''repaint (with primer layer only) that affected part or replace it with a serviceable part in accordance with the instructions of paragraph 3.B. of the applicable ASB,'' with ''repaint (with primer layer only) that affected part in accordance with the instructions of paragraph 3.B.2.b. of the applicable ASB, or replace the affected part with a 'serviceable part' as defined in EASA AD 2021–0265.''

(5) Where the service information referenced in EASA AD 2021–0265 specifies ''identify again the engine upper fixed cowling (a), refer to paragraph 3.C.,'' this AD does require modifying your helicopter by marking ''ASB No. 53.00.38,'' ''ASB No. 53A40,'' or ''ASB No. 53.00.65,'' as applicable to your helicopter, after the old P/N on the engine cowling with indelible ink, but does not require compliance with paragraph 3.C. of the ''applicable ASB'' as defined in EASA AD 2021–0265.

(6) Where the service information referenced in EASA AD 2021–0265 specifies during the interpretation of results from the visual check of the inside of the duct of the engine cowling, if there is any finish paint inside the duct, obey with paragraph 3.B.2.b. (*i.e.,* perform corrective actions) not more than 6 months after you complied with paragraph 3.B.2.a., for this AD, if there is any finish paint inside the duct of the engine cowling, perform the corrective actions not more than 6 months after you complied with paragraph 3.B.2.a. Work Card 20–04–05–402 (MTC), referenced in the Accomplishment Instructions, paragraph 3.B.2.b. of the ''applicable ASB'' as defined in EASA AD 2021–0265 is for reference only and is not required for the actions in this AD.

(7) Where the Accomplishment Instructions, paragraph 3.B.2.b of Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–53.00.65, and ASB EC155–53A040, both Revision 0, and both dated October 27, 2021, specify to refer to Work Card 53–50–00–402 (MET), or Task 53–54–00–061(AMM), to remove and install the engine cowling, for this AD those instructions are for reference only and are not required for the actions in this AD.

(8) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0265.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0265 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0265, dated November 23, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0265, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find EASA AD 2021–0265 on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0381.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on May 24, 2022.

Ross Landes,

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

[FR Doc. 2022–12183 Filed 6–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0284; Project Identifier MCAI–2021–01369–A; Amendment 39–22062; AD 2022–11–12]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc. and de Havilland, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as binding of the rod end bearing connecting the lower fuel control unit (FCU) push rod assembly to the FCU power lever. This AD requires performing tests, inspections, and lubrication of the FCU push rod assemblies, and replacing them with improved parts as necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 13, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 13, 2022.

ADDRESSES: For service information identified in this final rule, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust,

Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0284.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0284; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, Aviation Safety Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *elizabeth.m.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Viking Air Limited Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. The NPRM published in the **Federal Register** on March 22, 2022 (87 FR 16123). The NPRM was prompted by MCAI originated by Transport Canada, which is the aviation authority for Canada. Transport Canada has issued AD CF–2021–42, dated November 26, 2021 (referred to after this as ''the MCAI''), to correct an unsafe condition on Viking Air Limited Model DHC–6 series 1, DHC–6 series 100, DHC–6 series 110, DHC–6 series 200, DHC–6 series 210, DHC–6 series 300, DHC–6 series 310, DHC–6 series 320, and DHC–6 series 400 airplanes with certain part-numbered FCU push rod assemblies installed. The MCAI states:

> There have been in-service reports of binding of [part number] P/N VSC30–3A rod end bearings used in the linkage for the lower FCU push rod assembly P/N C6CE1398–7. The lower FCU push rod assembly is connected to the FCU power lever and contains a rod end bearing at each end. P/N VSC30–3A rod end bearings, fabricated with a metal inner race and a dry film lubricant, have been incorporated on FCU push rod assemblies introduced through Viking Air Ltd (Viking) MOD 6/2347. P/N VSC30–3A rod end bearings may have also been installed in-service as a replacement part in lower FCU push rod assembly P/N C6CE1398–3. In one instance, binding of the lower FCU push rod bearing resulted in one engine failing to return to a lower power setting from a higher power setting when commanded, which subsequently resulted in the need to perform an in-flight engine shutdown during final approach. An investigation also revealed that binding of P/N VSC30–3A rod end bearings can occur after a period of non-utilization of the aeroplane.
>
> This condition, if not detected and corrected, may lead to the inability to reduce power on the affected engine, resulting in the need to perform an in-flight engine shutdown, and consequently leading to reduced control of the aeroplane and increased pilot workload during this critical phase of flight.
>
> To address this unsafe condition, this [Transport Canada] AD mandates initial and repetitive functional checks, special detailed inspection (SDI) and lubrication of the affected FCU push rod assembly, and its replacement, as required, with a redesigned FCU push rod assembly with improved reliability (MOD 6/2484), in accordance with Viking Service Bulletin (SB) V6/0063. This [Transport Canada] AD also prohibits the installation of an affected FCU push rod assembly as a replacement part on applicable aeroplanes.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0284.

In the NPRM, the FAA proposed to require performing tests, inspections, and lubrication of the FCU push rod assemblies, and replacing them with improved parts as necessary. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from the Air Line Pilots Association, International (ALPA). ALPA supported the NPRM without change.

Conclusion

These products have been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following:

- Viking DHC–6 Twin Otter Service Bulletin (SB) No. V6/0063, Revision A, dated February 1, 2021, which specifies procedures for performing tests, inspections, and lubrication of the FCU push rod assemblies; and
- Viking DHC–6 Twin Otter Technical Bulletin No. V6/00155, Revision NC, dated September 14, 2020, which specifies procedures for replacing the FCU push rod assemblies with improved parts.

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

Other Related Service Information

The FAA also reviewed Viking DHC–6 Twin Otter SB No. V6/0063, Revision NC, dated June 7, 2019, which specifies procedures for performing tests, inspections, and lubrication of the FCU push rod assemblies. Viking revised this service information and issued Viking SB V6/0063, Revision A, to extend the lubrication requirement of Mod 6/2347 rod ends to all operating environments, add repeat inspections, and introduce a test and lubrication for airplanes that have not been in operation after a period of time before re-entry into service.

Differences Between This AD and the MCAI

The MCAI applies to Viking Air Limited Model DHC–6 series 110, DHC–6 series 210, DHC–6 series 310, and DHC–6 series 320, and this AD would not because these models do not have an FAA type certificate. Model DHC–6 series 1, DHC–6 series 100, DHC–6 series 200, DHC–6 series 300, and DHC–6 series 400 airplanes specified in the MCAI correspond to Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes specified in this AD, respectively.

The MCAI requires reporting information to the manufacturer, and this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 34 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Test, inspect, and lubricate the FCU push rod assemblies.	1 work-hour × $85 per hour = $85.	Not Applicable ..	$85 per inspection cycle	$2,890 per inspection cycle.

The FAA estimates the following costs to replace the FCU push rod assemblies. The agency has no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Replace both FCU push rod assemblies	3 work-hours × $85 per hour = $255	$60	$315

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in

14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–11–12 Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.): Amendment 39–22062; Docket No. FAA–2022–0284; Project Identifier MCAI–2021–01369–A.

(a) Effective Date

This airworthiness directive (AD) is effective July 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, serial numbers 001 through 989, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as binding of the rod end bearing connecting the lower fuel control unit (FCU) push rod assembly to the FCU power lever. The unsafe condition, if not addressed, could lead to the inability to reduce power on the affected engine, which could result in an in-flight engine shutdown and reduced airplane control.

(f) Definitions

(1) For purposes of this AD, an ''affected FCU pushrod assembly'' is one of the following:

(i) Lower FCU push rod assembly part number (P/N) C6CE1398–7; or

(ii) Lower FCU push rod assembly P/N C6CE1398–3 with P/N VSC30–3A rod end bearing installed.

Note 1 to paragraph (f)(1): P/N C6CE1398–7 may also be referred to as modification (MOD) 6/2347.

(2) For purposes of this AD, a ''serviceable FCU push rod assembly'' is lower FCU push rod assembly P/N C6CE1398–9.

Note 2 to paragraph (f)(2): P/N C6CE1398–9 may also be referred to as MOD 6/2484.

(g) Compliance

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

(h) Required Actions

(1) Within 125 hours time-in-service (TIS) after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, test each affected FCU push rod assembly for binding and restriction in accordance with the Accomplishment Instructions, paragraphs A.1. through A.3., in Viking DHC–6 Twin Otter Service Bulletin No. V6/0063, Revision A, dated February 1, 2021 (Viking SB V6/0063, Revision A).

(i) If there is any binding or restriction, before further flight, remove both affected FCU push rod assemblies from service and install serviceable FCU push rod assemblies

in accordance with the Accomplishment Instructions, paragraph A.4., in Viking SB V6/0063, Revision A, and the Accomplishment Instructions, Sections A through C, in Viking DHC–6 Twin Otter Technical Bulletin No. V6/00155, Revision NC, dated September 14, 2020 (Viking TB V6/00155, Revision NC).

(ii) If there is no binding and no restriction, before further flight, remove each affected FCU push rod assembly, clean the push rod ends, and inspect each affected FCU push rod assembly for corrosion and condition of the lubricant. Pay particular attention to the bearing ball and race.

(A) If there is no corrosion and the lubricant color and texture is normal, before further flight, lubricate each affected FCU push rod assembly in accordance with the Accomplishment Instructions, Section C, in Viking SB V6/0063, Revision A.

(B) If there is corrosion or if the lubricant is abnormal in color (too dark) or texture (too sticky), before further flight, remove both affected FCU push rod assemblies from service and install serviceable FCU push rod assemblies in accordance with the Accomplishment Instructions, paragraph A.4, in Viking SB V6/0063, Revision A, and the Accomplishment Instructions, Sections A through C, in Viking TB V6/00155, Revision NC.

(2) Repeat the requirements of this AD as follows until both affected FCU push rod assemblies are replaced.

(i) Test and lubrication: At intervals not to exceed 125 hours TIS or before further flight anytime the airplane has not been operated for a period of 30 days, whichever occurs first.

(ii) Inspection: At intervals not to exceed 1,500 hours TIS.

(3) As of the effective date of this AD, do not install an affected FCU push rod assembly on any airplane.

(i) Credit for Previous Actions

You may take credit for the test, inspection, replacement, and lubrication required by paragraphs (h)(1) and (2) of this AD if you performed those actions before the effective date of this AD using Viking DHC–6 Twin Otter Service Bulletin No. V6/0063, Revision NC, dated June 7, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(k) Related Information

(1) For more information about this AD, contact Elizabeth Dowling, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *elizabeth.m.dowling@faa.gov.*

(2) Refer to Transport Canada AD CF–2021–42, dated November 26, 2021, for more information. You may examine the Transport Canada AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2022–0284.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Viking DHC–6 Twin Otter Service Bulletin No. V6/0063, Revision A, dated February 1, 2021.

(ii) Viking DHC–6 Twin Otter Technical Bulletin No. V6/00155, Revision NC, dated September 14, 2020.

(3) For service information identified in this AD, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on May 24, 2022.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–12184 Filed 6–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 22–11]

RIN 1515–AE73

Extension of Import Restrictions Imposed on Certain Archaeological Artifacts and Ethnological Material From Peru

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect an extension of import restrictions on certain categories of archaeological artifacts and ethnological material of the Republic of Peru. The restrictions, which were originally imposed by Treasury Decision (T.D.) 97–50 and last extended by CBP Decision (CBP Dec.) 17–03, are due to expire on June 9, 2022, unless extended. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has made the requisite determinations for extending the import restrictions that previously existed and no cause for suspension exists. Pursuant to the exchange of diplomatic notes to extend the agreement, the import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this further extension through June 8, 2027. CBP–Dec. 17–03 contains the Designated List of archeological artifacts and ethnological material from Peru to which the restrictions apply.

DATES: Effective on June 9, 2022.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *otrrculturalproperty@cbp.dhs.gov.* For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945–7064, *1USGBranch@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Convention on Cultural Property Implementation Act, Public Law 97–446, 19 U.S.C. 2601 *et seq.,* which implements the 1970 United

Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)), the United States entered into a bilateral agreement with the Republic of Peru (Peru) on June 9, 1997, concerning the imposition of import restrictions on archaeological material from the Pre-Hispanic cultures and certain ethnological material from the Colonial period of Peru (the Memorandum of Understanding (MOU) between the United States of America and the Republic of Peru).

On June 11, 1997, the U.S. Customs Service (U.S. Customs and Border Protection's predecessor agency) published Treasury Decision (T.D.) 97–50 in the **Federal Register** (62 FR 31713), which amended § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a)) to reflect the imposition of these restrictions and included a list designating the types of archaeological and ethnological material covered by the restrictions. These restrictions continued the protection of archaeological material from the Sipán Archaeological Region forming part of the remains of the Moche culture that were first subject to emergency import restrictions on May 7, 1990 (T.D. 90–37), which were extended on June 27, 1994 (T.D. 94–54).

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of no more than five years if it is determined that the factors which justified the agreement still pertain and no cause for suspension of the agreement exists. *See* 19 CFR 12.104g(a).

Since the initial final rule was published on June 11, 1997, the import restrictions were subsequently extended four (4) times. First, on June 6, 2002, following the exchange of diplomatic notes, the former U.S. Customs Service published a final rule (T.D. 02–30) in the **Federal Register** (67 FR 38877) to extend the import restrictions for a period of five years. Second, on June 6, 2007, following the exchange of diplomatic notes, CBP published a final rule (CBP Dec. 07–27) in the **Federal Register** (72 FR 31176) to extend the import restrictions for an additional five-year period. Third, on June 7, 2012, following the exchange of diplomatic notes, CBP published a final rule (CBP Dec. 12–11) in the **Federal Register** (77 FR 33624) to extend the import restrictions for an additional five-year period. Fourth and lastly, on June 7, 2017, following the exchange of diplomatic notes, CBP published a final rule (CBP Dec. 17–03) in the **Federal Register** (82 FR 26340) to extend the import restrictions for an additional five-year period through June 8, 2022.

On September 13, 2021, the United States Department of State proposed in the **Federal Register** (86 FR 50931) to extend the MOU between the United States and Peru concerning the import restrictions on certain categories of archaeological and ethnological material from Peru. On March 15, 2022, after consultation with and recommendations by the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, determined that the cultural heritage of Peru continues to be in jeopardy from pillage of certain archeological and ethnological material, and that the import restrictions should be extended for an additional five years. Pursuant to the exchange of diplomatic notes to extend the agreement, the import restrictions will remain in effect for an additional five years, and the CBP regulations are being amended to reflect this further extension through June 8, 2027.

Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The restrictions on the importation of archaeological artifacts and ethnological material are to continue to be in effect through June 8, 2027. Importation of such material from Peru continues to be restricted through that date unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

The Designated List and additional information may also be found at the following website address: *https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/current-import-restrictions* by selecting the material for ''Peru.''

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure under 5 U.S.C. 553(a)(1). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the Secretary of the Treasury's authority (or that of his/her delegate) to approve regulations related to customs revenue functions.

Chris Magnus, the Commissioner of CBP, having reviewed and approved this document, has delegated the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to the CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, amend the table in paragraph (a) by revising the entry for Peru to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
Peru	Archaeological artifacts and ethnological material from Peru	CBP Dec. 22–11.
* * * * * * *		

* * * * *

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Approved:

Thomas C. West Jr.,

Deputy Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 2022–12299 Filed 6–7–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2021–N–0600]

Medical Devices; Cardiovascular Devices; Classification of the Intravascular Bleed Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the intravascular bleed monitor into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the intravascular bleed monitor's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective June 8, 2022. The classification was applicable on March 1, 2019.

FOR FURTHER INFORMATION CONTACT: LT Stephen Browning, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2106, Silver Spring, MD 20993–0002, 240–402–5241, *Stephen.Browning@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the intravascular bleed monitor as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On April 23, 2018, Saranas, Inc. submitted a request for De Novo classification of the Early Bird Bleed Monitoring System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for

its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on March 1, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 870.1345.[1] We have named the generic type of device intravascular bleed monitor, and it is identified as a probe, catheter, or catheter introducer that measures changes in bioimpedance and uses an algorithm to detect or monitor progression of potential internal bleeding complications.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—INTRAVASCULAR BLEED MONITOR RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction	Biocompatibility evaluation.
Infection	Sterilization validation, Pyrogenicity testing, Shelf-life testing, and Labeling.
Blood loss, bleeding, hematoma	Human factors testing, Labeling, Animal performance testing, and Non-clinical performance testing.
Embolization (micro or macro) with transient or permanent ischemia.	Human factors testing, Labeling, Animal performance testing, and Non-clinical performance testing.
Vascular trauma (*i.e.,* dissection, rupture, perforation, tear, etc.).	Human factors testing, Labeling, Animal performance testing, and Non-clinical performance testing.
Electrical shock	Electrical safety testing.
Device failure due to interference with other devices	Electromagnetic compatibility (EMC) testing, and Electrical safety testing.
Device failure due to software malfunction	Software verification, validation, and hazard analysis.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information 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 collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for part 870 continues to read as follows:

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

■ 2. Add § 870.1345 to subpart B to read as follows:

§ 870.1345 Intravascular bleed monitor.

(a) *Identification.* An intravascular bleed monitor is a probe, catheter, or catheter introducer that measures changes in bioimpedance and uses an algorithm to detect or monitor progression of potential internal bleeding complications.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) In vivo animal performance testing must demonstrate that the device performs as intended under anticipated conditions of use and evaluate the following:

(i) Device performance characteristics;

(ii) Adverse effects, including gross necropsy and histopathology; and

(iii) Device usability, including device preparation, device handling, and user interface.

(2) Non-clinical performance testing data must demonstrate that the device performs as intended under anticipated conditions of use. The following

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

performance characteristics must be tested:

(i) Tensile testing of joints and materials;

(ii) Mechanical integrity testing;

(iii) Friction testing;

(iv) Flush testing;

(v) Air leakage and liquid leakage testing;

(vi) Latching and unlatching testing;

(vii) Kink and bend testing;

(viii) Insertion force testing;

(ix) Torque testing;

(x) Corrosion testing; and

(xi) Dimensional tolerance testing.

(3) Performance data must support the sterility and pyrogenicity of the device components intended to be provided sterile.

(4) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the identified shelf life.

(5) The patient contacting components of the device must be demonstrated to be biocompatible.

(6) Software verification, validation, and hazard analysis must be performed.

(7) Performance data must demonstrate electromagnetic compatibility (EMC), electrical safety, thermal safety, and mechanical safety.

(8) Human factors performance evaluation must demonstrate that the user can correctly use the device, based solely on reading the directions for use.

(9) Labeling must include:

(i) Instructions for use;

(ii) A shelf life and storage conditions;

(iii) Compatible procedures;

(iv) A sizing table; and

(v) Quantification of blood detected.

Dated: June 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12364 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DoD–2020–HA–0040; and DoD–2020–HA–0050]

RIN 0720–AB81; 0720–AB82; and 0720–AB83

TRICARE Coverage and Reimbursement of Certain Services Resulting From Temporary Program Changes in Response to the COVID–19 Pandemic; Correction

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: The DoD is correcting a final rule that appeared in the **Federal Register** on June 1, 2022. The Assistant Secretary of Defense for Health Affairs issued this final rule related to certain provisions of three TRICARE interim final rules (IFRs) with request for comments issued in 2020 in response to the novel coronavirus disease 2019 (COVID–19) public health emergency (PHE). Subsequent to publication of the final rule, DoD discovered an error in the preamble. This document corrects that error.

DATES: This final rule correction is effective on July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Erica Ferron, Defense Health Agency, Medical Benefits and Reimbursement Section, 303–676–3626 or *erica.c.ferron.civ@mail.mil.* Sharon Seelmeyer, Defense Health Agency, Medical Benefits and Reimbursement Section, 303–676–3690 or *Sharon.l.seelmeyer.civ@mail.mil,* Diagnosis Related Groups, Hospital Value Based Purchasing, Long Term Care Hospitals, and New Technology Add-On Payments.

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–10545 appearing at 87 FR 33001–33015 in the **Federal Register** of Wednesday, June 1, 2022, the following corrections are made: On page 33007, in the third column, in section III.B.a.1, correct the first paragraph to read: ''The IFR temporarily waived the regulatory requirement that an individual be an inpatient of a hospital for not less than three consecutive calendar days before discharge from the hospital (three-day prior hospital stay) for coverage of a SNF admission for the duration of the COVID–19 national emergency, consistent with a similar waiver under Medicare and TRICARE's statutory requirement to have a SNF benefit like Medicare's. The waiver will terminate when the President's national emergency for COVID–19 is terminated.''

Dated: June 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–12263 Filed 6–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0444]

RIN 1625–AA08

Special Local Regulation; Lake of the Ozarks MM 1–6, Lake Ozark, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for the navigable waters of the Lake of the Ozarks within a 50-yard radius of all vessels participating in a boat parade starting at the foremost vessel in the World's Largest Parade marine event and extending to the last vessel in the parade. This special local regulation will follow the vessels until the parade's conclusion. The special local regulation is needed to protect personnel, vessels, and the marine environment from potential hazards created by the gathering of participant vessels during the Parade. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River.

DATES: This rule is effective from 10:30 a.m. through 1 p.m. June 10, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0444 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 Commander Stephanie Moore, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2560, email *Stephanie.R.Moore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of The Port Sector Upper Mississippi River
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. Sector Upper Mississippi River received the marine event application on May 25, 2022, prompting the creation of this rule due to the nature of the event. We must establish this special local regulation immediately and lack sufficient time to provide a reasonable comment period and then 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 this rule would be contrary to public safety due to potential hazards for participants of the event and those transiting in the area around it.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with this marine parade will be a safety concern for anyone operating or transiting within the lake of the Ozarks from MM 6 through MM 1. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation while the parade is occurring.

IV. Discussion of the Rule

The World's Largest Boat Parade is a gathering of over 1000 boats in an attempt to break a world record for the largest parade. It will occur on June 10, 2022 from 10:30 a.m. until 1 p.m. on the Lake of the Ozarks from MM 6 through MM 1. This special local regulation is a moving limited access area that follows the participants of the parade as they transit the parade route between MM 6 through MM 1. All spectator vessels and vessels not participating in this parade will not be allowed to transit within a 50 yard radius surrounding the area that includes vessels at the front of the parade extending to the vessels transiting at the end of the parade. Vessels other than those directly involved in the event will only be allowed to safely transit the regulated area when the Coast Guard Patrol Commander has deemed it safe to do so.

No vessel or person will be permitted to enter the area without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the area must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the special local regulation as well as any changes in the dates and times of enforcement, as well as reductions in size of the safety zone as conditions improve, through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB), as appropriate.

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.

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 a special local regulation located on the Lake of the Ozarks at MM 6 through MM 1. The regulation is expected to be active only during the hours of 10:30 a.m. to 1:00 p.m. on June 10, 2022.

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 special local regulation area 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 special local regulation is a moving limited access area that follows the participants of the parade as they transit the parade route between MM 6 through MM 1. All spectator vessels and vessels not participating in this parade will not be allowed to transit within a 50 yard radius surrounding the area that includes vessels at the front of the parade extending to the vessels transiting at the end of the parade. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C 70041; 33 CFR1.05–1.

■ 2. Add § 100.T08–0444 to read as follows:

§ 100.T08–0444 Special Local Regulation; Lake of the Ozarks MM 1–6, Lake Ozark, MO.

(a) *Regulated areas.* All waters on the Lake of the Ozarks within MM 6 through MM 1.

(b) *Definitions.* (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector Upper Mississippi River (COTP).

(2) Participant means all persons and vessels participating in The World's Largest Boat Parade under the auspices of the Marine Event Permit issued to the sponsor approved by the COTP.

(3) Spectator means all persons and vessels not registered with the event sponsor as participants or official patrol who are present on the water to observe the event.

(c) *Special local regulations.* (1) The World's Largest Boat Parade will occur on June 10, 2022 from 10:30 a.m. through 1 p.m. on the Lake of the Ozarks from MM 6 through MM 1. This special local regulation is a moving limited access area that follows the participants of the parade as they transit the parade route between MM 6 through MM 1. All spectator vessels and vessels not participating in this parade will not be allowed to transit within a 50 yard radius surrounding the area that includes vessels at the front of the parade extending to the vessels transiting at the end of the parade. Vessels other than spectator vessels and those directly involved in the event will only be allowed to safely transit the regulated area when the Coast Guard Patrol Commander has deemed it safe to do so. No vessel or person will be permitted to enter the area without obtaining permission from the COTP or a designated representative.

(2) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant in the event, at any time it is deemed necessary for the protection of life or property.

(4) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(5) Only participants and official patrol vessels are allowed to enter the parade route area.

Dated: June 3, 2022.

R.M. Scott,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2022–12325 Filed 6–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0330]

RIN 1625–AA00

Safety Zone; Potomac River, Between Charles County, MD and King George County, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; effective date extension and request for comment.

SUMMARY: The Coast Guard is is extending the duration of a temporary safety zone on certain waters of the Potomac River. This action is necessary to provide for the safety of persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge, through July 1, 2022. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: The effective period of 33 CFR 165.T05–0330, published at 87 FR 28776 on May 11, 2022, which was set to expire at 8 p.m. on June 18, 2022, is extended through 8 p.m. on July 1, 2022.

Comments and related material must be received on or before June 21, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0330 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 Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
§ Section
TFR Temporary Final Rule
U.S.C. United States Code

II. Background Information and Regulatory History

On May 11, 2022, the Coast Guard issued a final rule establishing a temporary safety zone on certain navigable waters of the Potomac River to protect persons and vessels during critical operations requiring a large crane within the federal navigation channel to lift and set 250-ton pier protection fender ring precast segments adjacent to the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge (87 FR 28776). The original rule runs through 8 p.m. on June 18, 2022. However, additional time is needed to conduct the critical heavy lift operations, and, as a result, the Coast Guard needs to extend the safety zone through 8 p.m. on July 1, 2022. 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 doing so would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the continuing critical bridge construction operations and required publication of this extension. Immediate action is needed to continue to protect persons and vessels from the hazards associated with carrying out large crane heavy lifts at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge that must occur within the federal navigation channel. It is impracticable and contrary to the public interest to publish an NPRM, because the extension needs to be in place by June 18, 2022. However, the Coast Guard is providing an opportunity to comment while the rule is in effect and may amend the rule after it becomes effective, if necessary.

We are issuing this rule under 5 U.S.C. 553(d)(3), and in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to continue to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge to be conducted within the federal navigation channel.

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 there are potential hazards associated with critical bridge construction operations. The work is a safety concern for anyone within the federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

IV. Discussion of the Rule

This rule extends the effective dates of an established safety zone, originally effective May 16, 2022 through 8 p.m. on June 18, 2022, through 8 p.m. on July 1, 2022. This extension makes no other changes to the original rule other than the end effective date. The safety zone includes all navigable waters of the Potomac River encompassed by a line connecting the following points beginning at 38°21′50.96″ N, 076°59′22.04″ W, thence south to 38°21′43.08″ N, 076°59′20.55″ W, thence west to 38°21′41.00″ N, 076°59′34.90″ W, thence north to 38°21′48.90″ N, 076°59′36.80″ W, and east back to the beginning point located between Charles County, MD and King George County, VA. The zone is approximately 450 yards in width and 270 yards in length. The extended duration of the zone is intended to protect personnel and the marine environment in these navigable waters while pier protection fender ring precast segments are lifted and set at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Maryland-National Capital Region or a designated representative.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification will also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

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 size of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. This safety zone will impact a small designated area of the Potomac River for 13 days, but we anticipate that there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not

impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. Vessel traffic, including recreational vessels, not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east or the west of the federal navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east and west. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about 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 temporary 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 lasting 13 total days that will prohibit entry within a portion of the Potomac River. 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.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0330 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but

we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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. In § 165.T05–0330, revise paragraph (e) to read as follows:

§ 165.T05–0330 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

* * * * *

(e) *Enforcement period.* The section will be enforced from 7 a.m. on May 16, 2022, through 8 p.m. on July 1, 2022.

Dated: June 3, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.

[FR Doc. 2022–12319 Filed 6–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0442]

RIN 1625–AA00

Safety Zone; City of Oswego Fireworks; Oswego River; Oswego, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 300-foot radius of bridge launched fireworks over Oswego River in Oswego, NY. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo or a designated representative.

DATES: This rule is effective from 9:15 p.m. through 10:45 p.m. on July 3, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0442 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 MST2 Anthony Urbana, Sector Buffalo, U.S. Coast Guard; telephone 716–843–9342, email *D09-SMB-SECBuffalo-WWM@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 the event sponsor did not submit notice of the fireworks display to the Coast Guard with sufficient time remaining before the event to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment in the Oswego River. It is impracticable to public a NPRM because we must establish this safety zone by July 03, 2022.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable because immediate action is necessary to protect personnel, vessels, and the marine environment during the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Buffalo has determined that fireworks over the water presents significant risks to public safety and property within a 300-foot radius of the launch point. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:15 p.m. through 10:45 p.m. on July 03, 2022. The safety zone will cover all navigable waters within a 300-foot radius of bridge launched fireworks over Oswego River in Oswego, NY. The zone is intended to protect spectators, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Buffalo 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 characteristics of the safety zone. The safety zone will encompass a 300-foot radius from the bridge-launched fireworks in the Oswego River in Oswego, NY, with the event lasting approxiamately 1.5 hours

during the evening when vessel traffic is normally low. Moreover, the Coast Guard would 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 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 1.5 hours that will prohibit entry within a 300-foot radius in Oswego River in Oswego, NY for a fireworks display. 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: 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.T09–0442 to read as follows:

§ 165.T09–0442 Safety Zone; City of Oswego Fireworks; Oswego River; Oswego, NY.

(a) *Location.* The following area is a safety zone: All waters of the Oswego River, from surface to bottom, encompassed by a 300-foot radius around 43°27′15.37″ N, 076°30′28.38″ W.

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

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP Buffalo or a designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone must contact the COTP Buffalo or his

designated representative to obtain permission to do so. The COTP Buffalo or his designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Buffalo, or his designated representative.

(d) *Enforcement period.* The regulated area described in paragraph (a) is effective from 9:15 p.m. through 10:45 p.m. on July 3, 2022.

Dated: June 1, 2022.

M.I. Kuperman,

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

[FR Doc. 2022–12343 Filed 6–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0464]

RIN 1625–AA00

Safety Zone; Lake Erie; Sandusky, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters near Sandusky Bay in Sandusky, OH. The safety zone is necessary and intended to protect personnel, vessels, and the marine environment from potential hazards associated with fireworks displays created by the Downtown Sandusky Fireworks event near Sandusky Bay. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit, or his designated representative.

DATES: This rule is effective from 8 p.m. through 10:30 p.m. on June 19, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0464 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Spencer Ehlers, Waterways Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6050, email *Spencer.R.Ehlers@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 the event sponsor notified the Coast Guard with insufficient time to publish an NPRM and immediate action is necessary to protect personnel, vessels, and the marine environment in Sandusky Bay. It is impracticable and contrary to the public interest to publish a NPRM because we must establish this safety zone by June 19, 2022.

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**. For the same reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 300-yard radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 8 p.m. through 10:30 p.m. on June 19, 2022. The safety zone will encompass all U.S. navigable waters of Lake Erie within a 300-yard radius of the fireworks launch site located near Jackson Street Pier, Sandusky, OH. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. The Captain of the Port Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Sandusky Bay 2.5 hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would 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 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. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2.5 hours that will prohibit entry within 300-yard radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] 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 record keeping 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.T09–0464 to read as follows:

§ 165.T09–0464 Safety Zone; Lake Erie; Sandusky Bay, OH.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of the Sandusky Bay within a within a 300-yard radius of the fireworks launch site located at position 41°27′32″ N, 082°42′51″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 8 p.m. through 10:30 p.m. on June 19, 2022. The Captain of the Port Detroit, or a designated representative may suspend enforcement of the safety zone at any time.

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

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

Dated: June 2, 2022.

Brad W. Kelly,

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

[FR Doc. 2022–12344 Filed 6–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0139]

RIN 1625–AA00

Safety Zone; Columbia River, Richland, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Columbia River. This action is necessary to provide for the safety of participants and the maritime public during a high-speed boat race from June 24, 2022 through June 26, 2022 on these navigable waters of the Columbia River in Richland, WA. This regulation prohibits non-participant persons and vessel from being in the safety zone unless authorized by the Captain of the Port Columbia River or a designated representative.

DATES: This rule is effective from June 24, 2022 through June 26, 2022. This rule will be enforced from 7:30 a.m. to 7:30 p.m. each day it is effective.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0139 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 LT Sean Murphy, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *D13-SMB-MSUPortlandWWM@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
COTP Captain of the Port Columbia River

II. Background Information and Regulatory History

On November 3, 2021, Northwest Powerboat Association notified the Coast Guard that it will be conducting a high-speed boat race from 8 a.m. to 7 p.m. on June 24, 2022 through June 26, 2022. These boats will be traveling at a rate of speed greater than usual boat traffic, and will be utilizing all of the waterway in the vicinity of Howard Amon Park, between mile markers 337 and 338. The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with the high speed boat race would be a safety concern for anyone in the regulated area.

In response, on 30 March, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Columbia River, Richland, WA (87 FR 18755). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high-speed boat race. During the comment period that ended May 2, 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 the high speed boat race.

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 from high speed boats associated with the event starting June 24, 2022, will be a safety concern for anyone within the safety zone. The purpose of this rule is to ensure safety of personnel, vessels, and the navigable waters within the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

As noted above, we received no comments on our NPRM published March 30, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone that will be subject to enforcement from 7:30 a.m. to 7:30 p.m. on June 24, 2022 through June 26, 2022. The safety zone will cover all navigable waters of the Columbia River from surface to bottom, in the vicinity of Howard Amon Park, between mile markers 337 and 338. The duration of the zone is intended to ensure the safety of personnel, vessels, and these navigable waters before, during, and after the scheduled 8 a.m. to 7 p.m. 3-day event. No vessel or person will be permitted to enter the regulated area 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, duration, and time-of-year of the regulated area. This regulatory action will only impact a small 1-mile section of the Columbia River. The Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows 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 safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 60 hours that will prohibit entry within a 1 mile length of the Columbia River om Richland, WA for the duration of a high-speed boat race. 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.T13–0139 to read as follows:

§ 165.T13–0139 Safety Zone; Columbia River, Richland, WA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River from surface to bottom, in the vicinity of Howard Amon Park, between mile markers 337 and 338.

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

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Columbia River (COTP) in the enforcement of the safety zone.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement periods.* This section will be enforced from 7:30 a.m. until 7:30 p.m. on June 24, June 25, and June 26, 2022. It will be subject to enforcement this entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: June 2, 2022.

M. Scott Jackson,

Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.

[FR Doc. 2022–12283 Filed 6–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2021–OESE–0116]

Final Requirements—American Rescue Plan Act Elementary and Secondary School Emergency Relief Fund

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final requirements.

SUMMARY: The Department of Education (Department) announces requirements for the American Rescue Plan Elementary and Secondary School Emergency Relief (ARP ESSER) Fund, under the American Rescue Plan Act of 2021 (ARP Act). These requirements are intended to promote accountability and transparency by requiring each State educational agency (SEA) to post on its website maintenance of equity information for each applicable local educational agency (LEA).

DATES: These requirements are effective July 8, 2022.

FOR FURTHER INFORMATION CONTACT: Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202. Telephone: (202) 453–5563. Email: *ESSERF@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.

Purpose of Program: The ARP ESSER Fund provides nearly $122 billion to SEAs and LEAs to help them safely reopen and sustain the safe operation of schools and address the impacts of the COVID–19 pandemic by addressing students' academic, social, emotional, and mental health needs. As a condition of receiving the funds, each SEA and LEA must comply with multiple requirements, including the maintenance of equity requirements in section 2004 of the ARP Act.

Program Authority: ARP Act, Public Law 117–2, March 11, 2021.

We published a notice of proposed requirement (NPR) in the **Federal Register** on January 3, 2022 (87 FR 57). The NPR contained background information and our reasons for proposing the requirement.

As discussed in the *Analysis of Comments and Changes* section elsewhere in this notice, there are a few differences between the proposed and final requirements. The final requirements change the timeline for publishing information on LEAs that are excepted from local maintenance of equity. The final requirements also clarify the requirement for an SEA to describe how it is ensuring LEAs are complying with the maintenance of equity requirements. Additional technical edits are made to the final requirements for clarity.

Public Comment: In response to our invitation in the NPR, 12 parties submitted comments on the proposed requirement.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the NPR.

Analysis of Comments and Changes: An analysis of the comments and of changes in the requirements since publication of the NPR follows.

Comment: Some commenters, including a few States, expressed concern that the proposed timeline to publish LEA-level maintenance of equity data on an SEA's website regarding which LEAs are excepted from the maintenance of equity requirements does not leave sufficient time for the SEA to prepare its data for submission. The commenters suggested that the proposed March 31, 2022, deadline be extended until June 30, 2022. One commenter suggested altering the date of publication of the maintenance of equity data to better align with the current annual reporting timeline for all ARP ESSER funds, which begins in May 2022. In response to comments and discussions with key stakeholders, we will set the deadline at 30 days from the publication of this **Federal Register** notice.

Discussion: The Department believes it is important for SEAs to publicly report information and data on those LEAs that must comply with the maintenance of equity requirements in a timely manner and that SEAs should already have the data requested in order to ensure that LEAs are complying with maintenance of equity requirements. At the same time, the Department understands the difficulties SEAs may have in accurately reporting data on a condensed timeline. As a result, the Department has adjusted the timeline to align with the ARP ESSER annual reporting period and to better fit the needs of SEAs, while also ensuring timely identification so that stakeholders in each State are aware of which LEAs must meet the maintenance of equity requirements prior to State and local allocations in FY 2023.

Changes: The Department changed the initial reporting deadline to July 8, 2022.

Comment: Several commenters expressed concern that they might be unable to gather LEA-level maintenance of equity data and post the data on their SEA website for each LEA in the State that is not excepted from LEA-level maintenance of equity requirements in time for the proposed December 31, 2022, deadline. Commenters specifically noted that Department guidance on reporting per-pupil expenditure data on Title I, Part A report cards routinely allows SEAs and LEAs to update report cards with expenditure information as soon as it becomes available, which is usually after December of each year and may be as late as the following June.

Discussion: We appreciate the commenters' concerns and note that the LEA-level maintenance of equity data for each LEA in the State that is not excepted from LEA-level maintenance of equity requirements during fiscal year 2022, which is the 2021–2022 school year, is due December 31, 2022. The Department recognizes that this may not align with per-pupil expenditure data published for Title I, Part A report cards. However, this reporting requirement simply allows, but does not require, LEAs to use such expenditure data for the purpose of demonstrating compliance with the maintenance of equity requirements. An LEA may also rely on allocations or budget data to determine whether it maintained equity. Further, because each SEA collects and finalizes per-pupil expenditure data on a different timeline, the Department is allowing SEAs to request a reasonable extension of the December 31, 2022, reporting deadline depending on State-specific circumstances.

Changes: None.

Comment: Several commenters expressed concern about how staffing decisions within an LEA impact its ability to maintain equity. For example, a commenter noted that hiring new staff could create a decline in spending, as newer staff are typically less expensive than leaving or retiring staff, even though staff numbers remain the same. In this case, the LEA would maintain staffing equity under section 2004(c)(1)(B) of the ARP Act, but not maintain funding equity under section 2004(c)(1)(A) of the ARP Act because the new staff salaries cost less.

Commenters also discussed whether a shift to using contracted supports would look like a decline in the number of full-time equivalent (FTE) staff while actually reflecting an increase in quality services.

Discussion: Under section 2004(c)(1) of the ARP Act, an LEA must maintain equity two ways: per-pupil funding and FTE staffing. The final requirements ensure transparency on how LEAs that are not excepted from local maintenance of equity are maintaining equity in both ways. When determining how to maintain staffing equity, an LEA must include all employees, including those hired by contract who perform school-level services. Therefore, any shift from direct employees to contracted services should not impact an LEA's ability to maintain staffing equity but may impact whether an LEA maintains fiscal equity.

Similarly, replacing experienced staff with less experienced staff will not affect an LEA's ability to maintain staffing equity. It may, however, affect the LEA's ability to maintain fiscal equity, depending on other fiscal considerations in the LEA for the applicable year. For example, consistent with the intent of the maintenance of equity requirements, in order to maintain fiscal equity where an experienced teacher receiving a higher salary is replaced with a less experienced teacher, the LEA may need to provide additional fiscal resources and supports to meet the needs of students in high-poverty schools.

Changes: None.

Comment: Several commenters asserted that proposed paragraph (d) would allow LEAs to use per-pupil expenditures to demonstrate how an LEA is maintaining staffing equity under section 2004(c)(1)(B). Commenters noted that the required FTE analysis is distinct from reporting on student-level spending. These commenters contended that offering States this flexibility would be at the cost of representative data and requested further detailed guidance should we choose to retain this flexibility.

Discussion: The benefit of publicly posting local maintenance of equity data is to facilitate public accountability so that parents and families will be able to access publicly available information on how each LEA in the State is maintaining both fiscal and staffing equity. The Department agrees with the commenters that the flexibility in proposed paragraph (d) aligns only with the maintenance of equity per-pupil funding analysis in section 2004(c)(1)(A) of the ARP Act. As a result, the final requirements clarify that this flexibility applies only to demonstrating compliance for per-pupil funding, and not maintaining staffing equity under section 2004(c)(1)(B) of the ARP Act.

Changes: The Department clarified that paragraph (d) of the final requirements applies to reporting data in paragraphs (c)(1) and (2) but not (c)(3) and (4) of the final requirements.

Comment: One commenter noted the complexity of the maintenance of equity requirements and suggested revisions to the regulatory scheme to allow for compliance to be met through either meeting the per-pupil spending requirement in section 2004(c)(1)(A) of the ARP Act or the full-time-equivalent staff requirement in section 2004(c)(1)(B) of the ARP Act.

Discussion: Each LEA must demonstrate that it has maintained equity for each high-poverty school in two ways as a condition of receiving ARP ESSER funds. Under section 2004(c) of the ARP Act, for each school identified by the LEA as a high-poverty school, the LEA may not, in FY 2022 or FY 2023, (1) reduce per-pupil funding (from combined State and local funding) by an amount that exceeds the total reduction, if any, in LEA per-pupil funding for all schools served by the LEA in such fiscal year; or (2) reduce the number of FTE staff per-pupil by an amount that exceeds the total reduction, if any, in FTE staff per-pupil in all schools served by the LEA in such fiscal year. The statute does not allow an LEA to comply with only one of the two requirements.

Changes: None.

Comment: Several commenters requested further guidance on the options available to SEAs in designing and implementing their own oversight processes to ensure LEAs comply with the maintenance of equity requirements. The commenters requested examples of allowable processes and parameters on how an LEA might remedy any violation of the maintenance of equity requirements.

Discussion: The final reporting requirements are established as a tool for States to identify and work with those LEAs that should be targeted for technical assistance to ensure their high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA. The ARP Act excepts an LEA from the local maintenance of equity requirements if the LEA:

- has a total enrollment of less than 1,000 students,
- operates a single school,
- serves all students within each grade span with a single school, or
- demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of the LEA, as determined by the Secretary of the U.S. Department of Education.

The Secretary has determined that an LEA that did not have an aggregate reduction in combined State and local per-pupil funding in FY 2022 compared to FY 2021, or in FY 2023 compared to FY 2022, has demonstrated an exceptional or uncontrollable circumstances to warrant an exception from maintaining equity for that fiscal year.

By narrowing the number of LEAs in the State that must comply with the local maintenance of equity requirements, each SEA can then review funding and FTE staffing data within the remaining LEAs and provide technical assistance on how an LEA can ensure compliance for FY 2022 and FY 2023. If an LEA does not maintain equity and cannot make adjustments in that year, then the LEA may remedy this violation by making adjustments to funding and FTE staffing in the next year to ensure that high-poverty schools in the LEA are treated equitably. The Department will continue to provide technical assistance to States on how to maintain equity.

Changes: None.

Comment: One commenter recommended that the Department create an optional reporting template for SEAs to use to report the required information in paragraph (a) on excepted LEAs.

Discussion: Each State must publish the names of LEAs that are excepted under each exception category detailed in paragraph (a). Each State must determine the most appropriate way to publish and list this information so that parents, families, and the general public in the State will be able to access and understand the information. To support States with this requirement, the Department will make available on its website an example of how a State may publicly post this information, for optional State use.

Change: None.

Comment: Several commenters expressed their support for proposed paragraph (b) to publish a general description of how the SEA is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA, if any, such that the LEA can make any necessary adjustments in a timely manner. The commenters suggested that such description be filed as a supplement to the approved ARP ESSER State Plan. However, some commenters requested that the Department reduce the burden of this

requirement on SEAs when establishing the final requirements.

Discussion: The benefit of publicly posting the local maintenance of equity data is to facilitate public accountability so that parents, families, and other education stakeholders will be able to access publicly available information on how LEAs are maintaining fiscal and staffing equity. By requiring SEAs to publish information and data on how LEAs are maintaining equity, the Department is providing the public access to this information. The Department has determined that the general description in proposed paragraph (b) is necessary to provide transparency on efforts the SEA is making to ensure that those LEAs that did not maintain equity take remedial efforts. As such, the Department has clarified this description in the final requirements. Further, although we appreciate the commenters' suggestion, we decline to require that States submit this information as an amendment to their ARP ESSER State Plan.

Changes: The Department clarified the description in paragraph (b).

Comment: In the preamble to the proposed requirement, the Department solicited feedback on whether an SEA should be able to publish general information on how LEAs in the State are complying with maintenance of equity rather than the specific proposed requirement. One commenter specifically recommended against allowing SEAs to alternatively publish general data for maintaining equity and cautioned that it would not allow for a meaningful evaluation of whether the maintenance of equity requirements were met by LEAs in the State. This commenter instead recommended an extended timeline to allow SEAs to gather the specific information and data in the proposed requirement.

Discussion: The Department appreciates the feedback that allowing an SEA to publish general information rather than the specific data and information proposed by the Department may result in less meaningful information to parents, families, and stakeholders. As a result, the Department declines to include this alternative approach in the final requirements and instead will require specific information and data from all States.

Change: None.

Comment: One commenter asserted that current per-pupil expenditure data are often inconsistent and not always useful to parents and advocates and requested a standardized expenditure reporting framework among LEAs. The commenter noted that available data do not always make sense alongside other data sources. Another commenter similarly requested further guidance on this potential use of data and noted that it is hard to provide oversight on per-pupil expenditure data before the end of the school year, when they can no longer be adjusted.

Discussion: The Department appreciates the concerns of the commenters and notes that the increased flexibility in the use of per-pupil expenditure data is a response to prior public feedback requesting that the Department provide this flexibility to demonstrate compliance with maintenance of equity because many LEAs do not budget or allocate spending at the school level. Given that the maintenance of equity requirements apply to two fiscal years and are not an annual reporting requirement, the Department is hesitant to require all SEAs and LEAs to change reporting structures and systems for this ARP Act requirement. As a result, the Department determined that the need for flexibility and transparency within each LEA and SEA outweighs the need for consistent data across all LEAs in the country.

In response to the challenge that one commenter identified regarding the flexibility to use per-pupil expenditure data while also ensuring that adjustments may be made to comply with the requirement, the Department acknowledges that LEAs using such per-pupil expenditure flexibility will not know whether they maintained equity until after the school year ends and, thus, will not be able to remedy a maintenance of equity violation for that school year. In deciding whether to use per-pupil expenditure data, an LEA may review prior-year per-pupil expenditure data to inform its approach to monitoring and assess the likelihood of a maintenance of equity violation. Also, as noted in response to a prior comment, if an LEA does not maintain equity and cannot make adjustments in that year, the LEA may make adjustments to funding and FTE staffing in the next year to ensure that high-poverty schools in the LEA are treated equitably.

Changes: None.

Comment: Multiple commenters requested confirmation that an SEA only needs to list excepted LEAs, and not provide detail on why they are excepted.

Discussion: Paragraph (a)(1) specifically notes that an SEA must identify each LEA in the State that is excepted from LEA-level maintenance of equity requirements under section 2004(c)(2) of the ARP Act for each of the exception reasons. As a result, the Department expects an SEA to identify each LEA that fits within each of the five categories of exceptions listed in paragraph (a). An SEA may not just list all LEAs in the State that are excepted without noting a reason why they are excepted. If more than one exception applies to an LEA (*e.g.,* the LEA operates a single school (paragraph (a)(1)(i)) and its enrollment is under 1,000 (paragraph (a)(1)(ii))), an SEA should have a consistent process for categorizing excepted LEAs into at least one of the exceptions listed in paragraph (a)(1)(i)–(v).

Changes: The Department clarified paragraph (a)(1) to indicate that an SEA must identify a reason each LEA is excepted from the maintenance of equity requirements.

Comment: Multiple commenters asked whether LEAs may continue to apply to the Department for an exception to the local maintenance of equity requirements under section 2004(c)(2)(D) of the ARP Act after the SEA's reporting deadline.

Discussion: In order for each SEA to accurately report on which LEAs are excepted from the maintenance of equity requirements for FY 2022, all LEAs that are able to demonstrate an exceptional or uncontrollable circumstance under section 2004(d)(2)(D) of the ARP Act in FY 2022 should do so prior to the updated July 8, 2022, reporting deadline. LEAs that did not have an aggregate reduction in combined State and local per-pupil funding in FY 2022 compared to FY 2021, or in FY 2023 compared to FY 2022, should submit Appendix B to the SEA. If an LEA did have an aggregate reduction in funding, but otherwise is able to demonstrate an exception or uncontrollable circumstance, then an LEA should submit an exception for FY 2022 to the Department by July 8, 2022 and notify the SEA of the request. For FY 2023, LEAs should submit exception requests by the November 1, 2022, reporting deadline. The Department makes SEAs aware of final determinations in cases when an LEA applies directly to the Department for an exception. (**Note:** The requests for exceptions referenced in this response are for LEAs that cannot sign Appendix B at *https://oese.ed.gov/files/2021/12/Maintenance-of-Equity-updated-FAQs_12.29.21_Final.pdf.* LEAs that can sign Appendix B do so and notify their SEA.)

Changes: None.

Comment: One commenter objected to the $60,000 cost assumption in the cost-benefit analysis as unrealistic.

Discussion: We appreciate the commenter's concerns and recognize the

amount of work required to meet these requirements as a whole. We further reviewed our cost- benefit analysis of the final requirement and provided additional information regarding the accuracy of the cost assumption in the *Regulatory Impact Analysis* section. The cost-benefit analysis is not intended to address the cost of compliance with the entire maintenance of equity requirements; rather, the analysis is intended to reflect the cost of the SEA publishing data that already exist. We believe that the burden outlined in the rule could be offset with ESSER administrative cost funds under section 2001(f)(4) the ARP Act.

Changes: None.

Final Requirements:

The Department establishes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

(a) By July 8, 2022, for FY 2022, which is the 2021–2022 school year, and by November 1, 2022, for FY 2023, which is the 2022–2023 school year, a State educational agency (SEA) must publish the following local educational agency (LEA)-level maintenance of equity data on its website:

(1) The identity of each LEA in the State that is excepted from LEA-level maintenance of equity requirements under section 2004(c)(2) of the ARP Act and indicate the reason for exception as follows:

(i) The LEA has a total enrollment of less than 1,000 students.

(ii) The LEA operates a single school.

(iii) The LEA serves all students within each grade span with a single school.

(iv) The LEA has been granted an exception by the Department due to an exceptional or uncontrollable circumstance under section 2004(c)(2)(D) of the ARP Act.

(v) The LEA has certified to the SEA that it did not have an aggregate reduction in combined State and local per-pupil funding, thereby justifying an exceptional or uncontrollable circumstance under section 2004(c)(2)(D) of the ARP Act, in the fiscal year for which the exception applies.

(2) For each LEA that is not excepted from the LEA-level maintenance of equity requirements under paragraph (a)(1), the identity of each ''high poverty'' school, as defined in section 2004(d)(4) of the ARP Act, in that LEA.

(b) By July 8, 2022 for FY 2022, which is the 2021–2022 school year and by November 1, 2022 for FY 2023, which is the 2022–2023 school year, each SEA must publish on its website a description of how the SEA will ensure that each LEA that is not excepted from LEA-level maintenance of equity requirements is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA, if any, such that the LEA can make any necessary adjustments in a timely manner including information on when the SEA will determine LEAs are not compliant and the date that the SEA will require non-compliant LEAs to describe what adjustments the LEA will make to be in compliance prior to the start of the next school year.

(c) By December 31 following each applicable school year (*e.g.,* December 31, 2022, for FY 2022, which is the 2021–2022 school year) or such other date as the Department may approve upon request from an SEA due to the SEA's specific circumstances, an SEA must publish the following LEA-level maintenance of equity data on its website for each LEA in the State that is not excepted from LEA-level maintenance of equity requirements under paragraph (a)(1):

(1) The per-pupil amount of funding for each high-poverty school in the LEA in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(2) The per-pupil amount of funding in the aggregate for all schools in the LEA, on a districtwide basis or by grade span, in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(3) The per-pupil number of full-time-equivalent (FTE) staff (which may be indicated as the number of students per FTE staff) for each high-poverty school in the LEA in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(4) The per-pupil number of FTE staff (which may be indicated as the number of students per FTE staff) in the aggregate for all schools in the LEA, on a districtwide basis or by grade span, in FYs 2021, 2022, and 2023, as applicable for the year for which the data are published.

(5) Whether the LEA did not maintain equity for any high-poverty school in FY 2022 or 2023, as applicable for the year for which the data are published.

(d) For the purpose of paragraph (c)(1) and (2), an SEA and its LEAs may rely on the applicable per-pupil expenditure data required to be included on the State report card pursuant to section 1111(h)(1)(C)(x) of the Elementary and Secondary Education Act of 1965.

(e) All data required to be published under paragraphs (a)-(d) must be published in a way that is machine-readable and accessible, in a location accessible for parents and families. LEA- and school-level data must be listed by the applicable National Center for Education Statistics (NCES) LEA ID and school ID, as applicable.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

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

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

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

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

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

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

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

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits

(including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

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

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

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

We are issuing these final requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that this final regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. The benefit of publicly posting the local maintenance of equity data is to facilitate public accountability so that parents and families will be able to access publicly available information on how LEAs are maintaining fiscal and staffing equity. By requiring SEAs to publish information and data on how LEAs are maintaining equity, the Department is providing the public access to this information.

Potential Costs and Benefits

The Department has analyzed the costs and benefits of complying with the final requirements. Due to the varying capacity and administrative structures of affected entities, we cannot estimate, with absolute precision, the likely effects of the final requirements. However, as discussed below, we estimate that the final requirements will have a net cost of $60,000 over two years.

As an initial matter, the Department recognizes that staff at SEAs and LEAs nationwide expend considerable effort every year on education finance, both in their general supervisory capacity and as part of their efforts to comply with the maintenance of equity requirements in the ARP Act. The analysis below is not an attempt to quantify those efforts. Rather, this analysis is limited only to the incremental cost of complying with the final requirements (*e.g.,* through public reporting).

We assume that a representative (management analyst at $53.79 per hour) from each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico (hereafter collectively referred to as States) will review the final requirements. We assume that such review will take, on average, one hour per State for a one-time cost of approximately $2,800.

We assume that, for each State, a management analyst will spend approximately eight hours, on average, compiling the relevant data and preparing it for posting. Within this estimate, we assume a management analyst would employ any necessary data suppression rules, add NCES identifiers, and make any necessary formatting changes for posting of the data. We assume that posting the data online would take a network administrator ($59.09 per hour) approximately 30 minutes. In total, we assume posting data will cost approximately $23,900 per year.

Finally, we assume that approximately 20 States would need to update their data after initial posting. We assume the updates will take a management analyst approximately four hours to complete and will require 30 minutes for a network administrator to post. In total, we assume posting corrections will cost approximately $4,900 per year.

Regulatory Flexibility Act Certification

The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population below 50,000.

This final regulatory action would affect only States, none of which is a small entity for the purpose of this analysis.

Paperwork Reduction Act

The final requirements contain information collection requirements that are approved by OMB under OMB control number 1810–0759.

Intergovernmental Review: The ARP ESSER program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 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 Adobe 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.

Mark Washington,

Deputy Assistant Secretary for Administration, Office of Elementary and Secondary Education.

[FR Doc. 2022–12296 Filed 6–7–22; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R08–OAR–2021–0808; FRL–9595–02–R8]

Approval and Promulgation of Implementation Plans; Montana; Whitefish PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Limited Maintenance Plan (LMP) submitted by the State of Montana to EPA on August 6, 2021, for the Whitefish Moderate nonattainment area (NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) and concurrently redesignating the NAA to attainment for the 24-hour PM_{10} National Ambient Air Quality Standard (NAAQS). In order to approve the LMP and redesignation, EPA determined that the Whitefish NAA has attained the 1987 24-hour PM_{10} NAAQS of 150 μg/m^3. This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2015 through 2020. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on July 8, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2021–0808. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6175, email address: *gregory.kate@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our March 8, 2022 proposal (87 FR 12912). In that document, we proposed to approve the LMP for the Whitefish NAA and the State's request to redesignate the Whitefish NAA from nonattainment to attainment for the 1987 24-hour PM_{10} NAAQS. Additionally, we proposed to determine that the Whitefish NAA has attained the NAAQS for PM_{10}. That determination was based upon monitored air quality data for the PM_{10} NAAQS during the years 2015 through 2020. Finally, in our March 8, 2022 proposal, EPA proposed to approve the Whitefish LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

The public comment period on the EPA's proposed rule opened on March 8, 2022, the date of its publication in the **Federal Register** (87 FR 12912) and closed on April 7, 2022. During this comment period we received no comments on our proposal.

II. Environmental Justice Considerations

As discussed on the proposed rule, to identify environmental burdens and susceptible populations in underserved communities in the Whitefish area, we performed a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[1] The results of this screening level analysis are described in our proposed rule (87 FR 12912). This action addresses a plan for continued attainment of the 1987 PM_{10} NAAQS for the Whitefish area. Approval of this plan does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in our proposed rule, Montana has demonstrated that the Whitefish area is attaining the 1987 PM_{10} NAAQS and the Whitefish Maintenance Plan provides for the maintenance of the NAAQS for 10 years beyond redesignation. For these reasons, this action will not result in disproportionately high and adverse human health or environmental effects on communities with environmental justice concerns.

[1] See 'Whitefish NAA EJSCREEN' document available in docket.

III. Final Action

For the reasons explained in our proposed action, we are approving the LMP for the Whitefish NAA and the State's request to redesignate the Whitefish NAA from nonattainment to attainment for the 1987 24-hour PM_{10} NAAQS. Additionally, the EPA is determining that the Whitefish NAA has attained the NAAQS for PM_{10}. This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2015 through 2020. The EPA is approving that the Whitefish LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2022.

K.C. Becker,

Regional Administrator, Region 8.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

■ 2. In § 52.1370, the table in paragraph (e) is amended by adding the entry ''Whitefish 1987 PM_{10} Limited Maintenance Plan'' under the heading entitled ''(3) Flathead County'' at the end of the section to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(e) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
*	*	*	*
(3) Flathead County			
*	*	*	*
Whitefish 1987 PM_{10} Limited Maintenance Plan	.....	6/8/2022	[insert **Federal Register** citation].
*	*	*	*

■ 3. In § 52.1374, add paragraph (g) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(g) On August 6, 2021, the State of Montana submitted limited maintenance plans for the Whitefish PM_{10} nonattaiment areas and requested that this area be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and limited maintenance plans satisfy all applicable requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.327, in the table entitled ''Montana—PM–10'' under the entry ''Flathead County:'' revise the fourth entry to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*		*	*
Flathead County:				
* * * *	*		*	*
The City of Whitefish and surrounding vicinity bounded by lines from Universal Transmercator (UTM) coordinates 695000 mE, 5370000 mN, east to 699000 mE, 5370000 mN, south to 699000 mE, 5361000 mN, west to 695000 mN, 5361000 mN, and north to 695000 mE, 5370000 mN.	7/8/2022	Attainment.		
* * * *	*		*	*

* * * * *

[FR Doc. 2022–11580 Filed 6–7–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R08–OAR–2021–0809; FRL–9579–02–R8]

Approval and Promulgation of Implementation Plans; Montana; Thompson Falls PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Limited Maintenance Plan (LMP) submitted by the State of Montana to EPA on November 4, 2021, for the Thompson Falls Moderate nonattainment area (NAA) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) and concurrently redesignating the NAA to attainment for the 24-hour PM_{10} National Ambient Air Quality Standard (NAAQS). In order to approve the LMP and redesignation, EPA determined that the Thompson Falls NAA has attained the 1987 24-hour PM_{10} NAAQS of 150 $\mu g/m^3$. This determination is based upon monitored air quality data for the PM_{10} NAAQS during the years 2015 through 2020. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on July 8, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2021–0809. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6175, email address: *gregory.kate@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our March 8, 2022 proposal (87 FR 12905). In that document, we proposed to approve the LMP for the Thompson Falls NAA and the State's request to redesignate the Thompson Falls NAA from nonattainment to attainment for the 1987 24-hour PM_{10} NAAQS. Additionally, we proposed to determine that the Thompson Falls NAA has attained the NAAQS for PM_{10}. That determination was based upon monitored air quality data for the PM_{10} NAAQS during the years 2015 through 2020. Finally, in our March 8, 2022 proposal, EPA proposed to approve the Thompson Falls LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

The public comment period on the EPA's proposed rule opened on March 8, 2022, the date of its publication in the **Federal Register** (87 FR 12905) and closed on April 7, 2022. During this comment period we received no comments on our proposal.

II. Environmental Justice Considerations

As discussed on the proposed rule, to identify environmental burdens and susceptible populations in underserved communities in the Thompson Falls area, we performed a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[1] The results of this screening level analysis are described in our proposed rule (87 FR 12905). This action addresses a plan for continued attainment of the 1987 PM_{10} NAAQS for the Thompson Falls area. Approval of this plan does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in our proposed rule, Montana has demonstrated that the Thompson Falls area is attaining the 1987 PM_{10} NAAQS and the Thompson Falls Maintenance Plan provides for the maintenance of the NAAQS for 10 years beyond redesignation. For these reasons, this action will not result in disproportionately high and adverse human health or environmental effects on communities with environmental justice concerns.

III. Final Action

For the reasons explained in our proposed action, we are approving the LMP for the Thompson Falls NAA and the State's request to redesignate the Thompson Falls NAA from nonattainment to attainment for the 1987 24-hour PM_{10} NAAQS. Additionally, the EPA is determining that the Thompson Falls NAA has attained the NAAQS for PM_{10}. This determination is based upon monitored

[1] See 'Thompson Falls MT NAA EJSCREEN Report' document available in docket.

air quality data for the PM_{10} NAAQS during the years 2015 through 2020. The EPA is approving that the Thompson Falls LMP as meeting the appropriate transportation conformity requirements found in 40 CFR part 93, subpart A.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2022.

K.C. Becker,

Regional Administrator, Region 8.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

■ 2. In § 52.1370, the table in paragraph (e) is amended by adding the entry ''Thompson Falls 1987 PM_{10} Limited Maintenance Plan'' under the heading entitled ''(7) Sanders County'' at the end of the section to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(e) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
* * * *	*	*	*
(7) Sanders County			
Thompson Falls 1987 PM_{10} Limited Maintenance Plan		6/8/2022	[insert **Federal Register** citation].
* * * *	*	*	*

■ 3. In § 52.1374, add paragraph (h) to read as follows:

§ 52.1374 Control strategy: Particulate matter.

* * * * *

(h) On November 4, 2021, the State of Montana submitted limited maintenance plans for the Thompson Falls PM_{10} nonattaiment areas and requested that this area be redesignated to attainment for the PM_{10} National Ambient Air Quality Standards. The redesignation request and limited maintenance plans satisfy all applicable requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.327, the table entitled ''Montana-PM–10'' is amended by revising the entries ''Sanders County (part)'' and ''Thompson Falls and vicinity'' to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	*	*	*
Sanders County (part)	7/8/2022	Attainment		
Thompson Falls and vicinity: Including the following Sections: R29W, T21N—Sections 5, 6, 7, 8, 9, 10, 15, and 16.				
* *	*	*	*	*

* * * * *

[FR Doc. 2022–11581 Filed 6–7–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 21–483; RM–11913; DA 22–584; FR ID 89847]

Radio Broadcasting Services; Hamilton, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments, of the Federal Communications Commission's (Commission or FCC) rules, by adding Channel 263A at Hamilton, Texas. Channel 263A would provide a second local service at Hamilton, Texas. A staff engineering analysis reveals that Channel 263A can be allotted to Hamilton in conformity with the FCC's rules at reference coordinates 31–39–48.1 NL and 98–21–29.4 WL. To accommodate the Hamilton allotment, we modify the FM station KNUZ license to specify operation on Channel 291A in lieu of Channel 224A at San Saba, Texas, and the FM station KRNR license to specify Channel 224A in lieu of 263A at Goldthwaite, Texas.

DATES: Effective July 11, 2022.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 21–483; RM–11913; DA 22–584 adopted on May 25, 2022 and released on May 26, 2022. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. 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* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

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 § 73.202(b), amend the Table of FM Allotments under Texas by adding in alphabetical order an entry for ''Hamilton'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)
[U.S. States]

	Channel No.
Texas	
* * * * *	
Hamilton	263A
* * * * *	

[FR Doc. 2022–12360 Filed 6–7–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. NHTSA–2020–0067]

RIN 2127–AL92

Federal Motor Vehicle Safety Standards, Consumer Information; Standard Reference Test Tire

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends several Federal motor vehicle safety standards and consumer information regulations to update the standard reference test tire (SRTT) used therein. The SRTT is used in those standards and regulations as a baseline tire to rate tire treadwear, define snow tires based on traction performance, and evaluate pavement surface friction. This rule is necessary because the only manufacturer of the currently referenced SRTT ceased production of the tire. Referencing a new SRTT ensures the availability of a test tire for testing purposes.

DATES: The effective date of this final rule is July 8, 2022. The incorporation by reference of the publications listed in the rule has been approved by the Director of the Federal Register as of July 8, 2022.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than July 25, 2022.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. For hand delivery or courier delivery, delivery is only possible between 9:00 a.m. and 5:00 p.m. Eastern time. To be sure someone is there to help you, please call (202) 366–9332 before coming.

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590: (1) a complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to the Administrator. To facilitate social distancing during COVID–19, NHTSA is temporarily accepting confidential business information electronically. Please see *https://www.nhtsa.gov/coronavirus/submission-confidential-business-information* for details.

FOR FURTHER INFORMATION CONTACT: You may contact Hisham Mohamed, Office of Crash Avoidance Standards, by telephone at (202) 366–0307 or David Jasinski, Office of the Chief Counsel, by telephone at (202) 366–2992. The mailing address of both of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The purpose of this final rule is to replace references to the 14-inch Standard Reference Test Tire (SRTT) with references to a new 16-inch SRTT. As the name suggests, the SRTT is a test tire that is not manufactured for general use. The 14-inch SRTT is used by NHTSA in three ways. First, as part of the Federal Motor Vehicle Safety Standards (FMVSS) (49 CFR part 571), it is used to verify the surface friction of test surfaces for braking and electronic stability control standards. Second, it is used as a traction reference for the determination of whether a tire may be considered a ''snow tire'' under FMVSS No. 139 (49 CFR 571.139). Third, the SRTT is used in NHTSA's Uniform Tire Quality Grading Standards (UTQGS) consumer information program as the course reference tire as part of NHTSA's base course wear rating (BCWR) determination for the treadwear course.

Because Michelin, the only manufacturer of the 14-inch SRTT, has ceased production of the tire in 2020, NHTSA must find a suitable replacement tire. After substantial testing by NHTSA and several test partners, NHTSA has determined that the 16-inch SRTT is a suitable replacement. The testing program has determined equivalent values for test surface friction, the snow tire determination, and the BCWR determination that do not change the severity of any requirements and ensure that tire consumer ratings tested using either SRTT are comparable.

II. Background

A. SRTT Information

This rulemaking addresses the standard reference test tire (SRTT) manufactured according to specifications set forth in an ASTM International (ASTM) standard, E1136, ''Standard Specification for P195/75R14 Radial Standard Reference Test Tire'' (14-inch SRTT). The 14-inch SRTT is a size P195/75R14 all-season steel-belted radial tire. The dimensions, weight, materials, and other physical properties of the tire are specified in E1136. The tire is not intended for general use, but as the name indicates, is used for testing.

NHTSA uses the 14-inch SRTT to evaluate test surface friction [1] for safety standards relating to braking because the narrow specifications for the tire (size, component materials, etc.) ensure consistent, repeatable performance. The 14-inch SRTT is also incorporated in the definition of a ''snow tire'' in FMVSS No. 139,[2] which is defined as a tire that attains a traction index greater than or equal to 110 compared to the 14-inch SRTT when using the ASTM F1805 snow traction test. The SRTT is also used as part of the Uniform Tire Quality Grading Standards (UTQGS),[3] an information program to assist consumers in making informed decisions when purchasing tires. The UTQGS apply to passenger car tires and

[1] 49 CFR 571.105, 571.121, 571.122, 571.126, 571.135, 571.136, 571.139, 571.500.

[2] See 49 CFR 571.139.

[3] See 49 CFR 575.104.

require motor vehicle and tire manufacturers and tire brand name owners to provide consumers with information about their tires' relative performance regarding treadwear, traction, and temperature resistance. The SRTT is used as the course monitoring tire (CMT) for the treadwear course.[4] Because tire performance over the test course can change daily due to variability in road surface, temperature, humidity, and precipitation, the CMTs are run alongside candidate tires being tested. The performance of the CMT is used to determine the base course wear rate (BCWR), which is published four times per year by NHTSA and is used to determine a course severity adjustment factor that is applied during tire treadwear testing.

In an August 5, 2021 notice of proposed rulemaking (NPRM),[5] NHTSA proposed amendments to the FMVSSs and tire regulations to replace references to the 14-inch SRTT with references to a newer 16-inch SRTT. The 14-inch SRTT was first introduced in the 1980s. The 14-inch SRTT was manufactured by one company, Michelin North America, Inc (Michelin) and was sold under its Uniroyal brand. Michelin has ceased production of the 14-inch SRTT because it has become difficult for Michelin to obtain the materials necessary to manufacture the SRTT.[6] ASTM has developed an updated specification for an SRTT designated F2493 (16-inch SRTT). The 16-inch SRTT is a size P225/60R16 97S radial standard reference test tire. The 16-inch SRTT is considered to be more representative of current tires because of its larger size and new material and design features that lead to traction that is more typical of modern passenger car tires.[7] To the best of NHTSA's knowledge, the 16-inch SRTT is manufactured only by Michelin and sold under its Uniroyal brand. NHTSA determined that the 16-inch SRTT was the only suitable replacement that had been suggested.

However, because the 16-inch SRTT is a larger size and uses more modern design and materials, it is likely that the 16-inch SRTT will not perform identically to the 14-inch SRTT. Therefore, NHTSA, in cooperation with Transport Canada, Natural Resources Canada, representatives of ASTM committees F09 on tires and E17 on vehicle-pavement systems, the U.S. Tire Manufacturers Association (including Michelin, currently the sole manufacturer of SRTTs), and the Rubber Association of Canada, conducted testing to determine the consequences of replacing the 14-inch SRTT with the 16-inch SRTT. The results of the testing by these entities, in addition to NHTSA's own testing, substantially contributed to the August 2021 proposal to replace the 14-inch SRTT with the 16-inch SRTT.[8]

B. Surface Friction Determination

NHTSA first incorporated the 14-inch SRTT into the Federal Motor Vehicle Safety Standards (FMVSSs) in a 1995 rule adopting FMVSS No. 135, the light vehicle braking standard. The SRTT is used to determine the friction of the test surface using the 1990 version of the ASTM E1337 test method. The ASTM E1337 test method involves mounting the SRTT to a test trailer, bringing the trailer to a test speed of 40 mph (64 km/h), and applying the brake to produce the maximum braking force prior to wheel lockup.

When NHTSA was informed that production of the 14-inch SRTT was to be discontinued, NHTSA evaluated the 16-inch SRTT to determine whether it would be a suitable replacement. NHTSA carefully considered the effect of the 16-inch SRTT on the determination of peak friction coefficient (PFC).[9] NHTSA was concerned, and subsequent testing verified, that the use of the 16-inch SRTT without further changes to the FMVSSs would increase the stringency of the braking and ESC FMVSSs. The reason for this was that the different materials used in the 16-inch SRTT and the increased size of the tire would result in the 16-inch SRTT having better traction performance than the 14-inch SRTT. If the 16-inch SRTT has improved traction performance relative to the 14-inch SRTT, then the same surface would have a higher PFC when tested with the 16-inch SRTT. Alternatively stated, obtaining an identical PFC value using the 16-inch SRTT would require a road surface with lower friction. Testing braking systems using stopping distance on road surfaces with lower friction would require improved braking performance to stop in the same distance, which is not an outcome intended by this rulemaking. Consequently, NHTSA sought a conversion factor to evaluate PFC of a test surface using the 16-inch SRTT without altering the severity of any braking or ESC FMVSSs.

ASTM developed a formula to correlate PFC determinations using the 14-inch and 16-inch SRTTs. NHTSA also commissioned confirmatory testing with its contactor, Transportation Test Center Inc. (TRC), which further verified the conversion formula used in the 2019 version of ASTM E1337.[10] This formula was included in a 2019 update to ASTM E1337. In the NPRM, NHTSA proposed to replace the 1990 version of ASTM E1337 currently incorporated by reference with the 2019 version. Furthermore, NHTSA used the formula in the 2019 version of E1337 to derive new PFC values for all FMVSSs when evaluated using the 16-inch SRTT. Those values are listed in Table 1 below.[11]

TABLE 1—PFC CONVERSION VALUES; FROM 14-INCH TO 16-INCH SRTT

FMVSS section	PFC value using 14-inch SRTT	New PFC value using 16-inch SRTT
FMVSS No. 105 S6.9.2(a) (high friction testing)	0.9	1.02
FMVSS No. 105 S6.9.2(b) (low friction testing)	0.5	0.55
FMVSS No. 121 S5.3.1.1, S5.7.1, S6.1.7 (high friction testing)[12]	0.9	1.02
FMVSS No. 121 S5.3.6.1, S6.1.7 (low friction testing)	0.5	0.55
FMVSS No. 122 S6.1.1.1 (high friction testing)	0.9	1.02
FMVSS No. 122 S6.1.1.2 (low friction testing)	≤0.45	≤0.50

[4] The treadwear course is a 400-mile course of public roads near San Angelo, Texas.

[5] 86 FR 42762.

[6] See ''Discontinued Tire Will Lead to ASTM Standard Changes'' (July 30, 2015), *available at https://www.astm.org/cms/drupal-7.51/newsroom/discontinued-tire-will-lead-astm-standard-changes* (last accessed April 13, 2021).

[7] See ''New ASTM Specification Presents Requirements for Standard Reference Test Tire'' (April 1, 2007), *available at https://www.astm.org/cms/drupal-7.51/newsroom/new-astm-specification-presents-requirements-standard-reference-test-tire* (last accessed April 13, 2021).

[8] See Docket No. NHTSA–2020–0067–0002.

[9] PFC is also sometimes referred to as peak braking coefficient or PBC.

[10] See Docket No. NHTSA–2020–0067–0002.

[11] Each value derived using the formula was rounded to the hundredths position, rounding up if necessary. This ensures that the updated FMVSS test surface PFC specification will be no more stringent than it is now, consistent with NHTSA's intent in this rulemaking.

TABLE 1—PFC CONVERSION VALUES; FROM 14-INCH TO 16-INCH SRTT—Continued

FMVSS section	PFC value using 14-inch SRTT	New PFC value using 16-inch SRTT
FMVSS No. 122 S6.9.7.1	≥0.8	≥0.90
FMVSS No. 126 S6.2.2	0.9	1.02
FMVSS No. 135 S6.2.1, S7.4.3, S7.5.2, S7.6.2, S7.7.3, S7.8.2, S7.9.2, S7.10.3, S7.11.3	0.9	1.02
FMVSS No. 136	0.9	1.02
FMVSS No. 500[13]	0.9	1.02

C. Snow Tire Definition

Presently, for a manufacturer to designate a tire as a ''snow tire,'' the tire must attain a traction index equal to or greater than 110 compared to the 14-inch SRTT when tested using the snow traction test in the 2000 version of ASTM F1805. The ASTM F09 committee on tires commissioned a study to determine the feasibility of replacing the 14-inch SRTT with the 16-inch SRTT in the determination of whether a tire meets the definition of ''snow tire.'' This study was funded by the United States Tire Manufacturers Association (USTMA). ASTM has published a technical report documenting this work.[14] ASTM determined that a correlation factor of 0.9876 was appropriate, meaning that a tire that attained a rating of 110 when tested using the 14-inch SRTT correlated to a rating of 111.4 or 111.5 when tested using the 16-inch SRTT, depending on the number of significant digits considered. Recent guidance issued by the USTMA, a trade association consisting of companies that manufacture tires in the United States, recommends a minimum traction index of 112 using the 16-inch SRTT.[15] Accordingly, NHTSA proposed to amend the definition of ''snow tire'' in FMVSS No. 139 to specify that a snow tire is a tire that attains a traction index of 112 when tested using the updated F1895 test method using the 16-inch SRTT, consistent with USTMA's guidance.

Furthermore, after reviewing this information from the USTMA, NHTSA determined that additional clarification was necessary to the definition of a ''snow tire'' in FMVSS No. 139. The 2020 version of ASTM F1805 defines the standard test procedure for measuring traction on ''snow'' and ''ice'' surfaces. However, there are multiple surface types in both the ''snow'' and ''ice'' categories. They include soft pack (new) snow, medium pack snow, medium hard pack snow, hard pack snow, ice—wet, and ice—dry.[16] The definition of ''snow tire'' in FMVSS No. 139 does not specify the surface type specified within ASTM F1805 for testing.

NHTSA stated that the ''medium pack snow'' condition was intended for use by manufacturers for marketing tires as ''snow tires.'' Accordingly, NHTSA proposed to specify that the traction index is obtained using the ''medium pack snow '' surface and further proposed updating the incorporation by reference of ASTM F1805 to the 2020 version.

D. Proposed UTQGS Amendments

In anticipation of Michelin's decision to cease production of the 14-inch SRTT, NHTSA began including testing of the 16-inch SRTT as part of its BCWR determination. Since the second quarter of 2016, NHTSA has been duplicating BCWR testing using both the 14-inch SRTT and the 16-inch SRTT. NHTSA considered several options for updating the UTQGS regulations to account for the 16-inch SRTT. As of publication of the NPRM, NHTSA had acquired 17 consecutive quarters of side-by-side testing of the 14-inch and 16-inch SRTTs on the treadwear course and published BCWR data for that period.[17] NHTSA requested comments on how the new conversion factor should be selected from among the available quarters of data. For the NPRM, NHTSA used the average of all 17 quarters of data to adjust the formula for severity adjustment factor using the BCWR.

NHTSA also proposed a modification to language in the treadwear test procedure in § 575.104 to reference the total distance and schedule of events in terms of circuits completed rather than mileage. This proposed change was intended to allow testing to be more flexible in the event of route changes or other unforeseen circumstances.

Finally, NHTSA proposed changes lengthening the amount of time a CMT may be used after removal from storage. Currently, a CMT must be no more than one year old at the commencement of testing and that it must be used within two months after removal from storage. Because NHTSA lacks facilities to store tires in a climate-controlled environment at its testing facility in San Angelo, Texas, NHTSA only purchases CMTs on a quarterly basis depending on funding availability and conducts BCWR testing as soon as feasible after receiving a shipment of CMTs. Lack of funding sometimes requires NHTSA to delay CMT purchases, and sometimes when NHTSA purchases CMTs, supplies may be limited. NHTSA proposed lengthening the amount of time a tire may be removed from storage to four months. Further, NHTSA also requested comment on whether the word ''storage'' was sufficiently well defined and, if not, how NHTSA could define ''storage'' more clearly to ensure tires are stored in such a way that would minimize testing variability without providing inflexible limitations on NHTSA's use of the SRTT.

E. Proposed Effective Dates

For the changes to the UTQGS, NHTSA stated that it expected to make any changes effective at the next BCWR determination at least 30 days after the date of publication of a final rule. NHTSA did not believe any further lead time is necessary for the following reasons. First, because NHTSA is using a conversion factor to keep the rating scale used with the 14-inch SRTT and 16-inch SRTT similar, ratings of a particular line of tires should not be affected by the proposed rule. Second, tire lines rated prior to the effective date of the changes would not be required to be rerated. Third, limited availability of the 14-inch SRTT could make it difficult

[12] NHTSA is also revising Tables I, II, and IIA in FMVSS No. 121 to eliminate the redundant references to PFC values in those tables. In place of PFC values, NHTSA is including in Table I (Stopping Sequence) references to the sections in which the various procedures are set forth, which is a more helpful reference.

[13] Although FMVSS No. 500 specifies a PFC value for the test surface, the test surface is only used to verify the vehicle's maximum speed.

[14] Available at *https://www.astm.org/COMMIT/2019_04_10_E1136%20to%20F2493%20transition%20for%20ASTMF1805.pdf* (last accessed April 13, 2021).

[15] See *https://www.ustires.org/sites/default/files/USTMA_TISB_37_0.pdf* (last accessed April 13, 2021).

[16] The surface types are defined in the text of ASTM F1805.

[17] See Docket No. NHTSA–2020–0067–0011.

for NHTSA to continue to obtain 14-inch SRTTs in its BCWR determinations.

For FMVSS changes, NHTSA proposed a lead time of six months. NHTSA determined that six months was sufficient to give compliance test facilities sufficient time to obtain and validate test surfaces using the 16-inch SRTT. Although NHTSA has determined an equivalent level of surface friction when evaluating PFC with the 16-inch SRTT in place of the 14-inch SRTT, NHTSA anticipates requiring test facilities conducting NHTSA's compliance tests to revalidate test surfaces using the 16-inch SRTT, to ensure that testing is being done in accordance with the procedures in the FMVSS. However, NHTSA observed that potential unavailability of the 14-inch SRTT may constitute good cause for NHTSA to impose a shorter lead time in a final rule resulting from the proposal.

III. Summary of Comments and NHTSA's Response

NHTSA received five comments on the August 2021 NPRM from, the Japan Automobile Tyre Manufacturers Association (JATMA), Michelin North America, Inc. (Michelin), the U.S. Tire Manufacturers Association (USTMA),[18] Phillip Donovan, and the Alliance for Automotive Innovation (Alliance).[19] Both JATMA and Michelin supported the comments filed by USTMA. JATMA had no further comment other than to encourage NHTSA to expedite publication of a final rule because no 14-inch SRTTs were available for tire manufacturers to purchase. USTMA and Michelin also encouraged NHTSA to expedite publication of the final rule.

A. Revision Date of ASTM F2493

USTMA and Michelin recommended that all references to ASTM F2493 (the specifications for the 16-inch SRTT) refer to the standard without a revision date. As an example, USTMA cites a recent amendment to the Canadian Motor Vehicle Tire Safety Regulations, in which the snow tire definition references an SRTT that ''meets the requirements of any version of ASTM F2493.'' [20] Similarly, UNECE Regulation No. 117 and Global Technical Regulation No. 20 reference ASTM F2493 without regard to version.

The incorporation by reference of ASTM F2493 without regard to date in Canadian and UNECE regulations makes it easier for governments to update their rules in the event future changes to ASTM F2493 are warranted. In light of the comments and the benefit to NHTSA of not having to conduct rulemaking to keep references to the ASTM F2493 up-to-date, NHTSA has considered whether the incorporation by reference of the specifications for the SRTT is necessary.

As required by 5 U.S.C. 552(a)(1), NHTSA must publish the text of its rules and any amendment, revision, or repeal thereto in the **Federal Register**. The only exception to this requirement is that matter reasonably available that cannot be published in the **Federal Register** may be deemed published when incorporated by reference therein with the approval of the Director of the Federal Register. In 1 CFR 51.1(f), the regulations setting forth the policy followed by the Director of the Federal Register in approving incorporations by reference, an incorporation by reference of a publication is limited to the edition of the publication that is approved. Further, that regulation provides that future amendments or revisions to a publication are not included in an incorporation by reference. Therefore, while NHTSA may incorporate the most current and prior versions of ASTM F2493 into the CFR, the Director of the Federal Register will not approve incorporation by reference of ASTM F2493 without reference to version or in any other way that would include future versions.

NHTSA, with assistance from the Office of the Federal Register, has considered these provisions and the manner in which ASTM F2493 is referenced in the proposed rule and in this final rule. Because no requirements, procedures, or anything else within the text of ASTM F2493 are referenced in this final rule, incorporation by reference is unnecessary. In order to obtain a tire manufactured to the specifications of ASTM F2493, an entity would not need reference to the specific requirements of the standard. The entity would only need to contact the manufacturer of the tire.

Having determined that incorporation by reference is not necessary, NHTSA agrees with the commenters that it would be preferable to refer to ASTM F2493 without regard to version number. Because the SRTT is a reference tire that is designed to have a specific level of performance, NHTSA would not expect that any subsequent revision of ASTM F2493 to have a consequential effect on the performance of the SRTT. Further, regardless of any particular version of ASTM F2493 that might be referenced in NHTSA's regulations, it is likely that any tire available for purchase and used by NHTSA will be manufactured according to the most recent or immediate prior version of ASTM F2493, given that the tire is manufactured in small batches.

Accordingly, NHTSA is not incorporating ASTM F2493–19 by reference as proposed in the NRPM, and is instead referring to ASTM F2493 without reference to version number.

B. Maximum Age and Storage Requirements for NHTSA's SRTT Use

In the August 2021 NPRM, NHTSA proposed lengthening, from two months to four months, the maximum time an SRTT may be removed from storage prior to use as part of a BCWR determination. USTMA and Michelin opposed lengthening the amount of time tires may be removed from storage prior to use in UTQGS testing from two to four months. Michelin stated that environmental exposure affects tire properties and could impact the published BCWR compared to what has been done in the past. USTMA suggested it was open to further discussions on this issue and that it be severed from the proposal to be addressed in a potential separate rulemaking. Both USTMA and Michelin referenced a 2000 rulemaking where NHTSA noted that tires removed from storage degrade at the rate of approximately 10 percent per year, while tires stored outside of prescribed storage conditions degrade at a rate of no more than 5 percent per year.

This final rule contains no changes in response to these comments. While NHTSA appreciates Michelin's commitment to managing supply of the 16-inch SRTT, there are factors outside of Michelin's management of tire supply that affect when NHTSA can test a tire. After a tire is removed from storage, it must be shipped to NHTSA. NHTSA must then prepare the tires for testing and negotiate with the treadwear testing contractor the start date for the vehicle convoys that run the 16 circuits of the UTQGS treadwear course as part of the BCWR determination. Any of the steps between the shipment of tires and the initiation of the convoy may be impacted by weather conditions, scheduling conflicts, and operational limitations. USTMA and Michelin both referenced a 2000 rulemaking in which the requirement that NHTSA use tires within two months after removal from

[18] USTMA is a trade association representing tire manufacturers that produce tires in the United States. Michelin is part of USTMA, but also submitted comments separately.

[19] The Alliance is a trade association including manufacturers of nearly all passenger cars and light trucks sold in the United States.

[20] Regulations Amending Certain Regulations Made Under the Motor Vehicle Safety Act, SOR/2021–83 (Can.).

storage was first adopted.[21] In that rulemaking, Uniroyal cited a NHTSA study [22] that found an aging effect of approximately 5 percent per year for tires in storage and about 10 percent per year for tires not in storage. NHTSA found that one year of aging could result in tire degradation of up to 5 percent, which NHTSA deemed to be acceptable as the best available compromise within the economic constraints of the supply of SRTTs, given that SRTTs had limited production runs.

Although NHTSA's storage facilities do not meet the exact storage specifications in F2493, the facilities are kept climate controlled at all times, tires are not stored near ozone-generating equipment or sources of ultraviolet radiation, and tires are stored on racks rather than stacked. NHTSA believes that its efforts reduce any potential test variability that might result from environmental exposure. NHTSA is also committed to using SRTTs as soon as reasonably practicable. NHTSA believes that these factors mitigate any additional tire degradation resulting from lengthening the amount of time a tire may be used after removal from storage from two months to four months. NHTSA believes that Michelin's commitment to a timely supply of tires and the storage conditions at NHTSA's facility will ensure that the total tire degradation will not be significantly more than the 5 percent that NHTSA deemed acceptable in the 2000 rulemaking.

USTMA and Michelin also recommended that NHTSA define the term ''storage'' in its regulations according to the guidelines in ASTM F2493. These specifications include constant relative humidity, temperature greater than freezing but that does not exceed 70 °F (21 °C), ozone levels that do not exceed 5 parts/10.[8] The requirements further specify that tires not be stored within 30 ft (9.1 m) of electrical motors or other ozone-generating equipment, be stored in subdued light, and that tires be stacked unbundled no more than eight tires high on a pallet.

Upon consideration of the comments, NHTSA has determined that it is not necessary to include a definition of the term ''storage'' in its regulations. NHTSA assumes, based on Michelin's comment favoring the use of a definition of ''storage'' from ASTM F2493, that Michelin is storing SRTTs that it manufactures in accordance with the guidelines in ASTM F2493 prior to sale. Because F2493 contains specifications for storage, NHTSA has determined that there is no need to further define the term ''storage'' in its regulations.

Phillip Donovan's comments also addressed the age requirements used for testing. The commenter noted that, while the restriction that an SRTT be less than one year old and be used within two (or four as proposed) months of removal from storage was workable for an agency conducting year-round testing, for entities using tires sporadically, those restrictions could result in disposal of tires prematurely leading to excess waste and expense. The commenter suggested that NHTSA could use a hardness test to determine if the tire rubber was still within the specification for testing, such as one referenced in ASTM E1136.

In response, NHTSA first observes that the existing requirement that an SRTT be less than one year old and that it be used within two months of removal of storage applies only to NHTSA's use of SRTT as CMTs as part of a test convoy in determining BCWR ratings for testing tires to verify a tire's treadwear ratings are compliant with the UTQG regulations. That requirement does not apply to PFC determinations for test surfaces used for testing compliance with braking and ESC FMVSSs. The commenter appeared to be focusing on those PFC determinations. However, even if the comment is intended to address use of the SRTT as the CMT as part of the UTQG treadwear testing, NHTSA observes that the restriction applies only to NHTSA's compliance testing. Tire manufacturers may determine their tires' treadwear ratings using any method they deem appropriate if those tires attain their ratings when tested by NHTSA on the San Angelo, Texas course using the procedures specified in 49 CFR 575.104.

As for the suggestion that NHTSA adopt a hardness specification for determining whether tires are appropriate for testing, although the commenter references E1136 for a hardness testing, the F2493 specification for the 16-inch SRTT also contains hardness specification. NHTSA understands that those hardness specifications are part of determining whether a tire is compliant with the F2493 specification. NHTSA does not believe that the tire needs to be retested prior to use to ensure that it remains within the F2493 specification. Rather (and as discussed in more detail in response to Michelin's and USTMA's comments regarding the lengthening of time a tire may be removed from storage prior to use), NHTSA believes that the variability associated with the degradation of tires resulting from the specified maximum period of time to use a tire since the tire after its manufacture and removal from storage and the conditions in which they were stored. Accordingly, NHTSA has not made any changes to the proposal based on this comment.

C. Other Issues

Several of USTMA and Michelin's comments agreed with NHTSA's approach to issues raised in the NPRM. For example, USTMA and Michelin agreed that ASTM F1805–20 should be used for the snow tire definition and agreed with the requirement that a tire attain a traction index of equal to or greater than 112 to be considered a snow tire. USTMA and Michelin also agreed with the use of the ''medium pack snow'' surface condition in ASTM F1805. Michelin agreed with using all 17 quarters of available UTQGS test data. Michelin also agreed with the proposed UTQGS conversion factor of 1.324. USTMA and Michelin further agreed with referencing the total distance in terms of circuits rather than the estimated 400 miles per circuit.

USTMA and Michelin agreed that ASTM E1337–19 should be used for surface friction measurement, including its correlation equations between 14-inch and 16-inch SRTTs. Further, Michelin also agreed with the PFC values derived from the equation in ASTM E1337–19 in the NPRM.

NHTSA has considered these comments and is including these aspects of the proposal in this final rule as they were proposed.

Commenters also pointed out typographical errors in the NPRM. For example, regarding the UTQGS, USTMA and Michelin requested that NHTSA confirm that 17 quarters of data were used for comparison as referenced in Table 1 of the NPRM, rather than 14 quarters of data as stated in the preamble text. NHTSA can confirm this was an error in the preamble text and that 17 consecutive quarters of data were used in determination of the conversion factor. Furthermore, an example calculation in the text referred only to the first 14 quarters of data. The actual conversion factor was calculated using all 17 quarters of data, as Michelin states. In addition, as noted by USTMA, NHTSA inadvertently referred to the ASTM F1805 as ''F1895.''

D. Effective Date

Due to the unavailability of the 14-inch SRTT, USTMA and Michelin agreed with the NPRM to make the changes to UTQGS effective at the next

[21] 65 FR 33,481 (May 24, 2000).

[22] See Texas Test Fleet, Critical Evaluation of UTQG Treadwear Testing & Methodology, DOT HS 808–701, March 10, 1997.

BCWR determination 30 days after publication of a final rule. Therefore, in light of the current unavailability of the 14-inch SRTT, NHTSA is making the UTQGS amendments effective 30 days after publication of this final rule as proposed. The effect of this is that the next BCWR determination made 30 days after publication of this final rule will use the 16-inch SRTT and will be calculated based on NHTSA's BCWR determinations using the 16-inch SRTT.

With respect to the FMVSS amendments, USTMA deferred to vehicle manufacturers on the appropriateness of lead time. Michelin recommended that NHTSA shorten the lead time to substantially less than 180 days. In contrast, the Alliance requested one year of lead time to prepare for the FMVSS amendments rather than the 180 days proposed in the August 2021 NPRM, with optional early compliance allowed. The Alliance reasoned that this would ensure that manufacturers have sufficient time to transition to the 16-inch SRTT and minimize any unnecessary waste of existing 14-inch SRTT stock. The Alliance also stated that NHTSA would not be prohibited from stockpiling 14-inch SRTTs to provide this additional lead time. The Alliance also requested that ''NHTSA not require additional certification testing for carryover vehicle models that may have been certified using the 14-inch SRTT.''

NHTSA has considered these comments carefully and has concluded that a shorter lead time than proposed in the NPRM is necessary for the amendments to the FMVSS. This conclusion is primarily based on the unavailability of the 14-inch SRTT for purchase, as stated by Michelin. While NHTSA has considered the issues with a shorter lead time raised by the Alliance, NHTSA does not believe any of those issues would make a shorter lead time impracticable or difficult.

As discussed in the NPRM, the intention of this amendment is not to change the severity of any FMVSS. Accordingly, the new PFC values in the FMVSSs associated with the use of the 16-inch SRTT are based on an equivalence formula in ASTM E1337–19. Because the severity of the FMVSSs is not being changed, NHTSA does not believe that any vehicle certifications would be affected by the use of the 16-inch SRTT.

Relevant to the Alliance's request that NHTSA not require additional certification testing for vehicle models that may have been certified using the 14-inch SRTT, NHTSA does not specify how manufacturers certify their vehicles as compliant, nor does NHTSA opine on whether and what testing is sufficient for certification outside of a specific enforcement action. However, as stated in both the August 2021 NPRM and in this final rule, NHTSA believes that the PFC values specified for the 14-inch SRTT currently in the FMVSSs are equivalent to those in this final rule using the 16-inch SRTT. Therefore, NHTSA does not anticipate that manufacturers would incur any burden associated with certifying vehicle models that may have been certified based on the use of the 14-inch SRTT.

Finally, as for the suggestion that NHTSA allow optional early compliance rather than a shorter lead time, optional early compliance is not suitable for this rulemaking. The 14-inch SRTT is no longer manufactured and no entity, including NHTSA or vehicle manufacturers, are able to purchase new tires to validate its test surfaces using a 14-inch SRTT. Thus, NHTSA cannot continue validating test surfaces with a 14-inch SRTT and must begin using the 16-inch SRTT. However, this final rule does not require manufacturers to use the 16-inch SRTT in their testing and certification programs. They may continue to use the 14-inch SRTT in their own testing if they have tires available to them. However, they must ensure that the tires will meet all applicable requirements when tested by NHTSA in a compliance test program that uses the 16-inch SRTT.

Therefore, with respect to the FMVSS amendments, NHTSA finds that the present unavailability of the 14-inch SRTT requires that the 180-day lead time proposed in the NPRM be shortened. NHTSA has determined that a 30-day lead time is appropriate for changes to the FMVSS to enable the agency's use of the 16-inch SRTT. NHTSA emphasizes, however, that its data and analyses indicate that the change to the new SRTT will have no substantive effect on compliance with the present FMVSS and UTQGS requirements, so the shortened lead time is anticipated to be inconsequential.

IV. Conclusion

For the reasons discussed in the August 2021 NPRM and in this final rule, NHTSA is updating references to the SRTT from the 14-inch SRTT to the 16-inch SRTT as proposed in the August 2021 NPRM except that NHTSA is incorporating by reference the 2020 version of the 16-inch SRTT specification rather than the 2019 version referenced in the NPRM. This final rule will be effective 30 days after the date of publication in the **Federal Register**.

V. Regulatory Analyses

A. Executive Order 12866, Executive Order 13563, and DOT Rulemaking Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's administrative rulemaking procedures. This rulemaking is not considered significant and was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.''

This final rule updates the standard reference test tire used as a baseline tire for consumer information testing, in the determination of what is a snow tire, and to evaluate testing surface friction for evaluating braking and electronic stability control performance. This final rule will not have a direct effect on safety because the changes proposed in this rule are designed to maintain the present level of stringency of NHTSA's braking and electronic stability control FMVSSs. However, if the 14-inch SRTT is discontinued without a replacement, NHTSA would be unable to verify test surface friction coefficient prior to compliance testing for braking and electronic stability control system FMVSSs. Thus, this rulemaking indirectly affects safety by ensuring that NHTSA would be able to perform compliance tests of those FMVSSs. Also, if this rule were not adopted, it would be impossible for NHTSA to continue maintaining the BCWR for treadwear testing. This unavailability of an SRTT would lead to tire manufacturers being unable to rate their tires for treadwear under the UTQGS and mold those ratings onto the side of the tire as required by 49 CFR part 575.

This rule is expected to result in additional costs to NHTSA because the 16-inch SRTT has a retail price that is $35 per tire more than the 14-inch SRTT ($335 vs. $300).[23] NHTSA purchases 64 SRTTs for its own use annually in determining BCWR. Therefore, based on the cost difference of $35 per tire, NHTSA expects that this rule could result in up to $2,240 additional annual costs to the government. However, NHTSA has been using the 14-inch SRTT and 16-inch SRTT side-by-side since 2016 for its quarterly BCWR

[23] Data on the price of the SRTT was obtained from instructions on how to purchase SRTTs from Michelin. See *https://www.astm.org/COMMIT/2011%2011%2008%20E1136%20F2493%20SRTT%20Purchase%20Procedure.pdf* (last accessed April 13, 2021).

determination. With side-by-side testing no longer necessary, NHTSA would likely purchase fewer SRTTs than it has in the past several years.

As to potential costs to the public, based upon information provided to NHTSA by Michelin from 2017 and 2018, annual U.S. sales of 14-inch SRTTs is fewer than 2,000 units. If NHTSA assumes that U.S. sales of 16-inch SRTTs is comparable to sales of 14-inch SRTTs, the annual cost of this rule would be less than $70,000. However, NHTSA does not know how many sales are a consequence of the SRTT being used as part of NHTSA's compliance test procedures, versus those sold for other purposes (*e.g.,* SRTTs sold to assess the performance of tires to some other country's regulations or to voluntary industry standards). Any SRTT sales that are not related to compliance with NHTSA's regulations would not be affected by this rule and the existence of such sales would mean this rule would be less costly than the maximum estimate of $70,000 per year. Moreover, NHTSA does not have any direct knowledge of whether regulated entities have been conducting side-by-side testing using both the 14-inch SRTT and 16-inch SRTTs like NHTSA has and whether side-by-side testing has artificially increased sales in 2017 and 2018.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will directly impact the government, as it affects the test procedures NHTSA uses in its FMVSSs and regulations that reference tire performance. It affects manufacturers of tires and of motor vehicles only to the extent those manufacturers choose to test their products in the manner NHTSA would test them. They are not required to use the test procedures NHTSA uses.

Although some entities producing tires or vehicles that would be tested by NHTSA are considered small businesses, this rule will not have a significant economic impact on those manufacturers. First, the small manufacturers are not required to use the SRTT in certifying their products. Second, for manufacturers choosing to use the 16-inch SRTT to test their products, this rule would result in a cost increase of only $35 per tire to entities currently purchasing the 14-inch SRTT to assess their products. NHTSA does not believe that this cost increase is significant. Finally, for the changes to the UTQGS, because NHTSA is using a conversion factor to keep the rating scale used with the 14-inch SRTT and 16-inch SRTT identical, ratings of a particular line of tires should not be affected by this rule. For FMVSS changes, NHTSA has determined an equivalent level of surface friction when evaluating PFC with the 16-inch SRTT in place of the 14-inch SRTT, so the change to the standard reference test tire should not change the performance of current tires or vehicles.

C. Executive Order 13132 (Federalism)

NHTSA has examined this rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Orders 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this rule and finds that the

rule affects only minimum safety standards (and only insofar as how NHTSA would conduct compliance testing under those standards). As such, NHTSA does not intend that this rule preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by the affected FMVSSs. Establishment of a higher standard by means of State tort law would not conflict with the minimum standards affected by this rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action. Aspects of this rule will amend 49 CFR part 575, which is not a safety standard but an information program to assist consumers in making informed decisions when purchasing tires. The 14-inch SRTT is used as part of the determination of a tire's treadwear rating. This rule will not impose any requirements on anyone.

D. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

E. Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This rule is not economically significant under E.O. 12866. Further, it is part of a rulemaking that is not expected to have a disproportionate health or safety impact on children. Consequently, no further analysis is required under Executive Order 13045.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There is not any information collection requirement associated with this rule.

G. Incorporation by Reference

Under regulations issued by the Office of the Federal Register (1 CFR 51.5), an agency, as part of a rule that includes material incorporated by reference, must summarize material that is incorporated by reference and must discuss the ways the material incorporated by reference is reasonably available to interested parties or how the agency worked to make materials available to interested parties.

As discussed earlier in this document, the ASTM F2493-specified tire is a standard reference test tire that is not used for general use, but, as its name suggests, is used for testing. The ASTM F2493 standard reference test tire is primarily used for evaluating surface friction (traction). The standard reference test tire specifications include, among other things, size, design, construction, and materials requirements. Although NHTSA proposed incorporating ASTM F2493–19 by reference in the proposed rule, after consideration of public comments, NHTSA has decided it is permissible and preferable not to incorporate by reference ASTM F2493, and to refer to it without regard to version number.

This rule updates an existing incorporation by reference of ASTM E1337, ''Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire.'' ASTM E1337 is a standard test method for evaluating peak braking coefficient of a test surface using a standard reference test tire using a trailer towed by a vehicle. NHTSA uses this method to evaluate test surfaces for conducting compliance test procedures for its braking and electronic stability control standards. The 2019 version of ASTM E1337 specifies that the test may be conducted using the 16-inch SRTT and includes correlation data for converting testing using the 14-inch SRTT to the 16-inch SRTT and vice versa.

This rule also updates an existing incorporation by reference of ASTM F1805, ''Standard Test Method for Single Wheel Driving Traction in a Straight Line on Snow- and Ice-Covered Surfaces.'' ASTM F1805 is a test method for measuring the traction of tires on snow- or ice-covered surfaces using an instrumented four-wheel drive vehicle with a single test wheel capable of measure tire performance. NHTSA uses ASTM F1805 as part of its criteria for determining whether a tire may be considered a ''snow tire'' under its light vehicle tire standards. The 2020 version of F1805 specifies that the test may be conducted using the 16-inch SRTT and includes correlation data for converting testing using the 14-inch SRTT to the 16-inch SRTT and vice versa.

The ASTM standards incorporated by reference in this final rule are available for review at NHTSA's headquarters in Washington, DC, and for purchase from ASTM International. The ASTM standards that are replaced by this final rule are presently available for review at NHTSA or at ASTM's online reading room.[24] Once this final rule becomes effective, NHTSA anticipates that ASTM will update its reading room to include these standards.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

[24] *https://www.astm.org/READINGLIBRARY/.*

Examples of organizations generally regarded as voluntary consensus standards bodies include ASTM International, the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

As discussed above, the standard reference test tire, the test method for determining surface friction, and the test method for determining whether a tire is a snow tire are based on specifications published by ASTM. Thus, this rulemaking accords with the requirements of the NTTAA.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This rule will not result in any expenditure by State, local, or tribal governments or the private sector of more than $100 million, adjusted for inflation.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects

49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 575

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR parts 571 and 575 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Amend § 571.5 by:
■ a. Revising paragraph (a);
■ b. Removing and reserving paragraph (d)(33); and
■ c. Revising paragraphs (d)(34) and (35).

The revisions read as follows:

§ 571.5 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part 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 National Highway Traffic Safety Administration (NHTSA) 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 NHTSA and at the National Archives and Records Administration (NARA). Contact NHTSA at: NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590; Phone: (202) 366–2588; website: *https://www.nhtsa.gov/about-nhtsa/electronic-reading-room.* 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.

* * * * *

(d) * * *

(34) ASTM E1337–19, ''Standard Test Method for Determining Longitudinal Peak Braking Coefficient (PBC) of Paved Surfaces Using Standard Reference Test Tire,'' approved December 1, 2019, into §§ 571.105; 571.121; 571.122; 571.126; 571.135; 571.136; 571.500.

(35) ASTM F1805–20, ''Standard Test Method for Single Wheel Driving Traction in a Straight Line on Snow- and Ice-Covered Surfaces,'' approved May 1, 2020; into § 571.139.

* * * * *

■ 3. Amend § 571.105 by revising paragraphs S6.9.2(a) and (b) to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S6.9.2(a) For vehicles with a GVWR greater than 10,000 pounds, road tests (excluding stability and control during braking tests) are conducted on a 12-foot-wide, level roadway, having a peak friction coefficient of 1.02 when measured using an ASTM F2493 standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 40 mph, without water delivery. Burnish stops are conducted on any surface. The parking brake test surface is clean, dry, smooth, Portland cement concrete.

(b) For vehicles with a GVWR greater than 10,000 pounds, stability and control during braking tests are conducted on a 500-foot-radius curved roadway with a wet level surface having a peak friction coefficient of 0.55 when measured on a straight or curved section of the curved roadway using an ASTM F2493 standard reference tire, in accordance with ASTM E1337–19 at a speed of 40 mph, with water delivery.

* * * * *

■ 4. Amend § 571.121 by revising paragraphs S5.3.1.1 introductory text, S5.3.6.1, S5.7.1, S6.1.7, Table I, Table II, and Table IIa to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3.1.1 Stop the vehicle from 60 mph on a surface with a peak friction coefficient of 1.02 with the vehicle loaded as follows:

* * * * *

S5.3.6.1 Using a full-treadle brake application for the duration of the stop, stop the vehicle from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, on a 500-foot radius curved roadway with a wet level surface having a peak friction coefficient

of 0.55 when measured on a straight or curved section of the curved roadway using an ASTM F2493 standard reference tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 40 mph, with water delivery.

* * * * *

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1, except for a loaded truck tractor with an unbraked control trailer, on a road surface having a PFC of 1.02, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 5 of Table II, measured from the point at which movement of the service brake control begins, except that a truck-tractor tested at its unloaded vehicle weight plus up to 1,500 pounds shall stop at least once in not more than the distance specified in Column 6 of Table II. The stop shall be made without any part of the vehicle leaving the roadway, and with unlimited wheel lockup permitted at any speed.

* * * * *

S6.1.7 Unless otherwise specified, stopping tests are conducted on a 12-foot wide level, straight roadway having a peak friction coefficient of 1.02. For road tests in S5.3, the vehicle is aligned in the center of the roadway at the beginning of a stop. Peak friction coefficient is measured using an ASTM F2493 standard reference test tire in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 40 mph, without water delivery for the surface with PFC of 1.02, and with water delivery for the surface with PFC of 0.55.

* * * * *

TABLE I—STOPPING SEQUENCE

	Truck tractors	Single unit trucks and buses
Burnish (S6.1.8)	1	1
Stability and Control at GVWR (S5.3.6)	2	N/A
Stability and Control at LLVW (S5.3.6)	3	5
Manual Adjustment of Brakes	4	N/A
60 mph Service Brake Stops at GVWR (S5.3.1)	5	2
60 mph Emergency Service Brake Stops at GVWR (S5.7.1)	N/A	3
Parking Brake Test at GVWR (S5.6)	6	4
Manual Adjustment of Brakes	7	6
60 mph Service Brake Stops at LLVW (S5.3.1)	8	7
60 mph Emergency Service Brake Stops at LLVW (S5.7.1)	9	8
Parking Brake Test at LLVW (S5.6)	10	9
Final Inspection	11	10

TABLE II—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hour	Service brake						Emergency brake	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
30	70	78	65	78	84	61	170	186
35	96	106	89	106	114	84	225	250
40	125	138	114	138	149	108	288	325
45	158	175	144	175	189	136	358	409
50	195	216	176	216	233	166	435	504
55	236	261	212	261	281	199	520	608
60	280	310	250	310	335	235	613	720

Note:
(1) Loaded and Unloaded Buses.
(2) Loaded Single-Unit Trucks.
(3) Loaded Tractors with Two Axles; or with Three Axles and a GVWR of 70,000 lbs. or less; or with Four or More Axles and a GVWR of 85,000 lbs. or less. Tested with an Unbraked Control Trailer.
(4) Loaded Tractors with Three Axles and a GVWR greater than 70,000 lbs.; or with Four or More Axles and a GVWR greater than 85,000 lbs. Tested with an Unbraked Control Trailer.
(5) Unloaded Single-Unit Trucks.
(6) Unloaded Tractors (Bobtail).
(7) All Vehicles except Tractors, Loaded and Unloaded.
(8) Unloaded Tractors (Bobtail).

TABLE IIA—STOPPING DISTANCE IN FEET: OPTIONAL REQUIREMENTS FOR: (1) THREE-AXLE TRACTORS WITH A FRONT AXLE THAT HAS A GAWR OF 14,600 POUNDS OR LESS, AND WITH TWO REAR DRIVE AXLES THAT HAVE A COMBINED GAWR OF 45,000 POUNDS OR LESS, MANUFACTURED BEFORE AUGUST 1, 2011; AND (2) ALL OTHER TRACTORS MANUFACTURED BEFORE AUGUST 1, 2013

Vehicle speed in miles per hour	Service brake				Emergency brake	
	(1)	(2)	(3)	(4)	(5)	(6)
30	70	78	84	89	170	186
35	96	106	114	121	225	250

TABLE IIA—STOPPING DISTANCE IN FEET: OPTIONAL REQUIREMENTS FOR: (1) THREE-AXLE TRACTORS WITH A FRONT AXLE THAT HAS A GAWR OF 14,600 POUNDS OR LESS, AND WITH TWO REAR DRIVE AXLES THAT HAVE A COMBINED GAWR OF 45,000 POUNDS OR LESS, MANUFACTURED BEFORE AUGUST 1, 2011; AND (2) ALL OTHER TRACTORS MANUFACTURED BEFORE AUGUST 1, 2013—Continued

Vehicle speed in miles per hour	Service brake				Emergency brake	
	(1)	(2)	(3)	(4)	(5)	(6)
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

* * * * *

■ 5. Amend § 571.122 by revising paragraphs S6.1.1.1, S6.1.1.2, S6.1.1.3, and S6.9.7.1(a) to read as follows:

§ 571.122 Standard No. 122; Motorcycle brake systems.

* * * * *

S6.1.1.1 *High friction surface.* A high friction surface is used for all dynamic brake tests excluding the ABS tests where a low-friction surface is specified. The high-friction surface test area is a clean, dry and level surface, with a gradient of ≤1 percent. The high-friction surface has a peak braking coefficient (PBC) of 1.02.

S6.1.1.2 *Low-friction surface.* A low-friction surface is used for ABS tests where a low-friction surface is specified. The low-friction surface test area is a clean and level surface, which may be wet or dry, with a gradient of ≤1 percent. The low-friction surface has a PBC of ≤0.50.

S6.1.1.3 *Measurement of PBC.* The PBC is measured using the ASTM F2493 standard reference test tire, in accordance with ASTM E1337–19, at a speed of 64 km/h (incorporated by reference; see § 571.5).

* * * * *

S6.9.7.1 * * *

(a) *Test surfaces.* A low friction surface immediately followed by a high friction surface with a PBC ≥0.90.

* * * * *

■ 6. Amend § 571.126 by revising paragraph S6.2.2 to read as follows:

§ 571.126 Standard No. 126; Electronic stability control systems for light vehicles.

* * * * *

S6.2.2 The road test surface must produce a peak friction coefficient (PFC) of 1.02 when measured using an ASTM F2493 standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5) at a speed of 64.4 km/h (40 mph), without water delivery.

* * * * *

■ 7. Amend § 571.135 by revising paragraphs S6.2.1, S7.4.3(f), S7.5.2(f), S7.6.2(f), S7.7.3(f), S7.8.2(f), S7.9.2(f), S7.10.3(e), and S7.11.3(f) to read as follows:

§ 571.135 Standard No. 135; Light vehicle brake systems.

* * * * *

S6.2.1. *Pavement friction.* Unless otherwise specified, the road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using an ASTM F2493 standard reference test tire, in accordance with ASTM E1337–19 (incorporated by reference, see § 571.5), at a speed of 64.4 km/h (40 mph), without water delivery.

* * * * *

S7.4.3. * * *

(f) Test surface: PFC of at least 1.02.

* * * * *

S7.5.2. * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.6.2. * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.7.3. * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.8.2. * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.9.2. * * *

(f) Test surface: PFC of 1.02.

* * * * *

S7.10.3. * * *

(e) Test surface: PFC of 1.02.

* * * * *

S7.11.3. * * *

(f) Test surface: PFC of 1.02.

* * * * *

■ 8. Amend § 571.136 by revising paragraph S6.2.2 to read as follows:

§ 571.136 Standard No. 136; Electronic stability control systems for heavy vehicles.

* * * * *

S6.2.2 The road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using an ASTM F2493 standard reference test tire, in accordance with ASTM E1337–19, at a speed of 64.4 km/h (40 mph), without water delivery (incorporated by reference, see § 571.5).

* * * * *

■ 9. Amend § 571.139 by revising the definition for ''Snow tire'' in S3 to read as follows:

§ 571.139 Standard No. 139; New pneumatic radial tires for light vehicles.

* * * * *

S3 * * *

Snow tire means a tire that attains a traction index equal to or greater than 112, compared to the ASTM F2493 standard reference test tire when using the snow traction test on the medium pack snow surface as described in ASTM F1805–20 (incorporated by reference, see § 571.5), and that is marked with an Alpine Symbol specified in S5.5(i) on at least one sidewall.

* * * * *

■ 10. Amend § 571.500 by revising paragraph S6.2.1 to read as follows:

§ 571.500 Standard No. 500; Low-speed vehicles.

* * * * *

S6.2.1. *Pavement friction.* Unless otherwise specified, the road test surface produces a peak friction coefficient (PFC) of 1.02 when measured using a ASTM F2493 standard reference test tire, in accordance with ASTM E1337–19, at a speed of 64.4 km/h (40.0 mph), without water delivery (incorporated by reference; see § 571.5).

* * * * *

PART 575—CONSUMER INFORMATION

■ 11. The authority citation for part 575 continues to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, 30181, 30182, 30183, and 32908, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.95.

§ 575.3 [Amended]

■ 12. Amend § 575.3 by removing and reserving paragraph (c)(2).

■ 13. Amend § 575.104 by revising paragraphs (e)(2)(viii), and (e)(2)(ix)(A)(*2*), the note to paragraph (e)(2)(ix)(C), and paragraph (e)(2)(ix)(F) to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(e) * * *

(2) * * *

(viii) Drive the convoy on the test roadway for 16 circuits (approximately 6,400 miles).

(A) After every circuit (approximately 400 miles), rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After every second circuit (approximately 800 miles), rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In four-car convoys, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After every second circuit (approximately 800 miles), if necessary, adjust wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(D) After every second circuit (approximately 800 miles), if determining the projected mileage by the 9-point method set forth in paragraph (e)(2)(ix)(A)(*1*) of this section, measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi) of this section.

(E) After every fourth circuit (approximately 1,600 miles), move the complete set of four tires to the following vehicle. Move the tires on the last vehicle to the lead vehicle. In moving the tires, rotate them as set forth in paragraph (e)(2)(viii)(A) of this section.

(F) At the end of the test, measure the tread depth of each tire pursuant to the procedure set forth in paragraph (e)(2)(vi) of this section.

(ix) * * *

(A) * * *

(*2*) *Two-point arithmetical method.* (*i*) For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraphs (e)(2)(vi) and (e)(2)(viii)(F) of this section and the corresponding mileages as data points, determine the slope (m) of the tire's wear in mils of tread depth per 1,000 miles by the following formula:

$$m = 1000\ \frac{(\mathrm{Y1} - \mathrm{Yo})}{(\mathrm{X1} - \mathrm{Xo})}$$

Where:

Yo = average tread depth after break-in, mils.
Y1 = average tread depth after 16 circuits (approximately 6,400 miles), mils.
Xo = 0 miles (after break-in).
X1 = Total mileage of travel after 16 circuits (approximately 6,400 miles).

(*ii*) This slope (m) will be negative in value. The tire's wear rate is defined as the slope (m) expressed in mils per 1,000 miles.

* * * * *

(C) * * *

Note 1 to paragraph (e)(2)(ix)(C): The ASTM F2493 standard reference test tire is the course monitoring tire (CMT). The base wear rate for the CMTs will be obtained by the Government by running the course monitoring tires for 16 circuits over the San Angelo, Texas, UTQGS test route 4 times per year, then using the average wear rate from the last 4 quarterly CMT tests for the base course wear rate calculation. Each new base course wear rate will be published in Docket No. NHTSA–2001–9395. The course monitoring tires used in a test convoy must be no more than one-year-old at the commencement of the test and must be used within four months after removal from storage.

* * * * *

(F) Compute the grade (P) of the of the NHTSA nominal treadwear value for each candidate tire by using the following formula:

$$P = \frac{Projected\ mileage\ \times\ base\ course\ wear\ rate_n}{304}$$

Where base course wear $rate_n$ = new base course wear rate, *i.e.,* average treadwear of the last 4 quarterly course monitoring tire tests conducted by NHTSA.

Round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.7.

Steven S. Cliff,

Administrator.

[FR Doc. 2022–12243 Filed 6–7–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[RTID 0648–XB046]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish and Red Drum Fisheries of the Gulf of Mexico; Amendments 48/5

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

ACTION: Notice of Agency decision.

SUMMARY: NMFS announces the approval of Amendment 48 to the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico and Amendment 5 to the FMP for the Red Drum Fishery of the Gulf of Mexico (Amendments 48/5), which are combined in a single document as submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council). Amendments 48/5 establish or modify maximum sustainable yield (MSY) proxies, maximum fishing mortality thresholds (MFMTs), minimum stock size thresholds (MSSTs), and optimum yield (OY) for stocks in the Reef Fish and Red Drum FMPs. The need for this action is to

have biological reference points that can be used for determining status of the stocks or stock complexes consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The amendment was approved June 3, 2022.

ADDRESSES: Electronic copies of Amendments 48/5 may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *http://sero.nmfs.noaa.gov.* Amendments 48/5 include an environmental assessment and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Gulf Council manage the Gulf reef fish fishery and the red drum fishery under the respective FMPs. The Gulf Council prepared the FMPs and NMFS implements the FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. Amendments 48/5 were prepared by the Gulf Council and will be incorporated into the management of Gulf reef fish and red drum through the respective FMPs.

Background

On March 9, 2022, NMFS published a notice of availability (NOA) for Amendments 48/5 and requested public comment (87 FR 13274). NMFS did not receive any public comments on the NOA.

The Magnuson-Stevens Act and the National Standard 1 Guidelines require that FMPs specify a number of reference points for managed fish stocks, including maximum sustainable yield (MSY) or MSY proxy, and optimum yield, as well as status determination criteria (SDC), including an MFMT or an overfishing limit (OFL), and an MSST. These SDC represent the point at which a stock is determined to be overfished (*i.e.,* below MSST) or experiencing overfishing (*i.e.,* above MFMT or OFL). In 1999, the Gulf Council submitted the Generic Sustainable Fisheries Act (SFA) Amendment, which proposed definitions of MSY, OY, MFMT, and MSST for all reef fish stocks. NMFS approved most of the MFMT criteria, but disapproved all of the definitions for MSY, OY, and MSST because they were not based on biomass.

While NMFS refers to the document as ''Amendments 48/5'' in this notice of Agency decision, each amendment applies separately to the stocks in the respective FMPs. Amendment 5 applies to the red drum stock. Amendment 48 applies to several reef fish stocks and stock complexes that either have not been assessed or were assessed but still require stock status determinations.

These include: cubera snapper, lane snapper, goliath grouper, the shallow-water grouper complex (scamp, black grouper, yellowmouth grouper, and yellowfin grouper), the deep-water grouper complex (yellowedge grouper, warsaw grouper, snowy grouper, and speckled hind), the tilefish complex (golden tilefish, blueline tilefish, and goldface tilefish), the jacks complex (lesser amberjack, almaco jack, and banded rudderfish), and the mid-water snapper complex (wenchman, silk snapper, blackfin snapper, and queen snapper). Amendments 48/5 also addresses four reef fish stocks that have been assessed and have known stock status determinations: hogfish, mutton snapper, yellowtail snapper, and black grouper. Amendment 43 to the Reef Fish FMP established references points and SDC for hogfish. However, OY for hogfish was not defined there and is addressed in Amendments 48/5. Mutton snapper, yellowtail snapper, and black grouper, which occur in both the Gulf Council and South Atlantic Fishery Management Council areas of jurisdiction but are managed separately under each Council's FMPs, have reference points and SDC specified in the South Atlantic Snapper-Grouper FMP, but not in the Gulf Reef Fish FMP. With respect to black grouper, that species is managed by the South Atlantic Council as a single stock but is managed by the Gulf Council as part of the shallow-water grouper complex.

The NOA includes a detailed description of the biological references points and status determination criteria established in Amendments 48/5. A summary is provided below.

Maximum Sustainable Yield

The MSY is the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.,* gear selectivity), and the distribution of catch among fleets. However, the actual MSY can rarely be estimated with certainty because of the difficulty in accurately estimating the relationship between the size of the spawning stock and the subsequent annual recruitment. As a result, proxies for MSY are typically used because they are easier to measure. Generally, MSY proxies used for fish species in the Gulf are based on some percentage of spawning potential ratio (SPR) and are expressed as the yield when fishing at F_{PROXY} (where F is fishing mortality rate). In using SPR, NMFS assumes that a certain amount of fish must survive and spawn in order to replenish the stock, thus SPR represents the average number of eggs per fish over its lifetime when the stock is fished, compared to the average number of eggs per fish over its lifetime when the stock is not fished.

For reef fish stocks and stock complexes with the exception of goliath grouper, the MSY proxy selected by the Gulf Council is the yield when fishing at $F_{30\%\ SPR}$. For goliath grouper, the Gulf Council selected a more conservative MSY proxy because this species is more vulnerable to overfishing because of its long life-span and slow growth rate. The goliath grouper MSY proxy is the yield when fishing at $F_{40\%\ SPR}$.

The harvest of red drum is prohibited in Federal waters, but fishing is allowed in state waters under management measures developed by the respective Gulf state marine fisheries agencies. These agencies manage the stock to achieve a 30 percent escapement rate from state to Federal waters. Thus, Amendment 5 defines the red drum MSY proxy as the yield that provides for an escapement rate of juvenile fish to the spawning stock biomass (SSB) equivalent to 30 percent of those that would have escaped had there been no inshore state-waters fishery.

Amendments 48/5 also adopt a streamlined procedure for future specification of the MSY proxies for reef fish stocks and red drum that will allow the Gulf Council to adopt an MSY proxy recommended by the SSC by including a discussion of the change in a plan amendment. If the Gulf Council chooses to use this procedure, which would not include the consideration of alternatives to the MSY proxy recommended by the SSC, NMFS expects the Gulf Council to document its rationale for that decision. If more than one MSY proxy is supported by the best scientific information available, NMFS expects the Gulf Council to provide an appropriate analysis of these alternatives.

Maximum Fishing Mortality Thresholds

MFMT is the rate of fishing mortality above which a stock is experiencing overfishing. To keep MFMT consistent with the proposed MSY proxies, Amendments 48/5 set this threshold for the relevant stocks equal to the F at the MSY proxy for each stock or stock complex as discussed above.

Minimum Stock Size Thresholds

The MSST is a biomass reference point that measures how many fish are left in the water rather than how many fish are caught, and determines at what biomass level a stock or stock complex is overfished. The MSST can be specified in terms of pounds of fish, numbers of fish, or the expected egg production from the SSB of the adult stock. The long-term average size of a stock that results from harvesting at MSY is called the biomass at MSY (B_{MSY}). The MSST is generally set at some level below B_{MSY}, but cannot be set lower than 50 percent of B_{MSY}. The greater the difference between B_{MSY} and MSST, the less likely a stock is to be declared overfished, but the more difficult it may be to rebuild the stock back to B_{MSY} should the stock size fall below MSST.

In Amendments 48/5 the Gulf Council set MSST at $0.75*B_{MSY}$ (or proxy) for all of the stocks and stock complexes for which the Council also established an MSY and MFMT. The Gulf Council also considered and selected an additional alternative that would apply only to those individual stocks that span both the South Atlantic and Gulf Councils' areas of jurisdiction and would set MSST consistent with the MSST specified by the South Atlantic Council. These stocks are goliath grouper, black grouper, mutton snapper, and yellowtail snapper. The MSST specified by the South Atlantic Council is $0.75*B_{MSY}$ (or proxy) for black grouper, mutton snapper, and yellowtail snapper, and $(1–M)*B_{MSY}$ (or proxy) for goliath grouper.

As discussed previously, and unlike the South Atlantic Council, the Gulf Council manages black grouper as part of the shallow water grouper complex, not as a single stock. Therefore, although black grouper was included in preferred alternative 5 that addressed the other three stocks that span both the South Atlantic and Gulf Councils' areas of jurisdiction, Amendment 48 does not consider specifying an MSY for black grouper as a single stock. Instead, consistent with the Gulf Council's current management of this stock, Amendment 48 specifies an MSY for the entire shallow-water grouper complex, which includes black grouper.

NMFS is approving the MSST for the shallow-water grouper complex as well as the MSST for black grouper, both of which are specified in Amendment 48 as $0.75*B_{MSY}$ (or proxy). However, because Amendment 48 did not establish an MSY or MFMT for black grouper, NMFS encourages the Gulf Council to do so. Having the complete suite of biological reference points and SDC for black grouper in both the South Atlantic and Gulf FMPs would help inform the next stock assessment, which is scheduled to be complete in 2025.

Optimum Yield

Amendment 48 sets set OY at 90 percent of the MSY or MSY proxy for all reef fish stocks addressed in the amendment with the exception of goliath grouper. For goliath grouper, the Council set OY at zero, which reflects that harvest is prohibited.

For red drum, the Gulf Council decided to keep the existing OY definition, which is based on a 1987 SEFSC stock assessment that concluded under certain escapement rates of juveniles, the stock could rebuild. This OY definition is: (1) all red drum commercially and recreationally harvested from Gulf state waters landed consistent with state laws and regulations under a goal of allowing 30 percent escapement of the juvenile population; and (2) all red drum commercially or recreationally harvested from the Primary Area (Louisiana, Mississippi, and Alabama) of the exclusive economic zone (EEZ) under the total allowable catch (TAC) level and allocations specified under the provisions of the Red Drum FMP, and a zero-retention level from the Secondary Areas (Florida and Texas) of the EEZ. The red drum TAC for the Gulf EEZ has been zero since 1988 with the implementation of Amendment 2 to the Red Drum FMP and harvest in the EEZ is prohibited (53 FR 34662; June 29, 1988). Therefore, to achieve the OY, the Gulf states have independently and cooperatively implemented red drum regulations to achieve a 30 percent or greater escapement rate to the spawning stocks for each year class.

Procedural Aspects of Amendments 48/5

Because none of the measures included in the amendments involve regulatory changes, no proposed or final rule was prepared. The provisions of Amendments 48/5 are not specified in Federal regulations but are considered an amendment to the respective FMPs.

Comments and Responses

NMFS did not receive any public comments on the NOA, either in favor of, or in opposition to approving Amendments 48/5. There have been no changes to Amendments 48/5 based on NOA public comment.

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

Dated: June 3, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–12339 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 110
Wednesday, June 8, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

RIN 0581–AE18

[Doc. No. AMS–FTPP–22–0046]

Poultry Growing Tournament Systems: Fairness and Related Concerns

AGENCY: Agricultural Marketing Service, U.S. Department of Agriculture.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Agricultural Marketing Service (AMS) seeks comments and information to inform policy development and future rulemaking proposals regarding the use of poultry grower ranking systems commonly known as tournaments in contract poultry production. AMS seeks this input in response to numerous complaints from poultry growers about the use of tournament systems. Comments in response to this request would help AMS tailor further rulemaking in addition to that already planned and under way to address specific industry practices in relation to tournament systems.

DATES: Comments must be received by September 6, 2022.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov,* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690–4355; or email: *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION: The majority of growers producing poultry under production contracts are paid under a poultry grower ranking or ''tournament'' pay system. Under tournament systems, vertically integrated poultry companies, known as ''integrators'', contract with farmers who serve as growers. Integrators provide growers with birds and feed; and growers provide facilities and labor to raise birds to slaughter weight. Grower compensation is based on a grouping, ranking, or comparison of poultry growers whose poultry was harvested during a specified period, usually one week. Tournament group averages are established for formulaic flock performance metrics, and growers are ranked against the averages. Grower contract base pay rate is adjusted by the individual grower's deviation for group average. Growers performing better than average receive increased pay while below average growers' contract pay rate is reduced.

Over many years, the U.S. Department of Agriculture (USDA) has received numerous complaints from poultry growers about the use of tournament systems and many have suggested that USDA should ban, restrict, or condition the use of tournament systems or particular aspects of those systems. These concerns, and countervailing views, were extensively summarized in USDA's withdrawal of previous proposed rulemaking on poultry tournaments, as well as in transcripts of previous listening sessions conducted by USDA and the Department of Justice (DOJ).[1]

USDA has made previous attempts to address grower concerns arising from the use of poultry growing arrangements and poultry grower ranking systems.[2] The first proposed rule, in 2010, would have required live poultry dealers—when paying growers under poultry grower ranking systems—to pay growers the same base pay for growing the same type and kind of poultry. The 2010 proposed rule further would have required that tournament system growers be settled in groups with other growers with similar house types. USDA did not finalize certain provisions related to poultry contracting. In December 2016, it modified the original proposal and published a second proposed rule.[3]

The 2016 proposed rule would have identified criteria that the Secretary could consider when determining whether a live poultry dealer's use of a system for ranking poultry growers for settlement purposes is unfair, unjustly discriminatory, or deceptive or gives an undue or unreasonable preference, advantage, prejudice, or disadvantage. The 2016 proposed rule was formally withdrawn in 2021.[4]

Executive Order 14036—Promoting Competition in the American Economy directs the Secretary of Agriculture to address unfair treatment of farmers and improve conditions of competition in their markets by considering rulemaking to address, among other things, certain practices related to poultry grower ranking systems.[5] AMS has considered that direction in undertaking this Advance Notice of Proposed Rulemaking (ANPR).

[1] For a discussion of past views regarding poultry tournament systems, see, *e.g.,* Agricultural Marketing Service, USDA, ''Poultry Grower Ranking Systems; Withdrawal of Proposed Rule,'' 86 FR 60779, November 4, 2021, available at *https://www.federalregister.gov/documents/2021/11/04/2021-23945/poultry-grower-ranking-systems-withdrawal-of-proposed-rule.* See also Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010, Normal, Alabama. Additionally, see Agricultural Marketing Service, USDA, ''Transparency in Poultry Contracting and Tournaments,'' RIN 0581–AE03, publication in the **Federal Register** forthcoming, May/June 2022.

[2] 75 FR 35338; June 22, 2010.

[3] 81 FR 92723; December 20, 2016.

[4] 86 FR 60779, November 4, 2021.

[5] 86 FR 36987; July 9, 2021.

Additionally, USDA is proposing in a separate rulemaking, under RIN 0581–AE03, a series of new transparency measures designed to address many grower concerns relating to deception and lack of access to critical information in connection with poultry contracting and tournament systems.[6] Furthermore, USDA is taking a range of steps to enhance fair and competitive markets in the meat and poultry sectors.[7] For example, under the American Rescue Plan Act's provision to enhance supply chain resiliency, USDA is investing directly into the creation of new, and expansion of existing, local and regional meat and poultry processing enterprises. Also this year, USDA and DOJ established a joint complaints and tips portal, *www.farmerfairness.gov,* to enable both departments to respond in a more coordinated manner to a range of competition and fair markets concerns. USDA has also announced rulemakings to address general matters relating to unfair, deceptive, and unjustly discriminatory practices, undue preferences and prejudices, and competitive harms under sections 202(a) and 202(b) of the Packers and Stockyards Act of 1921, 7 U.S.C. 181 *et seq,*192.[8] Rules on those topics will be forthcoming.

Against that policy backdrop, AMS is considering further policy development and rulemaking under the Packers and Stockyards Act, as amended, to address, through specific prohibitions, limits, and/or conditionalities, potential unfairness that may arise from the use of the tournament contracts in the poultry sector. The goal of this ANPR is to obtain information on the industry and assess the extent to which unfairness and deception, where it may exist, can be remedied through additional regulation to level the playing field for growers. The focus of any rulemaking would be contract terms in contracts relating to all aspects of poultry production that may be unfair to growers. Such rulemaking would also address the regulation of the operation of those contracts so that it would be consistent with those principles.

All views are solicited so that every aspect of this potential regulation may be studied prior to formulating a proposed rule by AMS. This request for public comment does not constitute notification that any aspect described in this document is being proposed or adopted. At such future time, pursuant to the requirements set forth in the Regulatory Flexibility Act, Executive Order 12866, and other relevant laws and Executive Orders, AMS would consider the economic impact that implementation of any prohibitions, limits, or conditionalities, including costs and benefits and impacts on small entities, and would prepare a full regulatory impact analysis and a regulatory flexibility analysis for inclusion in any subsequent rulemaking action. The informational impact of this action would also be considered under the Paperwork Reduction Act, and civil rights impacts would be evaluated under a Civil Rights Impact Analysis, among other relevant regulatory analyses.

Background

Live poultry dealers often operate as monopsonists [9] or oligopsonists [10] in a local market.[11] According to MacDonald and Key,[12] about one quarter of contract growers reported that there was just one live poultry dealer in their area; another quarter reported two; another quarter reported three; and the rest reported four or more. Owing to their greater negotiating power than that of the poultry growers with whom they contract, live poultry dealers set the terms of the contracts and important aspects of their execution, such as the frequency of individual flock placements they receive over any particular time period.

Most growers producing poultry under production contracts are paid under a poultry grower ranking or ''tournament'' pay system. Under tournament systems, the contract between the poultry grower and the company for whom the grower raises poultry for slaughter provides for payment to the grower based on a grouping, ranking, or comparison of poultry growers delivering poultry to the same company during a specified period.

Under tournament contracts, integrators provide the birds, the feed, and veterinary treatment as needed for the growing flock. The poultry grower provides the poultry growing facility, flock management, labor, and utilities (water, electricity, environmental control) required during flock growout. At the end of growout, the poultry company collects and weighs the mature poultry and pays the grower according to their individual flock's performance as compared to the performance of all other growers' flocks in the tournament.

Poultry grower investment is substantial. A 2011 study estimated a cost of $924,000 for site preparation, construction, and necessary equipment for four 25,000-square-foot poultry houses [13] (or $231,000 per house) in rural Georgia at that time, independent of the cost for the land.[14] Costs for establishing poultry houses have increased substantially since 2011, due to the advancement of new technologies in poultry housing and the increased cost of materials. AMS estimates current construction costs at $350,000 to $400,000 per poultry house.[15] A poultry growing contract includes the live poultry dealer's specifications for the poultry housing and equipment the growers are required to supply under the contract. At times, the live poultry dealer may encourage, incentivize, or even require a poultry grower to

[6] Agricultural Marketing Service, USDA, ''Transparency in Poultry Contracting and Tournaments,'' RIN 0581–AE03, publication in the **Federal Register** forthcoming, May/June 2022.

[7] White House, ''FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain,'' January 3, 2022, available at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/;* USDA, ''Meat and Poultry Supply Chain,'' available at *https://www.usda.gov/meat* (last accessed May 2022).

[8] See Office of Information and Regulatory Affairs, Office of Management and Budget, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, available at *https://www.reginfo.gov/public/do/eAgendaMain* (last accessed May 2022).

[9] Merriam-Webster online dictionary: A monopsonist is one who is a single buyer for a product or service of many sellers. *https://www.merriam-webster.com/dictionary/monopsonist;* accessed 3/8/2022.

[10] Merriam-Webster online dictionary: Oligopsony is a market situation in which each of a few buyers exerts a disproportionate influence on the market. An oligopsonist is a member of an oligopsonistic industry or market. *https://www.merriam-webster.com/dictionary/oligopsonist;* accessed 3/8/2022.

[11] The description set forth in this background is drawn largely from the analyses found in Agricultural Marketing Service, USDA, ''Transparency in Poultry Contracting and Tournaments,'' RIN 0581–AE03, publication in the **Federal Register** forthcoming, May/June 2022. Please consult that rulemaking for additional detail.

[12] MacDonald, James M., and Nigel Key. ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey''. *Journal of Agricultural and Applied Economics* 44 (November 2012): 477–490. See also, MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126,* U.S. Department of Agriculture, Economic Research Service, (June 2014): 29–30.

[13] Assuming a target weight of 6 pounds, an average 25,000 square foot house should yield about 21,500 birds per flock.

[14] Cunningham, Dan L., and Brian D. Fairchild. ''Broiler Production Systems in Georgia Costs and Returns Analysis 2011–2012.'' *UGA Cooperative Extension Bulletin* 1240 (November 2011), University of Georgia Cooperative Extension.

[15] See, for example, Cunningham and Fairchild (November 2011) Op. Cit.; Simpson, Eugene, Joseph Hess and Paul Brown, *Economic Impact of a New Broiler House in Alabama,* Alabama A&M & Auburn Universities Extension, March 1, 2019 (estimating a $479,160 construction cost for a 39,600 square foot broiler house).

upgrade existing housing or equipment in order to renew or revise an existing contract.

Additionally, some live poultry dealers provide income estimates to prospective growers and lenders. Grower advocate groups have complained these estimates are generally based on simple ''average pay'' projections, which are insufficient given fluctuations in grower payments, particularly under the tournament system discussed next.[16]

Integrators use a relative ranking to allocate payments among tournament participants. Tournament groupings are comprised of growers whose flocks are harvested within a specified time period, usually a week. Tournament group averages are established for formulaic flock performance metrics, and growers are ranked against the averages. Grower contract base pay rate is adjusted by the individual grower's deviation from group average. Growers performing better than average receive increased pay while below average growers' contract pay rate is reduced.

In a simplified example, the poultry company places flocks with ten growers (tournament group) under contract to deliver the same size of finished poultry to the company's processing plant at the end of a specified growout period. Upon harvest, each grower's performance with respect to the weight of poultry produced and the amount of poultry feed used during flock growout is determined. The company then compares individual grower results against average results for all growers in the group and ranks individual growers according to their relative performance within the group of ten growers. Grower pay comprises a contract base amount per pound of poultry produced plus or minus an adjustment based on the grower's deviation from average within the tournament grouping for that specific growout period. For example, a contract-based pay rate of $.06 per pound might be adjusted to $.0725 for an above average grower, while a below average grower may be paid $.048.

Group composition risk is associated with the composition and performance of other growers in their settlement groups. A particular grower's pay is impacted by the performance of others in the tournament. Growers have no control over the other tournament members' effort and performance, nor over with which other growers they are grouped. An individual grower's effort and performance can be static, and yet that grower's payments could fluctuate based on the grower's relative position in the settlement group. Further, changes in payment may not be commensurate with the changes in grower's effort and performance. These characteristics of the tournament system can add to the variability of pay and affect the ability of growers to plan and measure their own effort and performance. On the other hand, the system is designed to incentivize participants to do their best in the hopes of gaining higher rewards.

Integrators also determine which growers are in each settlement group. While growers in a group must have similar flock finishing times, a live poultry dealer could move a grower into a different grouping by altering layout times to change the week that a grower's broilers are processed. An individual grower may perform consistently in an average performing pool, but if the integrator places that grower in a pool with more outstanding growers, those outstanding growers raise the group average and reduce the fees paid to the individual. At its discretion or per the poultry growing arrangement, an integrator may remove certain growers it considers to be outliers from a settlement pool. This would likely affect the average performance standard for the settlement and affect the remaining growers' pay. Group composition risk can be more relevant to some growers when a tournament's settlement group contains growers with different quality or ages of grow houses.

A number of variable factors can influence individual grower performance, including the number, breed, sex, and condition of the young birds and the contents and quality of the feed provided by the poultry company, the growing facility environment, and the management practices of individual growers. Growers have expressed concern that the variability of inputs among tournament participants—for reasons outside of the grower's control but which may be within the control of the integrator—may impair the integrity of tournaments, and adversely affects the integrator's ability to effectively convey incentives to motivate optimal grower performance. Many growers have complained that tournament systems are inherently unfair because growers have no control over the inputs they receive from poultry companies, and thus have limited control over their performance and earnings. Commenters have also suggested input variability can be used as a tool for unlawful discrimination, retaliation, and deception in the development and execution of poultry growing contracts.

Agricultural production is an inherently risky endeavor, and returns have some level of risk no matter the marketing channel or structural arrangement. However, researchers have noted that in addition to mitigating the risks of input cost and output price variation, the tournament system can also help insulate poultry growers from some aspects of what are known as common production risks. These are systematic risks common to all growers in a tournament such as weather or widespread disease, feed quality, or genetic strains. This academic research finds that since those risks are likely to affect all growers in a region, compensation is less likely to be adversely affected under a tournament contract than it would be on a simple price per unit of weight contract.[17] For example, if an unusual heat wave caused all growers in a tournament to experience poorer feed conversion, all tournament growers may require more feed and a longer grow period for their flocks to reach the target weight. They would receive the same pay for the weight produced, while not being penalized for the higher feed costs incurred to produce that weight.

At the same time, tournament contracts still leave growers exposed to some common risks. For example, when plants had to reduce processing capacity due to the Covid pandemic, growers experienced reduced compensation to the extent that they received fewer or less dense placements from the integrators. Moreover, as noted, no contract type will protect growers from all market risks. Tournament systems do not insulate growers from the other risks of contracts discussed above such as the financial risk, liquidity risk, the risk from incomplete contracts, and the lack of control over inputs and production variables. Tournaments also introduce new categories of risks to growers: Group composition risk and added risks of settlement-related deception or fraud. The risks of deception or fraud as discussed above include the inability of growers to verify the accuracy of payments, and to detect discrimination or retaliation.

In a rulemaking being published simultaneously as a separate notice in the **Federal Register**, USDA has proposed enhancing transparency in poultry growing arrangements to address deception risks and information

[16] ''A Poultry Grower's Guide to FSA Loans'' Rural Advancement Foundation International. July 2017, available at *https://www.rafiusa.org/blog/a-poultry-growers-guide-to-fsa-loans/.*

[17] See, for example, Tsoulouhas, Theofanis and Tomislav Vukina. ''Regulating Broiler Contracts: Tournaments Versus Fixed Performance Standards''. *American Journal of Agricultural Economics* 83 (2001): 1062–1073.

asymmetries that growers face in modern, vertically integrated markets. The first part of the rule would give growers information regarding realistic outcomes relevant to poultry growing arrangements and poultry housing upgrades—information such as the number of bird placements per year and stocking density, earnings realized by other poultry growers displayed across quintiles and compared to other complexes, sale-of-farm policies, and more. The second part of the rule would give poultry growers information about the inputs they receive under their poultry growing arrangements, to enable them to be more effective growers and to protect them against deception and other potential abuses. Information—including stocking density of the placement, the breeder facility, breeder flock age, health impairments, and more—would be provided when the inputs are delivered and when any tournament settlement is completed.

AMS believes that transparency will be transformative in securing a more level playing field for growers and enabling a marketplace with fairer contracts and the fairer operation of those contracts. Transparency will be useful not only in addressing deception risks, in particular those arising from information asymmetries, but also in providing data and information needed to assess a range of potentially unfair, unjustly discriminatory, and other unreasonable practices that may be present or arise from time to time in the poultry marketplace.

Transparency may also complement requirements for poultry production contracts set by USDA's Farm Services Agency (FSA), which manages a loan guarantee program that covers poultry lending.[18] Under FSA standards, contracts must:

(a) be for a minimum period of 3 years

(b) provide for termination based on objective ''for cause'' criteria only

(c) require that the grower be notified of specific reasons for cancellation

(d) provide assurance of the grower's opportunity to generate enough income to ensure repayment of the loan by incorporating requirements such as a minimum number of flocks per year, minimum number of bird placements per year, or similar quantifiable requirements.

AMS recognizes that measures beyond disclosure and transparency may be necessary to address those practices, given the economic power imbalances and competition concerns that exist in today's markets. We also believe that the market may benefit from greater certainty around which specific practices relating to tournaments would be considered unfair, unjustly discriminatory, or otherwise unreasonable under the Packers and Stockyards Act.

Accordingly, we are considering further regulatory steps to address live poultry dealer conduct and business practices related to tournaments. Specific areas of consideration include whether there is a need for, and if so, how USDA could and should establish, rules relating to:

(a) Flock placement and density guarantees, including in relation to debt levels incurred by the grower;

(b) Quality and timing with respect to inputs provided under a contract that are factored into calculations in a tournament;

(c) Tournament payment allocations resulting in degradation of contractual base pay rates;

(d) Payment floors in relation to efforts or investments made by a grower, as opposed to a comparison on efforts or investments made by other growers;

(e) How integrators place a grower into tournament settlement groupings (also known as league composition);

(f) Oversight of an integrator's local agents;

(g) Alignment of incentives between growers and integrators, such as the incorporation of wholesale values into payment mechanisms for growers or the incorporation of grower outcomes into executive compensation mechanisms;

(h) Matching capital investment requirements with the length of poultry production contracts and the usable life of an asset;

(i) Obligations to provide growers with notice of breach and opportunities to cure when contract terms are not met;

(j) Opportunities for growers to form cooperatives so as to enable growers to collectively negotiate or arbitrate terms of poultry growing arrangements;

(k) Competitiveness of input markets, including relating to chick genetics, feed, and access to veterinary care;

(l) Information exchanges in poultry competition and ways to improve information access;

(m) Lending institutions that provide credit relating to poultry production agreements, their relationships to integrators, and their responsibilities to borrowers, including underserved borrowers with respect to non-discriminatory and fair credit opportunities;

(n) Availability of insurance and risk-management tools for growers and the potential for risk-sharing with integrators with respect to retail market demand changes.

AMS also seeks comment on whether there should be regulations that condition integrators' permissible use of the tournament system to circumstances in which they offer growers one or more of the following options:

(i) Allowing each grower to decide whether they want to be compared to other growers and to opt out of such comparisons;

(ii) Treating growers substantially equally regarding inputs, delivery, and payment over a given time period;

(iii) Guaranteeing growers a base price that enables the grower to pay for any debt incurred as result of technical specifications provided by the live poultry dealer plus an appropriate profit; and

(iv) Permitting growers to form cooperatives so as to cooperate and communicate amongst themselves and to negotiate collectively with the live poultry dealer.

Additionally, AMS is focused on improving research in poultry market practices and competition. AMS recognizes the presence of gaps in publicly available data and analysis with respect to poultry grower competition matters, which serves as a barrier for regulators and the public to recognizing and addressing potentially problematic practices in the poultry sector. In part, this may be because robust data of the quality necessary to provide useful insights has not been collected or made available on a regular basis or is otherwise made available only to private market participants. AMS and other USDA agencies have heard concerns regarding obstacles, burdens, and costs that may exist with respect to growers freely and fully participating in surveys, including risks of retaliation against growers, the costs to growers of participating in surveys, the burden of reporting due to duplicate requests, inefficiency in survey or gathering mechanisms, and lack of appropriate digital access by the producer. Concerns have also been noted regarding whether the information collected permits a sufficiently targeted analysis with respect to poultry growing, as opposed to the farm's economics as a whole.

With respect to the areas of focus noted above, as well as more broadly, AMS is interested in the manner which the tournament system pay mechanisms may be modified to better meet the needs of poultry market participants, in particular growers, while still retaining market flexibility and an appropriate role for performance-based incentives.

[18] USDA Farm Service Agency, *Guaranteed Loan Making and Servicing 2–FLP (Revision 1)* pp. 8–86 (October 2008). *https://www.fsa.usda.gov/Internet/FSA_File/2-flp.pdf;* accessed 1/3/2022.

Request for Comments and Information

As noted above, USDA has received numerous comments expressing concern about the use of tournaments in poultry production, as well as expressions of support for the tournament system. To ensure we have the most up-to-date analyses and views, we invite comments, including additional facts and data and views regarding their relevance to USDA or other legal authorities, with which to evaluate the industry's use of tournament systems and develop policy or regulations. In particular, AMS invites responses to the following questions:

(1) What is the tournament system's intended purpose and does the system achieve its intended purpose(s)?

(a) If yes, please describe what they are and how specific elements of the system help achieve those purposes.

(b) If not, why not? Moreover, please describe what you believe the intended purpose(s) are.

(c) Additionally, please describe what you believe should be the purpose of a payment and settlement system between integrators and growers?

(2) What specific practices under the tournament system are the most problematic, and why?

(3) Which practices should be addressed through regulatory or other administrative steps? Are regulatory steps the only path to curbing these practices?

(a) Should certain practices be subject to whole or partial prohibitions, limits, conditionalities? If so, which ones? Why or why not?

(b) Should certain practices be subject to additional disclosures? Why or why not?

(c) Please explain any reasoning for why such specific practices may be unfair, unjustly discriminatory, provide undue preferences or prejudices, are deceptive, or are otherwise unreasonable or anticompetitive under the law. If you are suggesting a particular regulatory standard for any such terms, please define it clearly. If you suggest administrative (non-regulatory) steps, please explain those.

(d) Do any specific practices harm competition among growers, among poultry companies for the services of growers, or among poultry companies in the sale of poultry products?

(f) Do the practices concerned give rise to significant harms that are unavoidable by certain parties or that undermine supply chain resiliency, price discovery, or open, competitive markets?

(g) Are there competitive or other benefits or legitimate business justifications that should be taken into consideration with respect to such practices?

(4) For the areas of focus listed as (a) through (n) in the introduction above:

(a) Are there minimum regulatory standards that would help address marketplace practices of concern, and if so, what are they? Please discuss both the marketplace concerns and the way that the minimum standards may address those concerns.

(b) Are any of the areas more, or less, amenable to transparency-oriented solutions, such as disclosures? Please explain why or why not.

(c) For these areas, please share any views regarding the scope and applicability, or inapplicability, of relevant USDA authorities, in particular (but not necessarily exclusively) the Packers and Stockyards Act.

(d) Are there any other Federal or state authorities that may be relevant to USDA's analysis of these issues?

(5) Please comment on the specific conditional approaches to the tournament system listed as (i) through (iv) in the introduction above.

(a) Which aspects of the tournament system are unfair as to warrant the possible conditions set forth? Do the conditional approaches appropriately address those concerns? Why or why not.

(b) What are the strengths and limitations, and costs and benefits, for each approach?

(c) Are there any competition implications to their adoption?

(d) Are there any other risks that should be considered with respect to the approaches?

(e) With particular respect to the cooperative negotiation option:

(I) Are there additional steps that USDA could take under the laws governing cooperatives that could facilitate the formation of cooperatives for those engaged in providing growout services?

(II) Alternatively, to what extent can poultry grower organizations adequately rely on the Capper-Volstead Act (in particular it's exemption from the antitrust statutes) to accomplish goals such as cooperating to negotiate or arbitrate for better terms and conditions of contracts? If not, why not?

(f) For all of these conditions, please share any views regarding the scope and applicability, or limits and inapplicability, of relevant USDA authorities, in particular the Packers and Stockyards Act, and whether any other Federal or state authorities are also relevant.

(6) With respect to the following areas, to what extent can the tournament system pay mechanisms be modified to achieve the following goals, while still retaining performance-based incentives? If so, how?

(a) Can they be modified to avoid degradation of base pay rates?

(b) Can they be modified to reduce variability or unpredictability in outcomes (at least over any short-term horizon)?

(c) Can they be modified to better reflect factors that are largely within own the control of growers?

(d) Can they be modified so that an integrator cannot terminate without cause, and if so, under what conditions would performance in the tournament be a basis for terminating a contract?

(e) Are there other targeted ways in which they should modified?

(f) If not, what alternatives may exist to it, and what risks might arise from such alternatives? What are the economic implications, including relating to competition, that may arise from the alternatives and any transition to them?

(g) For these questions, please share any views regarding the scope and applicability, or inapplicability, of relevant USDA authorities, in particular (but not necessarily exclusively) the Packers and Stockyards Act, and whether any other Federal or state authorities are also relevant.

(7) We further seek comments on the following additional related matters:

(a) Should capital investment provisions (9 CFR 201.216) be revised to address compensation requirements when integrators require upgrades beyond the original housing specification?

(b) Are there minimum standards or protections needed to prevent interference with the rights of growers to sell their farms? If so, what should they be?

(c) Are protections needed against premature contract cancellation without reasonable cause, and if so, how should they be designed?

(d) Should the remedy for breach of contract rules (9 CFR 201.217) be revised to provide for a specific time period that constitutes a reasonable period to remedy a breach of contract that could lead to termination (and if so, how long)?

(e) Should provisions relating to the suspension of the delivery of birds (9 CFR 201.215) be revised to protect against arbitrary suspensions of flocks, and if so, how?

(f) For these questions, please share any views regarding the scope and applicability, or inapplicability, of relevant USDA authorities, in particular (but not necessarily exclusively) the

Packers and Stockyards Act, and whether any other Federal or state authorities are also relevant.

(8) What role can reforms of lending and loan guarantee systems play to ensure better alignment between borrowers and lenders? Consider the following questions and please explain what authorities USDA or other relevant agencies might deploy, if any.

(a) Should borrower income be evaluated by lending institutions for justification of loan cash-flow only based on the minimum or lowest quartile of returns, or based on median returns, or in some other way?

(b) Should limitations or additional transparency cover the relationship between lenders and integrators? Are steering payments, prepayment penalties, or other finders' fees of concern?

(c) Should standards and oversight be improved for ensuring that credit is fair and nondiscriminatory? If so, how?

(d) How might relevant agencies better monitor the lending marketplace, including through data collection, reporting, and supervision?

(9) We also invite input on how to improve data collection and research generally.

(a) What data and information should be collected to assist with analyzing the concerns highlighted above?

(b) How can that information be more effectively collected?

(c) In what ways can AMS or USDA's research agencies make that information more available to growers, academics, smaller market participants, and other relevant parties?

(d) Please discuss concerns or risks with respect to confidentiality or collusion that should be considered as well.

(e) How might USDA support additional academic research with respect to poultry market practices and competition?

(10) Are there other approaches or proposals pertaining to regulation of the tournament system that USDA should consider?

We invite all comments, suggestions, information, and data that would inform our thinking on these areas. We are particularly interested in views and information from poultry companies that use tournament systems, from poultry growers who operate under such arrangements, from rural communities that have experience with them, and from other participants in the food supply chain. To the maximum extent possible, and to facilitate effectiveness by AMS in analyzing the information, please identify submitted comments by referring to the enumerated questions in this request.

Additionally, please ensure that your comments to this ANPR are *separate* from any comments that you may submit to other proposed rules or requests for information under the Packers and Stockyards Act. To the extent that your comment to this ANPR repeats information you are filing in another comment file to AMS, you may reference that other filing by name and date of your submission or simply repeat that information in your submission to this ANPR.

Comments received by the September 6, 2022 deadline will be considered.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–11998 Filed 6–7–22; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 25

[Docket No. TTB–2022–0006; Notice No. 212]

RIN 1513–AC48

Modernization of Qualification Requirements for Brewer's Notices

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking, the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes deregulatory amendments to its regulations to modernize and streamline the qualification requirements for Brewer's Notices. The proposed amendments also relax requirements associated with reporting certain changes to brewery businesses and other notification requirements. The proposed amendments are a result of TTB's evaluation of its qualification requirements and consideration of relevant public comments submitted to the Treasury Department in response to its request for recommendations concerning regulations that can be eliminated, modified, or streamlined to reduce burdens.

DATES: Comments must be received on or before August 8, 2022.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document as posted within Docket No. TTB–2022–0006 on the ''*Regulations.gov*'' website at *https://www.regulations.gov.* Within that docket, you also may view copies of this document, its supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/beer/notices-of-proposed-rulemaking* under Notice No. 212. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section below for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Jesse Longbrake, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone (202) 453–1039, extension 066.

SUPPLEMENTARY INFORMATION:

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I. Background

A. TTB Evaluation of Permit and Registration Application Requirements

In fiscal year 2017, the Alcohol and Tobacco Tax and Trade Bureau (TTB) began an evaluation of the information collected in TTB's permit and registration applications. The purpose was to identify ways to streamline the

application, reduce burden on the regulated industry, and ensure that the application collects, where possible, only information necessary for meeting the agency's statutory obligations. TTB's general approach was to identify information being collected that could be eliminated without hindering TTB's ability to evaluate an applicant's qualifications and to more narrowly focus the application questions to capture only the information that is needed. Additionally, TTB considered whether applicants made any types of requests that TTB routinely approved such that it might be reasonable to amend the regulations to remove the need for such requests.

Similarly, on June 14, 2017, the Treasury Department (Treasury) published in the **Federal Register** (82 FR 27217) a Request for Information inviting members of the public to submit recommendations for Treasury regulations that could be eliminated, modified, or streamlined to reduce burdens. TTB reviewed comments received in response to this request and identified proposals that related to beginning business in a TTB-regulated industry, including Brewer's Notices.

Through TTB's internal evaluation and consideration of the public input, TTB has identified deregulatory measures that TTB could take by amending regulations and, also, where rulemaking is not required, by amending guidance and forms. While this document addresses breweries, TTB intends to engage in further rulemaking to address other regulated industries within the context of their respective statutory eligibility requirements. Specifically, TTB will address in separate rulemakings Internal Revenue Code (IRC) permit and notice requirements for wine producers, as well as IRC requirements for TTB-regulated tobacco businesses. TTB has already published rulemaking concerning distilled spirits plants, users and dealers of specially denatured alcohol and tax-free alcohol, and Federal Alcohol Administration Act (FAA Act) basic permit holders (Notice No. 207, published in the **Federal Register** on December 3, 2021, at 86 FR 68573).

With respect to breweries, this document proposes to amend the regulations to eliminate or narrow the range of information that brewers must submit with Brewer's Notices to respond more directly to TTB's statutory obligations under the IRC. The proposed amendments include:

- Removing requirements that brewers intending to sell and serve beer on brewery premises designate and maintain a separate ''tavern'' area within the brewery for such activities, and including instead general provisions to account for beer sold and served to customers anywhere on brewery premises.
- Tailoring requirements to describe the brewery premises more narrowly.

TTB also is proposing regulatory amendments that will increase industry flexibility without creating any new obligations. These proposed amendments include:

- Extending deadlines for reporting certain changes to the brewer's business from 30 days to 60 days.
- Allowing brewers to use new trade names by notifying TTB in lieu of amending their Brewer's Notice.
- Allowing brewers to maintain required records at a location other than the permitted premises without first obtaining TTB approval.
- Reducing the frequency of physical inventories in certain circumstances and allowing greater flexibility in the timing of physical inventories within the inventory period.
- Allowing entities operating multiple breweries to secure one bond covering all brewery operations rather than separate bonds for each brewery.
- Eliminating the twelve day waiting period prior to destroying taxpaid beer off brewery premises.

Section II of this document includes more in-depth discussion of these and other proposed amendments.

As noted above, TTB's deregulatory strategy also includes streamlining its guidance and forms. TTB has already begun deploying such streamlining efforts in response to both TTB's internal evaluation of its applications and to comments received from the public.

B. TTB Authority

The IRC, 26 U.S.C. chapter 51, imposes Federal excise taxes on beer, provides for payment and/or refund of those taxes, and prescribes requirements related to the operations of brewers. Chapter 51 also requires all persons intending to brew or produce beer for sale (*i.e.,* brewers) to furnish qualifying documents to the Secretary of the Treasury (Secretary) before starting business, including a written notice containing the information prescribed by regulation as necessary to ensure collection of the revenue and, in certain cases, a bond to ensure protection of the revenue. See 26 U.S.C. 5401.

With respect to the excise tax on beer, chapter 51 generally provides that such tax is determined when beer is removed for consumption or sale from a qualified brewery in the United States, or is imported. Beer ''removed for consumption or sale'' includes beer sold for consumption on brewery premises. See 26 U.S.C. 5052(c)(1). Section 5552 of the IRC (26 U.S.C. 5552) authorizes the Secretary to require ''installation of meters, tanks, pipes, or any other apparatus for the purpose of protecting the revenue,'' such as requiring means to accurately measure the amount of beer transferred or removed. Section 5061 governs the collection of excise tax on beer. Section 5061(d) prescribes the time periods and due dates for paying tax on a deferred basis, and generally requires that the taxes be paid on a semimonthly basis. However, section 5061(d)(4) authorizes eligible taxpayers to use annual or quarterly tax return periods instead of semimonthly periods.

Chapter 51 also imposes requirements governing the operation of breweries, including a requirement that brewers keep records in the form and manner prescribed by regulation, and a requirement that brewers make true and accurate reports of operations and transactions as prescribed by regulation. See 26 U.S.C. 5415. In addition, 26 U.S.C. 7805(a) generally authorizes the Secretary to issue regulations to carry out the provisions of the IRC.

TTB administers chapter 51 of the IRC pursuant to Treasury Order 120–01, dated December 10, 2013, through which the Secretary has delegated to TTB certain IRC administrative and enforcement authorities, including those related to Brewer's Notices.

Pursuant to its delegated IRC authorities, TTB has promulgated regulations setting forth qualification requirements for breweries at 27 CFR part 25. TTB's regulations at 27 CFR 25.61 through 25.68 set forth the requirements for the qualifying documents that brewers must submit to TTB, including form TTB F 5130.10, Brewer's Notice. The TTB regulations prescribe additional information that brewers must include in the Brewer's Notice when they intend to operate a ''tavern'' on brewery premises. See 27 CFR 25.25. A brewery may not commence operations until TTB approves the Brewer's Notice. 27 CFR 25.61(a). TTB proposes amendments to the regulations specifying the information brewers must provide on form TTB F 5130.10 or its electronic equivalent, as well as in certain supporting documents.

Concerning determination and payment of the tax on beer, TTB's regulations at 27 CFR 25.159 provide that the tax will be determined at the time of its removal for consumption or sale and will be paid by return as provided in part 25. TTB's regulations

generally require that breweries have suitable means to accurately measure beer for tax determination purposes. See, *e.g.,* 27 CFR 25.41. Breweries operating taverns are currently required to have a ''suitable method for measurement of the beer'' that is tax determined for sale to customers for consumption at the tavern. 27 CFR 25.25(c)(1).

TTB regulations at 27 CFR 25.71 through 25.79 require brewers to report certain changes in the business affecting the Brewer's Notice (*e.g.,* changes in address or location, changes in stockholders or officers, directors, managers, etc.). In addition, regulations at 27 CFR 25.291 through 24.301 include recordkeeping requirements as authorized by 26 U.S.C. 5415.

This notice of proposed rulemaking includes proposed amendments to the qualification process for breweries, the tax determination requirements for beer sold for consumption at the brewery, and the reporting and recordkeeping requirements described above. With respect to reporting requirements, in instances where TTB's regulations refer to submitting a ''letterhead notice,'' industry members may provide such notices electronically in Permits Online. Unlike the brewer's initial submission of qualifying documents, these ''letterhead notices'' do not require TTB approval. TTB is proposing amendments to 25 CFR 25.81 to update the term ''letterhead notice'' to the term ''written notice'' and to 27 CFR 25.11 to add a definition of ''written notice.''

C. Relationship to Other Notices of Proposed Rulemaking

TTB recently published a notice of proposed rulemaking titled ''Modernization of Permit and Registration Application Requirements for Distilled Spirits Plants,'' in which TTB proposed amendments, generally similar to those proposed in this document, in 27 CFR parts 1, 17, 19, 20, 22, 26, 27, 28, and 31. Amendments related to FAA Act basic permits—including basic permits as importers and wholesalers of malt beverages—were included in that document and are not included in this document. See Notice No. 207, 86 FR 68573, 12/03/2021. TTB plans to publish notices of proposed rulemaking to propose generally similar amendments to regulations related to wine, tobacco products, and processed tobacco-related applications and operations, set forth in 27 CFR parts 24, 40, 41, and 44.

II. Proposed Changes to the Regulations

The amendments proposed in this document are intended to modernize and streamline the qualification processes for breweries under the IRC. The general approach TTB adopted in developing the proposed amendments was to identify information currently being collected that could be eliminated without hindering TTB's ability to protect and ensure collection of the revenue, and to provide more clarity and specificity in the questions and instructions on the Brewer's Notice. The proposed amendments also relax requirements associated with certain reporting requirements.

A. Retail Service Operations

For brewers who intend to operate a ''tavern'' or ''brewpub,'' TTB proposes to remove requirements to designate and maintain a separate tavern area within the brewery where beer may be sold and served to customers for consumption on the premises, and replace these with general provisions related to determining tax on beer that is sold and served to customers on the brewery premises. (The TTB regulations use the term ''tavern'' although TTB forms and guidance also refer to a ''brewpub'' to recognize a term more commonly used in the industry.) TTB's regulations at 27 CFR 25.25 prescribe additional information that brewers must include in their Brewer's Notice when seeking to operate a tavern on the brewery premises. For instance, a brewer is required to identify the areas of the brewery premises that will be operated as a tavern accessible to the public, and to describe the security measures used to separate these public areas from the non-public areas of the brewery. Brewers also are required to describe in detail the method they will use for measuring beer for the purposes of tax determination (*i.e.,* measuring the beer set aside to serve to customers on-premises, upon which tax will later be paid). Brewers must also identify any tanks that will periodically contain tax-determined beer, as well as any other areas of the brewery where tax-determined beer will be stored.

As part of TTB's evaluation of the Brewer's Notice, and in recognition of the comments and questions TTB has received over the years from brewers regarding tavern, brewpub, and taproom operations, TTB considered ways to simplify the relevant qualification requirements and to provide more flexibility for brewers considering different types of operations. The current regulations applicable to the concept of a tavern or brewpub have not been updated since they were issued in 1988. They require a separately-defined area for retail sales of beer in the brewery. These regulations were implemented to protect the revenue on beer sold for consumption on brewery premises. The IRC does not require such a separately-defined area, and TTB considered if it could eliminate the regulatory distinction between a brewery and a brewery operating a tavern without jeopardizing the revenue.

TTB considered the differences in operations between breweries and breweries operating taverns (hereinafter ''brewpubs''), as currently defined, and the related differences in the statutory requirements for the permissible methods of ''removing'' beer ''for consumption or sale'' (that is, subject to tax). The IRC defines the term ''removal for consumption or sale'' at 26 U.S.C. 5052(c) to mean:

(1) The sale and transfer of possession of beer for consumption at the brewery; or

(2) Any removal of beer from the brewery (except removals without payment of tax, *e.g.,* for export or transfers in bond to another brewery).

The first definition relates to beer sold and served to a customer for consumption at the brewery. The second definition relates to beer removed for distribution (however, this definition also captures, for example, beer sold to customers at the brewery to drink outside of the brewery, as defined by the Brewer's Notice).

Beer removed ''from the brewery'' is required by statute to be removed in containers. Pursuant to 26 U.S.C. 5412, ''Beer may be removed *from the brewery* for consumption or sale only in hogsheads, packages, and similar containers[.]'' [Emphasis added.] The term ''package'' is further defined at 26 U.S.C. 5416 as a ''bottle, can, keg, barrel, or other original consumer container[.]''

Section 5412's container requirement does not apply to beer removed by sale and transfer of possession for consumption at the brewery.

With that understanding of the statutory removal requirements, TTB recognized that its regulations must address three main avenues for the retail sale of beer for consumption occurring at a brewery, for example:

(1) Sale of untaxpaid beer from tanks to drink on the brewery premises;

(2) Sale of untaxpaid beer from containers (such as barrels or kegs) or in containers (such as bottles) to drink on the brewery premises; and

(3) Sale of beer in containers to drink outside of the brewery premises.

Any beer sold in containers at the brewery for consumption outside of the brewery in the third scenario would be a removal ''from the brewery'' subject to tax under 26 U.S.C. 5052(c)(2) and the

container requirements of section 5412 would apply. TTB is not proposing any regulatory amendments affecting this type of retail sale. This third scenario includes situations where brewers operate ''tasting rooms'' or ''taprooms'' that serve beer and may be adjacent to the brewery, but are not part of the brewery itself (as defined by their Brewer's Notice). Brewers cannot make any sales of their beer at such a tasting room or taproom from a tank or by running lines from a tank in the brewery to an adjacent area that is not part of the defined brewery premises. Brewers wishing to make such sales could do so consistent with TTB's proposed regulations, discussed further below, by amending their Brewer's Notice to include the tasting room or taproom area in their brewery premises.

TTB's proposed amendments address the first two avenues of sale described above: Sales for consumption at the brewery (1) from tanks, and (2) from or in containers. The proposed regulations eliminate the distinction between a brewery and a brewpub, and instead outline the ''retail service operations'' brewers are authorized to engage in under a Brewer's Notice. The amendments eliminate certain brewpub regulatory requirements, in particular the requirements to delineate the public and non-public areas of the brewery and to employ security measures to separate those areas. Eliminating these requirements would recognize that brewers have an interest in providing broader access to their brewery operations while also ensuring that visitors do not interfere with those operations.

The proposed regulations also recognize the need to retain current policies authorizing breweries engaging in retail activities to serve food, taxpaid wine, taxpaid distilled spirits, taxpaid beer of another brewer's production, brewery related merchandise, and anything else not contrary to law.

The proposed regulations would eliminate the need for separate qualifications, such as are currently present in Permits Online, for breweries and brewpubs. Instead, brewers would merely provide basic information about any ''retail service operations'' in which they intend to engage.

Brewers engaging in retail service operations would be required to keep records of such retail service operations, and properly account for, for tax purposes, any untaxpaid beer sold for consumption at the brewery. In general, in the case of (1) untaxpaid beer sold from tanks, the proposed regulations provide that tax will be determined based on a measurement of the beer dispensed for sale from a tank each day, as opposed to current procedures generally requiring that tanks be tax determined in their entirety when filled. TTB believes the proposed method of tax determination is simpler and will provide greater flexibility by eliminating the need for tax determination tanks that must be segregated from other untaxpaid beer on the brewery premises. TTB invites comments on whether to maintain tax determination tanks as another option for tax determination of beer to be sold for consumption at the brewery. In the case of (2), untaxpaid beer sold in containers, barrels and kegs must be tax determined at the time they are tapped for sale and consumption on premises, while bottles must be tax determined at the time they are sold for on-premises consumption.

TTB's proposed amendments setting forth authorized retail service operations would replace the current § 25.25. Conforming amendments are proposed to §§ 25.11, 25.23, 25.24, 25.35, 25.41, 25.62, 25.159, and 25.292.

B. Premises Description

TTB is proposing to more narrowly tailor requirements to describe the brewery premises to accelerate TTB's review during initial qualification. TTB also is proposing to consolidate requirements to provide descriptions of alternation operations with the general brewery premises description. The TTB regulations at 27 CFR 25.62 prescribe, in general, information that a brewer must provide in a Brewer's Notice, which includes a description of the brewery premises. TTB currently collects these descriptions in an open-ended narrative format. TTB requires more detailed narrative descriptions and/or diagrams where a brewer wishes to operate a tavern in the brewery or intends to alternate its premises with an adjacent bonded or taxpaid wine premises. See 27 CFR 25.25 and 25.81. TTB believes that more direct questions and certifications could enable brewers to better understand what information they must submit, which may reduce the need for additional submissions and communication between TTB and brewers, and accelerate TTB's review process. TTB therefore proposes amendments, described below, to alter the format in which descriptions of brewery premises and related information are collected and to consolidate the collection of certain such information.

Currently, § 25.62(a)(5) requires that a Brewer's Notice include a description of the brewery in accordance with § 25.68. Section 25.68(a) sets forth the specific information to be included in the description, which includes: (1) A description of each tract of land comprising the brewery; and (2) a listing of each brewery building by its designated letter or number, giving the approximate ground dimensions and the purpose for which ordinarily used. Section 25.68(b) also requires that the description must be in sufficient detail to enable TTB officers to determine the boundaries of the brewery. TTB proposes to amend § 25.68 to remove the requirements to provide a description of the tract of land, and to number each building. TTB proposes to further clarify the specific information to be submitted in the brewery description, to include: (1) The overall dimensions of the building(s) housing the brewery and, if the brewery occupies less than the entire building, the boundaries of the brewery within the building; and (2) any portions of the brewery that are outdoors, including the location of any outdoor tanks.

Section 25.25 currently requires that a brewer desiring to operate a tavern on the brewery premises submit certain additional information with the Brewer's Notice. Paragraph (b)(1) requires the brewer to identify the portion of the brewery that will be operated as a tavern ''by providing a diagram or narrative description of the boundaries of the tavern,'' including identification of the areas of the brewery that will be accessible to the public. As described in section II(A) of this document, TTB is proposing to replace the current requirements of § 25.25 entirely with new regulations governing retail service operations at the brewery and to require a statement concerning retail service operations as part of the Brewer's Notice under a new § 25.62(a)(14).

Section 25.81 sets forth requirements related to alternation of the brewery premises with a contiguous bonded winery or taxpaid wine bottling house, including requirements for certain qualifying documents. Among those qualifying documents, paragraph (b)(2) currently requires that brewers seeking to engage in such alternation provide ''special diagrams,'' in duplicate, delineating the brewery premises and the bonded or taxpaid wine premises as they will exist in their relative operating sequence. Paragraph (b)(2) provides that the diagrams must clearly depict all areas, buildings, floors, rooms, equipment, and pipelines which are to be subject to alternation in their relative operating sequence. TTB believes that the information captured in the ''special diagrams'' currently required under paragraph (b)(2) can instead be consolidated into the premises

descriptions required under proposed § 25.68. Accordingly, TTB proposes to amend § 25.81(b)(2) to require that the description submitted under proposed § 25.68 contain the information concerning the alternation. TTB also proposes clarifying amendments to § 25.81 to capture brewery alternation with an adjacent distilled spirits plant (DSP). This amendment is consistent with TTB's existing regulations at 27 CFR 19.143, which allow alternation between a DSP and brewery.

C. Statements of Interest

TTB proposes amendments to clarify the scope of the collection of information related to persons holding ownership interests in a business. TTB collects these statements of interest in accordance with TTB's statutory obligations to collect the information necessary to protect and ensure collection of the revenue. See 26 U.S.C. 5401(a).

TTB must identify circumstances in which a brewery's ownership structure would affect the brewery's required method of tax payment and/or the brewery's eligibility for certain reduced rates of tax. Pursuant to 26 U.S.C. 5061(e), any taxpayer who, in any calendar year, was liable for at least $5,000,000 in taxes on distilled spirits, wines, or beer must pay such taxes in the following year by electronic fund transfer. Paragraph (3)(A) of that subsection provides that, in the case of a controlled group of corporations, all component members of the group are treated as one taxpayer.[1] To determine whether a brewer belongs to a controlled group, and thereby to enforce section 5061(e), TTB must collect information identifying the persons holding ownership interests in the business.

Determining whether a prospective brewery is a member of a controlled group is also necessary to determine whether the brewer may be eligible for certain reduced tax rates upon TTB approval of a Brewer's Notice. Pursuant to 26 U.S.C. 5051(a)(1)(A), a reduced rate of tax is available on the first 6,000,000 barrels of beer brewed by the brewer and removed during the calendar year for consumption or sale. Section 5051(a)(2) provides a further reduced rate on the first 60,000 barrels of beer brewed and removed during a calendar year, available to brewers who produce not more than 2,000,000 barrels of beer during the calendar year.

The reduced rates under sections 5051(a)(1)(A) and (a)(2) each take into account the collective production and removal activity of a controlled group. See 26 U.S.C. 5051(a)(5)(A). For example, if a Brewer's Notice is to be issued to a brewery that produces 50,000 barrels per year, but which is part of a controlled group with another brewery producing 3,000,000 barrels per year, TTB will need to collect information to identify the controlled group structure and thereby ensure that the breweries within the controlled group do not claim reduced tax rates for which they are ineligible.

TTB proposes amendments to 27 CFR 25.66 to clarify and standardize the collection of the basic identifying information of persons with an interest in the business. The amended § 25.66 provides that: (1) The requirement to disclose basic identifying information (*i.e.* names and addresses) of persons with an ownership interest in the business applies to persons with an interest at least equivalent to that of a principal stockholder in a corporation—that is, an ownership interest of 10 percent or greater; and (2) where a ''person'' holding such an interest is a legal entity other than an individual, the brewer must provide the name, title, and place of residence (city and State) of a representative individual for that entity. The representative individual generally will be the individual designated by the entity to represent the entity's interest in the business or, in the absence of a designated individual, an owner, chief officer or manager, or person with similar authority within the entity.

TTB believes that this is the minimum amount of information required to identify the individuals with an interest in the business and to evaluate the brewer as to any potential controlled group affiliations.

D. 30-Day Filing Requirements for Certain Changes in the Business

TTB proposes to extend the reporting period for certain changes in a brewery's business to 60 days. The TTB regulations generally require that, when there is a change in the information submitted in a Brewer's Notice, the proprietor of the business must notify TTB of the change. The timing and form of this notification differs depending on the type of business change.

Proprietors must report some business changes to TTB within a certain amount of time following the change, generally within 30 days. For example, the TTB regulations at 27 CFR 25.75 require that the brewer submit an amended Brewer's Notice within 30 days of any change in the list of officers or directors furnished with the original Brewer's Notice.

Comments received in response to Treasury's 2017 request for information, described in section I(A) of this document, suggest that 30 days is too short a time for regulated entities to assemble the information that is required. These comments suggested that TTB should extend such filing deadlines to 60 days.

TTB reviewed these proposals and concluded that extending existing deadlines for reporting changes in the business (including in some cases by amending Brewer's Notices) from 30 to 60 days may not pose risk to the revenue or raise other concerns. Accordingly, TTB proposes amendments to extend such deadlines in 27 CFR 25.71, 25.74, and 25.75. Section 25.71 currently requires that, unless another time period is specified, a brewer submit an amended notice within 30 days of ''a change with respect to the information shown in the Brewer's Notice, Form 5130.10.'' Section 25.74 requires a brewer to submit an amended notice to TTB within 30 days of a change in control or management of a business caused by the sale or transfer of capital stock. Section 25.75 generally requires that a brewer submit an amended Brewer's Notice within 30 days of a change to the list of officers or directors. TTB proposes to extend each of the above reporting deadlines from 30 to 60 days.

E. Changes in Trade Names

TTB proposes to revise currently-reserved section 27 CFR 25.76 to allow changes to, or additions of, trade names through a written notice to TTB rather than through an amended Brewer's Notice. The regulations at § 25.71(a)(1) currently require that brewers submit an amended Brewer's Notice for a change with respect to information shown in the Brewer's Notice, which includes the list of trade names required by 27 CFR 25.62(a)(6). The proposed regulation clarifies that a brewer need only notify TTB of the addition of a trade name prior to using such name for marking or labeling purposes as required by subpart J of part 25 (27 CFR 25.141—25.145). TTB's Permits Online system already includes a function for reporting additional trade names, which will satisfy the proposed § 25.76's requirement for a written notice.

TTB notes that it remains the responsibility of the brewer to ensure that any trade name is properly

[1] For purposes of 26 U.S.C. sections 5061(e) and 5051(a)(5)(A), a ''controlled group of corporations'' has the meaning given to such term by 26 U.S.C. 1563(a), except that ''more than 50 percent'' must be substituted for ''at least 80 percent'' each place it appears in section 1563(a). Section 5061(e)(3)(B) clarifies that rules similar to paragraph (3)(A) apply to a group of persons under common control where one or more of such persons is not a corporation.

registered with the applicable State or local government. Brewers should further note that the FAA Act prohibits false or misleading statements on malt beverage labels, and TTB will not approve an application for label approval proposing to use a trade name on a malt beverage label that gives a misleading impression as to the age, origin, or identity of the product. 27 U.S.C. 205(e). The FAA Act also prohibits the use of misleading trade names when advertising malt beverages. 27 U.S.C. 205(e)(5).

F. Retention of Records Off-Premises

TTB is proposing amendments to allow records to be stored at a location other than the brewery and to allow brewers to simply notify TTB of their intention to store records at an off-brewery location, rather than apply for approval. As part of its evaluation of permit and registration applications, TTB sought to identify any types of requests to vary from the regulations that applicants commonly submitted with their permit or registration applications that TTB routinely approved. One common request from brewers has been for approval to retain required records at a location other than the premises covered by the Brewer's Notice. As a result, TTB proposes to amend 27 CFR 25.300 to allow brewers to keep records at another location upon providing a written notice to TTB. The amendments provide that required records must still be made available at the brewery premises upon request, but that copies will generally satisfy this requirement (consistent with current TTB policy, ''copies'' includes electronic copies).

G. Inventory Requirements

TTB is proposing amendments reducing the frequency of physical inventories in certain circumstances and allowing greater flexibility in the timing of physical inventories within the inventory period. The TTB regulations at 27 CFR 25.294 require that brewers take physical inventories of beer and cereal beverages on hand at least once each calendar month and prescribe the information required on the inventory record. Section 25.294 requires that brewers take the required inventory within seven days of the close of the calendar month for which it is made.

One comment received in response to Treasury's request for information seeks elimination of § 25.294 or, alternatively, relaxation of its requirements to allow inventories to be taken within the final 15 days of the month. The comment suggests that these amendments would reduce burdens on both TTB and industry. TTB considered these suggestions and proposes to relax inventory requirements as described below.

With respect to the frequency of physical inventories, TTB proposes to align the taking of inventories with the filing of tax returns for brewers who file less frequently than monthly. As described in section I(B) of this document, 26 U.S.C. 5061(d) requires that the taxes on beer be paid on a semimonthly basis. However, section 5061(d)(4) authorizes eligible taxpayers to use annual or quarterly tax return periods instead of semimonthly periods. Specifically, section 5061(d)(4)(A)(ii) allows a taxpayer who reasonably expects to be liable for not more than $1,000 in excise taxes for the calendar year and who was liable for not more than $1,000 in such taxes in the preceding calendar year to make returns annually. Section 5061(d)(4)(A)(i) allows a taxpayer who reasonably expects to be liable for not more than $50,000 in excise taxes for the calendar year and who was liable for not more than $50,000 in such taxes in the preceding calendar year to make returns quarterly. TTB has implemented these provisions in its regulations at 27 CFR 25.164. TTB proposes to amend § 25.294 to allow brewers authorized by 26 U.S.C. 5061(d) and § 25.164 of the TTB regulations to file tax returns on an annual or quarterly basis to complete physical inventories on an annual or quarterly basis, respectively. Brewers required to file semimonthly tax returns will still be required to conduct monthly physical inventories.

TTB further proposes to amend § 25.294 to allow physical inventories to be taken within 15 days of the close of the applicable inventory period (*i.e.,* month, quarter, or year), rather than within 7 days of the close of the applicable inventory period.

H. Discontinuance of Business

TTB proposes to amend 27 CFR 25.85 to streamline procedures for discontinuing business as a brewer. The current § 25.85 requires a brewer discontinuing its business to first file a notice to that effect using the Brewer's Notice form, TTB F 5130.10, or its electronic equivalent in Permits Online. Under the regulations, TTB must approve and return a copy of the notice to the brewer once ''all beer has been lawfully disposed of.'' This may require additional communication with the brewer prior to approving the discontinuance notice. Once TTB approves and returns the notice, the brewer must file a ''final report'' on form TTB F 5130.9, ''Brewer's Report of Operations,'' or its electronic equivalent, showing no beer or cereal beverage on hand.

TTB proposes to amend § 25.85 to allow a written notice to the appropriate TTB officer to serve as adequate notice of discontinuance of business, rather than requiring submission of form TTB F 5130.10 and TTB approval. The notice must indicate the date on which business discontinued or will discontinue. The proposed amendments also dispose of the blanket requirement for a final report and provide that the brewer must submit such report only upon request of the appropriate TTB officer. While TTB will continue to examine the operations of closing businesses on a case-by-case basis to ensure that there are no outstanding tax liabilities, this examination would no longer impact TTB's processing of notices of discontinuance of business. TTB believes this proposal will ease burdens on brewers exiting the industry.

TTB is also proposing conforming amendments to 27 CFR 25.102, Termination of surety's liability, to remove a reference to TTB's ''approval'' of a discontinuance notice. Under the proposed § 25.85, a notice of discontinuance of business is effective on the date indicated on the notice submitted to TTB.

I. Blanket Bond Form for Multiple Breweries

TTB is proposing amendments allowing entities operating multiple breweries to secure one bond covering all brewery operations rather than separate bonds for each brewery. The TTB regulations at 27 CFR 25.91 generally require that every person intending to commence business as a brewer must file a bond covering operations at the brewery at the time of filing the original Brewer's Notice. There is an exemption to the bond requirement at 27 CFR 25.91(e) for brewers who are eligible to pay tax on a deferred basis annually or quarterly pursuant to 27 CFR 25.164. Section 25.91 further requires the brewer to file a new bond or continuation certificate every four years. A comment received in response to Treasury's request for information requests that TTB allow entities operating multiple breweries to obtain blanket bonds covering all locations under one bond. The comment suggests that this would reduce the amount of effort required to procure and maintain multiple bonds with differing expiration dates.

TTB agrees that allowing entities operating multiple breweries to secure one bond covering all operations is an appropriate measure to reduce burden

on both industry and TTB. TTB is proposing amendments to §§ 25.91 and 25.93 to provide this option and set forth the penal sum requirements associated with such blanket bonds. TTB's proposed amendments generally provide that the penal sum required for a blanket bond will be equal to the aggregate of such sums applicable to each brewery location, as calculated under current regulation. TTB will also amend form TTB F 5130.22, Brewer's Bond, to allow coverage of multiple breweries.

J. Notice of Intent To Destroy Taxpaid Beer Off Premises

TTB is proposing to eliminate the requirement that brewers notify TTB prior to destroying taxpaid beer off brewery premises. The TTB regulations at 27 CFR 25.222 require that brewers destroying taxpaid beer off brewery premises submit to TTB a notice of intent (NOI) containing specific information about the destruction at least 12 days prior to the destruction. Generally, TTB requires brewers to submit the information contained in the NOI with a subsequent claim for refund or credit of tax pursuant to 27 CFR 25.283. The NOI is intended to provide TTB an opportunity to assign personnel to witness a destruction under 25.223. In response to the COVID–19 pandemic, TTB suspended the NOI requirement and instead has relied on the supporting information submitted with claims, and TTB has requested additional proof of destruction where necessary (as such proof is not specifically required as supporting information under § 25.283).

To provide brewers additional flexibility in the timing of beer destructions, and to avoid requiring brewers to store taxpaid beer longer than is necessary to arrange its destruction, TTB is proposing to permanently eliminate the requirement that brewers notify TTB prior to destroying taxpaid beer off brewery premises, as well as the provision concerning routine TTB supervision of such destruction. TTB is proposing to amend § 25.283 to instead require that brewers submit, with a claim for refund or credit of tax on taxpaid beer destroyed off brewery premises, proof of destruction in the form of commercial records. TTB is also proposing to amend 27 CFR 25.221 to give TTB discretion to require a brewer to submit an NOI before destruction if the appropriate TTB officer determines that pre-notification is necessary to protect the revenue.

K. Update of OMB Control Numbers

In this document, TTB also proposes to update the Office of Management and Budget (OMB) control numbers and, as needed, the list of regulatory sections in 27 CFR part 25 containing information collections covered by those numbers. Therefore, in 27 CFR 25.5, TTB proposes to: (1) Update the OMB control numbers previously assigned to TTB's predecessor agency, the former Bureau of Alcohol, Tobacco and Firearms (ATF) (OMB No. 1512–__), to the control numbers currently assigned to TTB (OMB No. 1513–__); (2) add inadvertently missing OMB control numbers for existing information collections and remove control numbers for obsolete collections; and (3) add inadvertently missing sections, remove obsolete sections, or otherwise correct the list of sections containing information collections.

OMB has previously reviewed and approved all of the information collections contained in the part 25 regulations listed below in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The update, addition, or removal of OMB control numbers and regulatory sections in § 25.5 is merely informational in nature, and these proposed technical and conforming amendments do not change the requirements or burden of any currently approved TTB information collection contained in part 25.

The OMB control numbers and the regulatory sections containing information collections in part 25 are as follows:

OMB Control No.	Occurs in part 25 in section(s)
1513–0005 (Letterhead Applications & Notices Filed by Brewers, & Brewer's Notice).	25.23, 25.52, 25.61, 25.62, 25.64, 25.66, 25.68, 25.71–25.81, 25.85, 25.141, 25.142, 25.144, 25.158, 25.167, 25.184, 25.213, 25.221, 25.272, 25.273, 25.277, & 25.282.
1513–0007 (Brewer's Report of Operations, and Quarterly Brewer's Report of Operations).	25.296(b), & 25.297.
1513–0009 (Application to Operate Wine Premises, & Wine Bond)	25.81(b)(3).
1513–0013 (Change of Bond (Consent of Surety))	25.72, 25.73, 25.77, 25.81, 25.92, 25.95, 25.103, & 25.271.
1513–0014 (Power of Attorney)	25.65.
1513–0015 (Brewer's Bonds and Brewer's Bonds Continuation Certificates).	25.73, 25.77, 25.91, 25.93, 25.94, 25.95, 25.97, 25.98, & 25.274.
1513–0030 (Claims—Alcohol, Tobacco, and Firearms Taxes)	25.281–25.283, 25.285, & 25.286.
1513–0048 (Registration of Distilled Spirits Plants)	25.81(b)(5).
1513–0058 (Usual & Customary Records Maintained by Brewers)	25.42, 25.186, 15.192, 25.195, 25.196, 25.211, 25.252, 25.263, 25.264, 25.276, 25.291–25.296, 25.300, & 25.301.
1513–0083 (Excise Tax Return)	25.160, 25.163–25.166, 25.168, 25.175, 25.224, 25.285, & 25.298.
1513–0085 (Principal Place of Business Address & Place of Production Coding on Beer & Malt Beverage Labels).	25.241–25.143.
1513–0086 (Marks on Brewery Equipment & Structures, & Marks & Labels on Containers of Beer).	25.24, 25.35, 25.141–25.143, 25.145, 25.192, 25.196, 25.213, 25.231, 25.242, 25.251, & 25.263.
1513–0088 (Alcohol, Tobacco, and Firearms Related Documents for Tax Returns and Claims).	25.72–25.75, 25.77, 25.78, 25.151, 25.163, 25.276, 25.281–25.286, 25.291, 25.298, & 25.300.
1513–0118 (Formulas for Fermented Beverage Products)	25.53, & 25.55–25.58.
1513–0122 (Formula & Process for Domestic & Imported Alcohol Beverages.	25.53, & 25.55–25.58.

The proposed § 25.5 also includes changes to existing information collections as discussed in section IV(C) of this document.

III. Public Participation

A. Comments Invited

TTB invites comments from interested members of the public on the proposals described in this document. TTB also invites comments on any additional means to streamline the Brewer's Notice within the parameters of TTB's statutory obligations. As noted in section II(A) of

this document, TTB specifically invites comments from brewers on whether to maintain tax determination tanks as another option for tax determination of beer to be sold for consumption at the brewery.

B. Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 212 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received.

IV. Regulatory Analysis and Notices

A. Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory impact assessment is not required.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB has analyzed the potential economic effects of this action on small entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The following analysis provides the factual basis for TTB's certification under section 605.

Impact on Small Entities

While TTB believes the majority of businesses subject to this proposed rule are small businesses, the changes proposed in this document will not have a significant economic impact on those small entities. The proposed amendments are generally aimed at reducing burden on regulated entities of all sizes by:

(1) Eliminating the collection of certain information from Brewer's Notices;

(2) Replacing required narrative descriptions of the premises with more specific information;

(3) Extending deadlines for reporting certain changes in the brewer's business;

(4) Streamlining procedures for brewers using new trade names;

(5) Allowing the maintenance of required records at locations other than the brewery premises through a notification rather than an application for an alternate procedure;

(6) Clarifying which individuals are required to submit statements of financial interest in the business in connection with an application for a Brewer's Notice;

(7) Reducing the frequency of physical inventories for certain brewers and providing additional flexibility in the timing of inventories;

(8) Streamlining procedures for discontinuing business as a brewer;

(9) Allowing entities operating multiple breweries to secure one bond covering all operations; and

(10) Eliminating the requirement that brewers notify TTB before voluntarily destroying taxpaid beer off brewery premises.

On June 14, 2017, the Treasury Department (Treasury) published in the **Federal Register** (82 FR 27217) a Request for Information inviting members of the public to submit views and recommendations for Treasury regulations that can be eliminated, modified, or streamlined to reduce burdens. TTB reviewed comments received in response to this request and identified proposals that related to the permit application or, more generally, to beginning business in a TTB-regulated industry. Many of the proposed changes are consistent with recommendations submitted by industry in response to Treasury's request.

To reduce the information collected in applications for Brewer's Notices, TTB proposes amendments to 27 CFR 25.25 to eliminate requirements for brewers interested in engaging in retail service operations to specifically delineate and identify the locations within the brewery where such operations will take place and to describe the security measures they will employ to segregate the public service area (the ''tavern,'' as described in current regulation) from the brewing areas.

To streamline brewery description requirements, TTB proposes amendments to 27 CFR 25.68 and 25.81 to replace requirements for narrative descriptions of the brewery premises with requirements to submit more specific information regarding the premises. For example, § 25.68 currently requires a detailed narrative description of the brewery premises, including each tract of land covered by the brewery, featuring ''approximate ground dimensions.'' The proposed amendments to § 25.68 remove the narrative description requirements and instead require the submission of more limited information illustrating certain specified attributes.

An example of extending deadlines for reporting changes in a permitted or registered business is the proposed amendment to § 25.71, which provides the general rules for notifying TTB of any changes in the information included in a Brewer's Notice. Section 25.71 generally requires that when such changes occur, the brewer must file an amended Brewer's Notice within 30 days. The proposed amendments to § 25.71 extend this deadline to 60 days. TTB proposes similar amendments at §§ 25.74 and 25.75.

Regarding changes in trade names, TTB's regulations at 27 CFR 25.71(a)(1) currently require that brewers submit an amended Brewer's Notice when there is a change in the information shown on the notice, which includes the list of trade names required by 27 CFR 25.62(a)(6). The proposed amendments to 27 CFR 25.76 clarify that a brewer need only notify TTB of the addition of a trade name prior to using such name for labeling purposes as required by subpart J of part 25 (27 CFR 25.141–25.145), and may notify TTB through a written notice. TTB's Permits Online system already includes a function for reporting additional trade names, which will satisfy the proposed § 25.76's requirement for a written notice.

Concerning records maintenance, current recordkeeping requirements

require that brewers maintain prescribed records at the brewery. The proposed amendments to 27 CFR 25.300 generally allow for the maintenance of required records at locations other than the brewery upon written notice to TTB.

With respect to the collection of background information, TTB proposes amendments to 27 CFR 25.66 to clarify the individuals who are required to submit statements of ownership interest in a business submitting a Brewer's Notice. The proposed amendments clarify that: (1) such statements of interest are required only from persons with an ownership interest in the applicant business of 10 percent or greater; and (2) where a ''person'' holding such an interest is a legal entity other than an individual, a brewer must submit basic identifying information about a representative individual for that entity.

To ease burdens associated with conducting physical inventories of beer, TTB proposes amendments to 27 CFR 25.294 to reduce the frequency with which brewers are required to conduct inventories where such brewers are eligible to file annual or quarterly tax returns under 26 U.S.C. 5061(d)(4). Section 5061(d)(4) allows brewers falling under certain annual tax liability thresholds to file annual or quarterly tax returns, rather than semimonthly returns. The proposed amendment aligns inventories with the annual or quarterly return periods, where applicable. The proposed amendments to § 25.294 also provide additional flexibility to all brewers by allowing inventories to be taken within the final 15 days of the applicable inventory period (*i.e.,* month, year, or quarter), rather than within the final 7 days.

To streamline procedures for discontinuing business as a brewer, TTB proposes to amend § 25.85 to allow a written notice to the appropriate TTB officer to serve as adequate notice of discontinuance of business, rather than requiring the outgoing brewer to file and receive TTB approval of a new Brewer's Notice. The proposed notice must indicate the date on which the business discontinued or will discontinue. The proposed amendments also dispose of the blanket requirement for a final report and provide that a brewer must submit such report only upon request of the appropriate TTB officer.

To provide additional flexibility in securing brewery bond coverage, TTB proposes amendments to 27 CFR 25.91 and 25.93 to allow entities operating multiple breweries to secure one bond covering all operations rather than requiring separate bonds for each brewery. The amendments allowing blanket bonds will reduce the amount of effort required to procure and maintain multiple bonds with differing expiration dates.

To provide brewers additional flexibility in the timing of beer destructions, and to avoid requiring brewers to store taxpaid beer longer than is necessary to arrange its destruction, TTB is proposing to eliminate the requirement that brewers notify TTB prior to destroying taxpaid beer off brewery premises. TTB is proposing to amend § 25.283 to instead require that brewers submit, with a claim for refund or credit of tax on taxpaid beer destroyed off brewery premises, proof of destruction.

In conclusion, while the entities affected by the proposed rule include a substantial number of small entities, TTB expects the effects of the changes in this proposed rule to include modest burden reductions for the affected entities.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

C. Paperwork Reduction Act

As discussed above, in 27 CFR part 25, TTB proposes to update the Office of Management and Budget (OMB) control numbers and the list of regulatory sections containing information collections. OMB has previously reviewed and approved all of the information collections contained in the part 25 regulations in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control numbers assigned to information collections currently contained in part 25 are: 1513–0005, 1513–0007, 1513–0009, 1513–0013, 1513–0014, 1513–0015, 1513–0030, 1513–0058, 1513–0083, 1513–0085, 1513–0086, 1513–0088, 1513–0118, and 1513–0122.

The update, addition, or removal of OMB control numbers and section numbers containing information collections in part 25 is merely informational in nature, and these technical amendments do not change the requirements or burden of any currently approved TTB information 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 valid control number assigned by OMB.

In addition to those technical updates, several regulations specifically addressed in this document affect current collections of information under control numbers 1513–0005, 1513–0015, 1513–0030, 1513–0058, 1513–0083, and 1513–0086. The specific regulatory sections in this proposed rule that contain such collections of information, either current or proposed, are §§ 25.23, 25.24, 25.25, 25.35, 25.62, 25.66, 25.68, 25.71, 25.74, 25.75, 25.76, 25.81, 25.85, 25.91, 25.93, 25.167, 25.221, 25.222, 25.225, 25.283, 25.284, 25.292, 25.294, and 25.300.

The amendments that TTB proposes in this document, along with certain corresponding policy changes, are designed to reduce the overall burden associated with the information collections noted above. In general, the proposed amendments involve:

(1) Eliminating the collection of certain information from Brewer's Notices;

(2) Replacing required narrative descriptions of a brewer's premises with more specific information;

(3) Extending deadlines for reporting certain changes in the brewer's business;

(4) Streamlining procedures for brewers using new trade names;

(5) Allowing the maintenance of required records at locations other than the brewery premises;

(6) Clarifying which individuals are required to submit certain background information in connection with a Brewer's Notice;

(7) Reducing the frequency of physical inventories for certain brewers and providing additional flexibility in the timing of inventories;

(8) Streamlining procedures for discontinuing business as a brewer;

(9) Allowing entities operating multiple breweries to secure one bond covering all operations; and

(10) Eliminating the requirement that brewers notify TTB before voluntarily destroying taxpaid beer off brewery premises.

To reduce the amount of information collected in applications for Brewer's Notices, TTB proposes to amend 27 CFR 25.25 to remove requirements that a brewer designate and maintain a separate ''tavern'' area within the brewery where brewers may sell and serve beer to customers. Instead, TTB

proposes to replace these requirements with general provisions related to accounting for beer sold and served to customers on the brewery premises. The amendments eliminate certain requirements associated with the current tavern regulations, in particular the requirements to delineate the public and non-public areas of the brewery, and to employ security measures to separate those areas. Under the proposed 27 CFR 25.62, brewers are merely required to disclose whether they intend to engage in retail service operations, and if so what kind. TTB proposes to amend 27 CFR 25.292 to incorporate recordkeeping requirements related to the retail service operations authorized under the proposed § 25.25.

Section 25.25 is currently included in the collections of information assigned OMB control numbers 1513–0005 and 1513–0086; § 25.62 is currently included in the collection of information assigned OMB control number 1513–0005; and § 25.292 is currently included in the collection of information assigned OMB control number 1513–0058. Under the proposed amendments, § 25.25 no longer imposes a collection of information. Accordingly, TTB has submitted to OMB revisions of information collection numbers 1513–0005 and 1513–0086 to account for the reduced burden of the proposed amendments. TTB has submitted a revision of information collection number 1513–0058 to account for the related recordkeeping requirements under proposed § 25.292. Conforming amendments related to retail service operations are also made in proposed 27 CFR 25.23, 25.24, and 25.35; section 25.23 is currently included in the collection of information assigned OMB control number 1513–0005, while §§ 25.24 and 25.35 are currently included the collection of information assigned OMB control number 1513–0086. However, the amendments to those sections proposed in this document are unrelated to the collections of information included in those sections.

To replace required narrative descriptions of brewery premises with more specific information, TTB proposes amendments to §§ 25.68 and 25.81. The proposed amendments to § 25.68 eliminate requirements to submit detailed narrative descriptions of the brewery and certain of its attributes and replace these requirements with a more specific set of information. Section 25.81 relates to qualifying to alternate the brewery premises. TTB believes that, in general, the more direct questions in the proposed regulations will enable brewers to better understand what information they must submit, reduce the need for additional submissions and communication between TTB and brewers, and accelerate TTB's review process. TTB proposes amendments to § 25.81 to allow descriptions or diagrams of areas to be alternated and how the alternated areas will be separated from other parts of the premises to be consolidated with the general premises description or diagram provided under § 25.68. Sections 25.68 and 25.81 are currently included in the collection of information assigned OMB control number 1513–0005. TTB has submitted to OMB a revision of that information collection to account for the reduced burden of the proposed amendments.

The TTB regulations generally require that, when there is a change in the information shown in the Brewer's Notice, the brewer must notify TTB of the change. To extend deadlines for reporting certain changes in the brewery business, TTB proposes amendments to 27 CFR 25.71, 25.74, and 25.75. In each case, TTB proposes to extend the deadline for reporting the specified change in the business to 60 days from 30 days. Sections 25.71, 25.74, and 25.75 are currently included in the collection of information assigned OMB control number 1513–0005. TTB has submitted to OMB a revision of that information collection to account for the reduced burden of the proposed amendments.

The TTB regulations generally require that brewers report changes to, or additions of, the trade names under which a brewery may operate to TTB by submitting an amended Brewer's Notice. See 27 CFR 25.62 and 26.71. TTB proposes a new 27 CFR 25.76 to clarify that a brewer need only notify TTB of the addition of a trade name prior to using such name for marking or labeling purposes as required by subpart J of part 25 (27 CFR 25.141–25.145) and may notify TTB through a written notice. TTB's Permits Online system already includes a function for reporting additional trade names, which will satisfy the proposed § 25.76's requirement for a written notice. The proposed § 25.76 does not require conforming amendments to §§ 25.62 and 25.71. Sections 25.62 and 25.71 are currently included in the collection of information assigned OMB control number 1513–0005. TTB has submitted to OMB a revision of information collection 1513–0005 to account for the reduced burden of the proposed § 25.76.

The current applicable recordkeeping requirements do not explicitly allow brewers to maintain records at a location other than the brewery premises. As a result, brewers generally must submit a request for specific authorization to retain records at a central recordkeeping location rather than the brewery premises. To allow the maintenance of required records at locations other than the brewery premises, TTB proposes amendments to 27 CFR 25.300. These amendments also clarify that a brewer generally may satisfy a request for documents by providing copies of such documents, including electronic copies. Section 25.300 is currently included in the collection of information assigned OMB control number 1513–0058. TTB has submitted to OMB a revision of that information collection to account for the reduced burden of the proposed amendments.

With respect to the collection of background information, TTB proposes amendments to 27 CFR 25.66 to specify the individuals who are required to submit statements of ownership interest in the business. Section 25.66 generally requires that brewers submit a statement disclosing the identities of persons holding certain levels of ownership in a business submitting a Brewer's Notice. The proposed amendments clarify that: (1) Such statements of interest are required only from persons with an ownership interest in the business of 10 percent or greater; and (2) where a ''person'' holding such an interest is a legal entity other than an individual, a brewer must submit basic identifying information about a representative individual for that entity. Section 25.66 is currently included in the collection of information assigned OMB control number 1513–0005. TTB has submitted to OMB a revision of that information collection to account for the reduced burden of the proposed amendments.

To reduce burdens associated with physical inventories, TTB proposes to amend § 25.294 to allow brewers authorized by sections 5061(d) of the IRC and § 25.164 of the TTB regulations to file tax returns on an annual or quarterly basis to complete physical inventories on an annual or quarterly basis, respectively. TTB further proposes to amend § 25.294 to allow physical inventories to be taken within the final 15 days of the applicable inventory period (*i.e.,* month, year, or quarter). Section 25.294 is currently included in the collection of information assigned OMB control number 1513–0058. TTB has submitted to OMB a revision of that information collection to account for the reduced burden of the proposed amendments.

Concerning discontinuing business as a brewer, TTB proposes to amend § 25.85 to allow any written notice to

the appropriate TTB officer to serve as adequate notice of discontinuance of business. The notice must indicate the date on which business discontinued or will discontinue. The proposed amendments also dispose of the blanket requirement for a final report, and provide that brewers must submit such report only upon request of the appropriate TTB officer. Section 25.85 is currently included in the collection of information assigned OMB control number 1513–0005. TTB has submitted to OMB a revision of that information collection to account for the reduced burden of the proposed amendments.

To provide greater flexibility in obtaining bond coverage to entities operating multiple breweries, TTB proposes amendments to §§ 25.91 and 25.93 to allow such entities to secure one bond covering all operations. TTB's proposed amendments also set forth the penal sum requirements associated with these blanket bonds. Sections 25.91 and 25.93 are currently included in the collection of information assigned OMB control number 1513–0015. TTB has submitted to OMB a revision of that information collection to account for the reduced burden of the proposed amendments.

Finally, TTB is proposing to eliminate the requirement that brewers notify TTB before voluntarily destroying taxpaid beer off brewery premises. To provide brewers additional flexibility in the timing of beer destructions, and to avoid requiring brewers to store taxpaid beer longer than is necessary to arrange its destruction, TTB is proposing to eliminate entirely §§ 25.222 and 25.223 requiring the notice, and to amend § 25.283 to instead require that brewers submit proof of destruction with a claim for refund or credit of tax on taxpaid beer destroyed off brewery premises. Section 25.222 is currently included in the collection of information assigned OMB control number 1513–0005; and §§ 25.283 is currently included in the collection of information assigned OMB control number 1513–0030. TTB has submitted to OMB revisions of those information collections to account for the reduced burden of the proposed amendments.

As noted above, TTB has submitted the revised information collection requirements to the OMB for review. Comments on these revised recordkeeping and reporting requirements should be sent to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 or by email to *OIRA_submissions@omb.eop.gov.* A copy should also be sent to TTB by any of the methods previously described. Comments on the information collections should be submitted no later than August 8, 2022. Comments are specifically requested concerning:

(1) Whether the collections of information submitted to OMB are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;

(2) The accuracy of the estimated burdens associated with the collections of information submitted to OMB;

(3) How to enhance the quality, utility, and clarity of the information to be collected;

(4) How to minimize the burden of complying with the proposed revisions of the collections of information, including the application of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

List of Subjects in 27 CFR Part 25

Alcohol and alcoholic beverages, Application procedures, Beer, Notice requirements, Reporting and recordkeeping requirements, Security requirements, Trade names.

Proposed Amendments to the Regulations

For the reasons discussed above in the preamble, TTB proposes to amend 27 CFR part 25 as follows:

PART 25—BEER

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 2. Section 25.5 is revised to read as follows:

§ 25.5 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Display.* The following display identifies each section in this part that contains an information collection requirement and the OMB control number assigned to that information collection requirement.

TABLE 1 TO PARAGRAPH (b)

Section where contained	Current OMB control No.	Section where contained	Current OMB control No.
25.23	1513–0005	25.163	1513–0083
25.24	1513–0086		1513–0088
25.35	1513–0086	25.164	1513–0088
25.42	1513–0058	25.165	1513–0088
25.52	1513–0005	25.166	1513–0088
25.53	1513–0118	25.167	1513–0005
	1513–0122	25.168	1513–0083
25.55	1513–0118	25.175	1513–0083
	1513–0122	25.184	1513–0005
25.56	1513–0118	25.186	1513–0058
	1513–0122	25.192	1513–0058
25.57	1513–0118		1513–0086
	1513–0122	25.195	1513–0058
25.58	1513–0118	25.196	1513–0058
	1513–0122		1513–0086
25.61	1513–0005	25.211	1513–0058
25.62	1513–0005	25.213	1513–0005

TABLE 1 TO PARAGRAPH (b)—Continued

Section where contained	Current OMB control No.	Section where contained	Current OMB control No.
25.64	1513–0005		1513–0086
25.65	1513–0014	25.221	1513–0005
25.66	1513–0005	25.224	1513–0083
25.68	1513–0005	25.231	1513–0086
25.71	1513–0005	25.241	1513–0085
25.72	1513–0005	25.242	1513–0085
	1513–0013		1513–0086
	1513–0088	25.243	1513–0085
25.73	1513–0005	25.251	1513–0086
	1513–0013	25.252	1513–0058
	1513–0015	25.263	1513–0058
	1513–0088		1513–0086
25.74	1513–0005	25.264	1513–0058
	1513–0088	25.271	1513–0013
25.75	1513–0005	25.272	1513–0005
	1513–0088	25.273	1513–0005
25.76	1513–0005	25.274	1513–0015
25.77	1513–0005	25.276	1513–0058
	1513–0013		1513–0088
	1513–0015	25.277	1513–0005
	1513–0088	25.281	1513–0030
25.78	1513–0005		1513–0088
	1513–0088	25.282	1513–0005
25.79	1513–0005		1513–0030
			1513–0088
25.81	1513–0005	25.283	1513–0030
	1513–0009		1513–0088
	1513–0013	25.284	1513–0088
25.85	1513–0005	25.285	1513–0030
25.91	1513–0015		1513–0083
25.92	1513–0013		1513–0088
25.93	1513–0015	25.286	1513–0030
25.94	1513–0015		1513–0088
25.95	1513–0013	25.291	1513–0058
	1513–0015		1513–0088
25.97	1513–0015	25.292	1513–0058
25.98	1513–0015	25.293	1513–0058
25.103	1513–0013	25.294	1513–0058
25.141	1513–0005	25.295	1513–0058
	1513–0086	25.296	1513–0007
25.142	1513–0005	25.296	1513–0058
	1513–0086	25.297	1513–0007
25.143	1513–0086	25.298	1513–0083
25.144	1513–0005		1513–0088
25.145	1513–0086	25.300	1513–0058
25.151	1513–0088		1513–0088
25.158	1513–0005	25.301	1513–0058
25.160	1513–0083		

■ 3. Section 25.11 is amended by:

■ a. Removing the phrase ''Form 5130.10'' each place it appears and adding, in its place, ''form TTB F 5130.10''; and

■ b. Adding, in alphabetical order, definitions of ''Retail service operation'' and ''Written notice''.

The additions read as follows:

§ 25.11 Meaning of terms.

* * * * *

Retail service operation. Retail sale by a brewer on brewery premises of beer produced by the brewer, other alcohol beverages, food, or other brewery related merchandise.

* * * * *

Written notice. A statement on a company's letterhead or similar medium that clearly identifies the company and shows that the statement is from a company representative with power of attorney described at § 25.65, submitted in paper or electronically.

■ 4. Section 25.23 is amended by:

■ a. Revising paragraph (b)(6) and the first sentence of paragraph (c); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 25.23 Restrictions on use.

* * * * *

(b) * * *

(6) Involve retail service operations in accordance with § 25.25.

(c) *Application.* Except as provided in § 25.25 for retail service operations on brewery premises, a brewer desiring to use a brewery for other purposes must submit to the appropriate TTB officer an application listing the purposes. * * *

§ 25.24 [Amended]

■ 5. Section 25.24 is amended by:

■ a. Removing, in paragraph (a)(1), the words ''nontaxpaid beer'' and adding, in

their place, ''beer that has not been tax determined'';

■ b. Removing, in paragraph (a)(2), the word ''shall'' and adding, in its place, the word ''must''; and

■ c. Removing the parenthetical authority citation at the end of the section.

■ 6. Section 25.25 is revised to read as follows:

§ 25.25 Retail service operations at brewery.

(a) *General.* A brewer desiring to sell untaxpaid beer, taxpaid beer of another brewer's production, taxpaid wine, or taxpaid distilled spirits for consumption at the brewery is authorized to engage in such operations subject to the procedures and conditions set forth in this section.

(b) *Sale of beer from tanks.* A brewer may dispense untaxpaid beer from tanks for sale and consumption at the brewery, subject to the conditions relating to tax determination set forth in this paragraph (b). The brewer must have a suitable method for measurement of the beer dispensed from any tank as required by subpart E of this part, such as a meter or gauge glass. The brewer must determine the tax on the beer dispensed by measuring the amount dispensed for sale each day and preparing the brewer's record of tax determination, required by § 25.292(a)(8).

(c) *Sale of packaged beer.* A brewer may dispense untaxpaid beer from barrels and kegs, or make available untaxpaid beer in bottles, for sale and consumption at the brewery, subject to the following conditions relating to tax determination:

(1) *Barrels and kegs.* Barrels and kegs must be tax determined at the time they are tapped for the sale of beer for consumption on the brewery premises; barrels and kegs must be reflected on the brewer's record of tax determination, required by § 25.292(a)(8), for the day on which they are tapped. Barrels and kegs that have been tapped and tax determined for sale and consumption on the brewery premises must be physically marked or segregated in such a manner as to preclude mixing with beer that has not been tax determined.

(2) *Bottles.* Bottles must be tax determined at the time they are sold for consumption on the brewery premises and reflected on the brewer's record of tax determination, required by § 25.292(a)(8), for the day on which sold.

(3) *Storage of taxpaid or tax determined beer.* The prohibition of § 25.24 does not apply to tax determined or taxpaid beer handled in accordance with this subsection. Such beer may continue to be sold for consumption on the brewery premises after it has been tax determined or taxpaid.

(d) *Sale of taxpaid alcohol.* A brewer may sell taxpaid wine and distilled spirits, as well as taxpaid beer of another brewer's production, for consumption at the brewery. Any taxpaid beer of another brewer's production must be stored as required by § 25.24(a). Any records of sales of taxpaid wine, distilled spirits, and/or beer of another brewer's production must be distinguishable from records of sales of beer described in paragraphs (b) and (c) of this section.

(e) *Other sales.* A brewer may sell food as well as brewery-related merchandise at the brewery. Any business records of other sales that the brewer may keep must be distinguishable from records of sales of beer described in paragraphs (b) and (c) of this section.

§ 25.35 [Amended]

■ 7. Section 25.35 is amended in the introductory text by:

■ a. Removing the word ''stationary''; and

■ b. Removing the word ''shall'' and adding, in its place, the word ''must''.

■ 8. Section 25.41 is revised to read as follows:

§ 25.41 Measuring system required.

The brewer must accurately and reliably measure the quantity of beer transferred from the brewery cellars for bottling and for racking, as well as the quantity of untaxpaid beer sold for consumption on brewery premises in accordance with § 25.25. The brewer may use a measuring device, such as a meter or gauge glass, or any other suitable method.

■ 9. Section 25.62 is amended by:

■ a. In paragraph (a) introductory text:

■ i. Removing the word ''shall'' each place it appears and adding, in its place, ''must''; and

■ ii. Removing the phrase ''Form 5130.10'' and adding, in its place, ''form TTB F 5130.10''.

■ b. Removing the parenthetical authority citation at the end of the section.

■ 10. Section 25.66 is amended by:

■ a. Revising paragraph (c);

■ b. Removing the word ''shall'' in paragraph (d) and adding, in its place, ''must''; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 25.66 Organizational documents.

* * * * *

(c) *Statements of interest*—(1) *Sole proprietorships and general partnerships.* In the case of an individual owner or a general partnership, the name and address of each person having an interest in the business and a statement indicating whether the interest appears in the name of the interested person or in the name of another person.

(2) *Limited liability entities.* In the case of a corporation, limited liability partnership, limited liability company, or other legal entity in which some or all of the owners have limited personal liability for the activities of the entity:

(i) The names and addresses of persons having a 10 percent or more ownership or other interest in each of the classes of ownership of the entity, and the nature and amount of ownership or other interest of each person.

(ii) The name of the person in whose name the interest appears. If the limited liability entity is under actual or legal control of another limited liability entity, the appropriate TTB officer may request the same information regarding ownership for the parent limited liability entity.

(3) *Legal entities other than individuals.* If any interested person named under paragraphs (c)(1) and (2) of this section is a legal entity other than an individual, the name, title, and city and state of residence of a representative individual for the entity. The representative individual must be the individual designated by the entity to represent the entity's interest in the brewery or, in the absence of a designated individual, an owner, chief officer or manager, or person with similar authority within the entity.

* * * * *

■ 11. Section 25.68 is revised to read as follows:

§ 25.68 Description of brewery.

(a) As required by § 25.62(a)(5), the Brewer's Notice must include a description of the brewery premises. The description may be in narrative form or diagram form, and must describe or illustrate:

(1) The overall dimensions of the building(s) housing the brewery and, if the brewery occupies less than the entire building, the boundaries of the brewery within the building; and

(2) Any portions of the brewery that are outdoors, including the location of any outdoor tanks.

(b) Photographs further illustrating any of the elements required in paragraph (a) of this section must be

submitted upon request of the appropriate TTB officer.

§ 25.71 [Amended]

■ 12. Section 25.71 is amended by:
■ a. Removing ''shall'' and ''30 days'' and adding, in their places, ''must'' and ''60 days'', respectively, in paragraph (a)(1);
■ b. Removing the phrase ''Form 5130.10'' each place it appears in paragraphs (a)(1) and (2) and (b)(2) and adding, in its place, ''form TTB F 5130.10''; and
■ c. Removing the parenthetical authority citation at the end of the section.
■ 13. Section 25.74 is revised to read as follows:

§ 25.74 Changes in ownership interests.

Changes in the list of persons with an ownership interest furnished under the provisions of § 25.66(c)(2) must be submitted annually by the brewer on July 1 or on any other date approved by the appropriate TTB officer. When a change in the ownership interests results in a change in the control or management of the business, notification of the change will be made within 60 days in accordance with § 25.71.
■ 14. Section 25.75 is amended by:
■ a. Revising the first sentence; and
■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 25.75 Change in officers and directors.

When there is any change in the list of officers or directors furnished under the provisions of § 25.66(a)(2), the brewer must submit, within 60 days of the change, an amended notice on form TTB F 5130.10. * * *
■ 15. Section 25.76 is added to read as follows:

§ 25.76 Change in trade name.

Before using a trade name for marking or labeling purposes as required by subpart J of this part, the brewer must first submit a written notice to the appropriate TTB officer listing the new name and the office(s) where it is registered.
■ 16. Section 25.81 is amended by:
■ a. Revising paragraphs (a), (b), (c), (d)(6), and (e); and
■ b. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 25.81 Alternation of brewery and wine premises or distilled spirits plant.

(a) *General.* A brewer may temporarily extend or curtail the brewery premises to allow for several other types of alternate uses. A curtailment or extension of brewery premises may allow for the use of the premises as:

(1) An adjacent bonded wine cellar;

(2) An adjacent taxpaid wine bottling house; or

(3) An adjacent distilled spirits plant.

(b) *Qualifying documents.* Before alternating the brewery for a purpose listed in paragraph (a) of this section, the proprietor must file and receive approval of the necessary registration, application forms and attachments that relate to the proposed alternate use. Depending on the type of alternation involved, the proprietor must file one or more of the following qualification documents:

(1) *Brewer's Notice.* For all alternate uses of the brewery described in paragraph (a) of this section the proprietor must file a form TTB F 5130.10, Brewer's Notice, to cover the proposed alternation of premises.

(2) *Description.* For all alternate uses, the proprietor must provide additional versions of the description required under § 25.62(a)(5) describing in narrative form or illustrating by diagram the premises as they will exist, both during extension and curtailment and clearly depicting all buildings, floors, rooms, areas, equipment that are to be subject to alternation, in their relative operating sequence.

(3) *Bond.* For all alternate uses, the proprietor must provide evidence of an existing bond, consent of surety, or a new bond to cover the proposed alternation of premises. The requirement in this paragraph (b)(3) does not apply if a bond is not required under this chapter to cover the proposed alternation.

(4) *Bonded wine cellar or taxpaid wine bottling house.* If the proprietor intends to alternate the brewery premises or part of the brewery premises as a bonded wine cellar or taxpaid wine bottling house, the proprietor must also file form TTB F 5120.25, Application to Establish and Operate Wine Premises.

(5) *Distilled spirits plant.* If the proprietor intends to alternate the brewery premises or part of the brewery premises as a distilled spirits plant, the proprietor must also file form TTB F 5110.41, Registration of a Distilled Spirits Plant, to cover the proposed alternation of premises.

(c) *Brewer's responsibility.* After approval of qualifying documents, the proprietor may alternate the designated premises pursuant to a written notice submitted to the appropriate TTB officer. The notice must contain the information required by paragraph (d) of this section. Prior to the effective date and hour of the alternation, the proprietor must segregate products as follows:

(1) *Wine operations.* Prior to alternation from brewery premises to wine premises, the proprietor must remove all beer from the brewery premises that will be alternated. Prior to alternation from wine premises to brewery premises, the proprietor must remove all wine and spirits from the wine premises that will be alternated.

(2) *Distilled spirits plant.* Prior to alternation of brewery premises to distilled spirits plant premises, the proprietor must remove all beer from the premises except beer that is being received for production of distilled spirits as provided in 27 CFR 19.296. Prior to alternation from distilled spirits plant premises to operation of a brewery the proprietor must remove all spirits, denatured spirits, articles and wine from the premises to be alternated to brewery premises.

(d) * * *

(6) Identification of the description or diagram depicting the premises as they exist when curtailed or extended; and

* * * * *

(e) *Separation of premises.* The appropriate TTB officer may require that the portion of brewery premises, wine premises, or distilled spirits plant premises extended or curtailed under this section be separated, in a manner satisfactory to the appropriate TTB officer, from the remaining portion of the brewery premises, wine premises, or distilled spirits plant premises.
■ 17. Section 25.85 is revised to read as follows:

§ 25.85 Notice of permanent discontinuance.

When a brewer desires to discontinue business permanently, they must provide a written notice to the appropriate TTB officer indicating the date on which business discontinued or will discontinue. Upon request of the appropriate TTB officer, the brewer must file a final report of operations on form TTB F 5130.9 or form TTB F 5130.26 showing no beer or cereal beverage on hand and marked ''Final Report.''
■ 18. Section 25.91 is amended by:
■ a. Removing the phrase ''Form 5130.22'' each place it appears in paragraphs (a) and (b) and adding, in its place, ''form TTB F 5130.22'';
■ b. Removing the word ''shall'' each place it appears in paragraphs (a) and (c) and adding, in its place, ''must'';
■ c. Adding paragraph (f); and

■ d. Removing the parenthetical authority citation at the end of the section.

The addition reads as follows:

§ 25.91 Requirement for bond.

* * * * *

(f) *Blanket bond.* A brewer that operates more than one brewery may, in lieu of filing separate bonds, file a blanket bond on form TTB F 5130.22 for any or all of the breweries. The total amount of any blanket bond given under this section must be available for the satisfaction of any liability incurred at any factory covered by the bond.

■ 19. Section 25.93 is amended by:

■ a. Adding paragraph (a)(4);

■ b. Removing the word ''shall'' each place it appears in paragraph (b) and adding, in its place, ''must'';

■ c. Revising paragraph (c); and

■ d. Removing the parenthetical authority citation at the end of the section.

The addition and revision read as follows:

§ 25.93 Penal sum of bond.

(a) * * *

(4) *Blanket bonds.* Where a brewer operates multiple breweries and obtains a blanket bond covering any or all of the breweries, the penal sum of the blanket bond must be equal to the aggregate penal sum applicable to all of the breweries covered by such bond, as calculated under paragraphs (a)(1) through (3) of this section.

* * * * *

(c) *Maximum and minimum penal sums*—(1) *Single brewery bond.* The maximum penal sum of the bond (or total penal sum if original and strengthening bonds are filed) is not to exceed $150,000 when the tax on beer is to be prepaid, or $500,000 when the tax is to be deferred as provided in § 25.164. The minimum penal sum of a bond is $1,000.

(2) *Blanket bond.* The maximum penal sum of the blanket bond (or total penal sum if original and strengthening bonds are filed) is not to exceed $150,000 per brewery covered by the blanket bond where the tax on beer is to be prepaid, or $500,000 per brewery covered by the blanket bond when the tax is to be deferred as provided in § 25.164. The minimum penal sum of a blanket bond is $1,000 per brewery covered by the blanket bond.

■ 20. Section 25.102 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 25.102 Termination of surety's liability.

* * * * *

(b) The date of discontinuance of business of the brewer indicated on the notice required under § 25.85;

* * * * *

■ 21. Section 25.159 is amended by

■ a. Revising paragraph (a);

■ b. Removing the word ''shall'' in paragraph (c)(2) and adding, in its place, ''must''; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 25.159 Time of tax determination and payment; offsets.

(a) *Time and payment.* The tax on beer will be determined at the time of its removal for consumption or sale, and will be paid by return as provided in this part. In the case of retail service operations, see § 25.25 for tax determination requirements.

* * * * *

■ 22. Section 25.221 is amended by:

■ a. Revising paragraph (a)(2); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 25.221 Voluntary destruction of beer.

(a) * * *

(2) A brewer conducting retail service operations under § 25.25(b) or (c) may destroy taxpaid or tax-determined beer stored on brewery premises, in accordance with the requirements of § 25.225.

* * * * *

■ 23. Section 25.222 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 25.222 Notice of brewer.

* * * * *

(b) *Execution of notice.* The brewer shall serially number each notice and execute each notice under penalties of perjury as defined in § 25.11. The brewer shall specify the date on which the beer is to be destroyed.

* * * * *

■ 24. Section 25.225 is amended by:

■ a. Revising paragraphs (a) and (b)(1); and

■ b. Removing the word ''shall'' in paragraph (b)(2) and adding, in its place, ''must''.

The revisions read as follows:

§ 25.225 Destruction of taxpaid beer which was never removed from brewery premises.

(a) *General.* A brewer conducting retail service operations under § 25.25(b) or (c) may destroy taxpaid or tax-determined beer which was never removed from brewery premises, in accordance with the recordkeeping requirements of paragraph (b) of this section, and with the benefit of the tax refund provisions of paragraph (c) of this section.

(b) * * *

(1) When taxpaid or tax-determined beer which was never removed from brewery premises is destroyed, the brewer must prepare a record of the quantity of beer destroyed, and the reason for, date of, and method of, destruction. The brewer may prepare this record on form TTB F 5620.8 for submission as a claim under § 25.283.

* * * * *

■ 25. Section 25.283 is amended by:

■ a. Removing the word ''shall'' each place it appears in paragraphs (a) introductory text, (b) introductory text, (c) introductory text, and (e) and adding, in its place, ''must'';

■ b. Revising paragraphs (a)(9) and (10) and adding paragraph (a)(11);

■ c. Removing the phrase ''Form 2635 (5620.8)'' and adding, in its place, ''form TTB F 5620.8'' in paragraph (e); and

■ d. Removing the parenthetical authority citation at the end of the section.

The revisions and addition read as follows:

§ 25.283 Claims for refund of tax.

(a) * * *

(9) A statement that the tax has been fully paid or determined;

(10) A reference to the notice filed under § 25.213 (if required) or § 25.222; and

(11) For beer voluntarily destroyed at a location other than a brewery, proof of the destruction through commercial records relating to the destruction.

* * * * *

§ 25.284 [Amended]

■ 26. Section 25.284 is amended by:

■ a. Removing the phrase ''Form 5000.24'' in paragraph (a) and adding, in its place, ''form TTB F 5000.24'';

■ b. Removing the word ''shall'' in paragraph (f) introductory text and adding, in its place, ''must''; and

■ c. Removing the phrase ''and (10)'' and adding, in its place, ''(10), and (11)'' in paragraph (f)(1); and

■ d. Removing the parenthetical authority citation at the end of the section.

■ 27. Section 25.292 is amended by:

■ a. Removing the word ''shall'' each place it appears in paragraphs (a) introductory text and (b) introductory text and adding, in its place, ''must'';

■ b. Revising paragraphs (a)(8) and (11); and

■ c. Removing the parenthetical authority citation at the end of the section.

The revisions read as follows:

§ 25.292 Daily records of operations.

(a) * * *

(8) Beer removed for consumption or sale.

(i) For each removal of beer from the brewery, the record will show the date of removal, the person to whom the beer was shipped or delivered (not required for sales in quantities of one-half barrel or less for delivery at the brewery), and the quantities of beer removed in kegs and in bottles.

(ii) For removals of beer for sale and consumption at the brewery, the record will show, for each day of operation, the barrel equivalent of: The total bottles of beer sold for consumption at the brewery; the total amount of beer poured from any tank(s) and sold for consumption at the brewery; and the barrels or kegs tapped for the sale of beer for consumption at the brewery. Barrel equivalents must be calculated in accordance with §§ 25.156 through 25.158. The daily record will be supported by records of individual sales transactions.

* * * * *

(11) Beer provided gratuitously for consumption at the brewery and not as part of a retail service operation.

* * * * *

■ 28. Section 25.294 is amended by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;

■ c. Adding a new paragraph (b);

■ d. Adding headings to newly redesignated paragraphs (c) and (d);

■ e. Removing the word ''shall'' each place it appears in newly redesignated paragraphs (c) introductory text and (d) and adding, in its place, ''must''; and

■ f. Removing the parenthetical authority citation at the end of the section.

The additions and revision read as follows:

§ 25.294 Inventories.

(a) *General.* The brewer must take a physical inventory of beer and cereal beverage at least once each calendar month. The brewer must take this inventory within 15 days of the close of the calendar month for which made.

(b) *Exception for annual and quarterly filers.* A brewer authorized to use an annual return period under § 25.164(c)(2) need only take a physical inventory of beer and cereal beverage in the month that their annual tax return is due. A brewer authorized to use a quarterly return period under § 25.164(c)(3) need only take physical inventories of beer and cereal beverage in the months in which their quarterly tax returns are due. The brewer must take the inventories required by this paragraph (b) within 15 days of the close of the calendar month in which made.

(c) *Inventory record.* * * *

(d) *Record retention.* * * *

■ 29. Section 25.300 is amended by:

■ a. Revising paragraph (a); and

■ b. Removing the word ''shall'' in paragraph (b) and adding, in its place, ''must''; and

■ c. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 25.300 Retention and preservation of records.

(a) *Place of maintenance.* Records required by this part generally will be prepared and kept by the brewer at the brewery premises where the operation or transaction occurs and will be available for inspection by any appropriate TTB officer during business hours. If a brewer desires to keep the required records at any location other than the brewery premises, they must first provide written notice to the appropriate TTB officer of the location where the records are to be kept. Any brewer keeping records at a location other than the brewery premises must make them available at the brewery premises upon request of the appropriate TTB officer; however, the appropriate TTB officer may allow the brewer to supply copies (including electronic copies) of such records instead of the originals.

* * * * *

Signed: May 27, 2022.

Mary Ryan,

Administrator.

Approved: May 27, 2022.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade and Tariff Policy).

[FR Doc. 2022–11902 Filed 6–7–22; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0199]

RIN 1625–AA11

Regulated Navigation Area; Environmental Protection Agency Superfund Site, Point Ruston, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent regulated navigation area (RNA) for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This RNA is necessary to preserve the integrity of protective sediment caps placed in multiple areas within this waterway as part of the remediation process at the Commencement Bay, Nearshore/Tideflats Environmental Protection Agency (EPA) Superfund Cleanup site. This RNA would prohibit activities which would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment cap, unless authorized by the Captain of the Port (COTP) Puget Sound or their Designated Representative. The RNA would not affect the transit or navigation within this waterway. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 8, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0199 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Rob Nakama, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6089, email *SectorPugetSoundWWM@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
RNA Regulated Navigation Area
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On December 6, 2021, the United States Environmental Protection Agency Region 10 notified the Coast Guard that it requests the establishment of an RNA or ''No Anchor Zone'' for commercial vehicles within the Operable Unit 6 (OU6) Asarco sediment cap in the Commencement Bay Nearshore/Tideflat (CB–NT) Superfund site. This RNA would prohibit activities that could disrupt the integrity of the engineered sediment caps that have been placed within the OU6 Asarco sediment cap. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the integrity of the sediment caps.

The purpose of this rulemaking is to prevent disruption of the sediment caps which may result in hazardous conditions and harm to the marine environment. As such, this RNA is necessary to help ensure the sediment cap is protected and will do so by prohibiting maritime activities that could disturb or damage it.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70011 and 70034. The Secretary of the Department of Homeland Security (DHS) delegated these statutory authorities to the Coast Guard through DHS Delegation No. 00170.1(70), Revision No. 01.2. Section 46 U.S.C. 70011 generally authorizes the Coast Guard to take such action as is necessary to protect the navigable waters and the resources therein from harm resulting from vessel or structure damage, destruction, or loss. Section 70034 authorizes the Coast Guard to issue regulations that are necessary to implement 46 U.S.C. Chapter 700.

III. Discussion of Proposed Rule

The Coast Guard is proposing to establish a permanent regulation restricting activities such as anchoring, dragging, trawling, or other activities that involve disrupting the integrity of sediment caps located within the Commencement Bay Nearshore/Tideflat, WA. Activities common in the proposed regulated areas include tugboat and log-rafting activities, tugboat moorage, removal and launching of boats for repair and other maintenance activities. The thick-layer cap areas were designed to be compatible with the activities described above that are associated with a working waterfront. The material used for the cap was chosen to be able to contain underlying sediments without altering the main activities of the working waterways. No vessel or person would be permitted to perform the aforementioned activities without obtaining permission from the Captain of the Port, Puget Sound (COTP) or a designated representative.

The RNA would include all waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18′12.0″ N, 122°30′26.0″ W onshore, thence 240 feet to position 47°18′13.0″ N, 122°30′22.0″ W offshore, thence 2,900 feet to position 47°17′52.0″ N, 122°29′53.0″ W offshore, thence 500 feet to position 47°17′49.0″ N, 122°29′59.0″ W onshore. These coordinates are based on World Geodetic System (WGS 84).

The prohibition for anchoring, dragging, trawling, or other activities that involve disrupting the integrity of sediment caps would not apply to vessels or persons engaged in activities associated with remediation efforts in the Commencement Bay Nearshore/Tideflat (CB–NT) Superfund sites, provided that the COTP is given advance notice of those activities by the EPA.Vessels may otherwise transit or navigate within this area without reservation.

IV. 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 fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for specified activities that may damage the engineered sediment cap.

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 RNA may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule involves a permanent regulated navigation area for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This rule prohibits activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA superfund cleanup site. Normally such actions are 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 preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

A. Submitting Comments

We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0199 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

B. Viewing Material in Docket

To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

C. Personal Information

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 proposes to amend 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 § 165.1344 to read as follows:

§ 165.1344 Regulated Navigation Area; Commencement Bay Nearshore/Tideflat Superfund Site, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas.* The following area is a regulated navigation area (RNA): All waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18′12.0″ N, 122°30′26.0″ W onshore, thence 240 feet to position 47°18′13.0″ N, 122°30′22.0″ W offshore, thence 2,900 feet to position 47°17′52.0″ N, 122°29′53.0″ W offshore, thence 500 feet to position 47°17′49.0″ N, 122°29′59.0″ W onshore. These coordinates are based on World Geodetic System (WGS 84).

(b) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Prohibited activities include those that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA superfund cleanup site. Vessels may

otherwise transit or navigate within this area without reservation.

(2) The prohibition described in this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Middle Waterway superfund sites, provided that the Captain of the Port (COTP) Puget Sound is given advance notice of those activities by the EPA.

M.W. Bouboulis,

Rear Admiral, U.S. Coast Guard, Commander, 13th U.S. Coast Guard District.

[FR Doc. 2022–12282 Filed 6–7–22; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register
Vol. 87, No. 110
Wednesday, June 8, 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

Foreign Agricultural Service

Commodity Credit Corporation

Notice of Request for Extension of Currently Approved Information Collection

Correction

In notice document 2022–10573, appearing on pages 29848–29849, in the issue of Tuesday, May 17, 2022, make the following correction:

On page 29848, in the second column, in the **DATES** section, in the second line, ''May 17, 2022'' should read ''July 18, 2022''.

[FR Doc. C1–2022–10573 Filed 6–7–22; 8:45 am]
BILLING CODE 0099–10–D

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Eldorado National Forest and Lake Tahoe Basin Management Unit within El Dorado county, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *www.fs.usda.gov/main/eldorado/workingtogether/advisorycommittees.*

DATES: The meeting will be held on July 6, 2022, 3:30 p.m.—5:30 p.m., Pacific Daylight Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Jeff Marsolais, Designated Federal Officer (DFO), by phone at 530–303–2412 or email at *jeffrey.marsolais@usda.gov* or Jennifer Chapman, RAC Coordinator, at 530–957–9660 or email at *jennifer.chapman@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays. Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY). Additionally, program information may be made available in languages other than English.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss Title II projects and other RAC updates;
2. Approve meeting minutes; and
3. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Jennifer Chapman, 100 Forni Road, Placerville, CA 95667 or by email to *jennifer.chapman@usda.gov.*

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 2, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–12312 Filed 6–7–22; 8:45 am]
BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed Administrative Settlement Agreement and Order on Consent for the Mill City Cabin Area of the Mammoth Stamp Mill Site, Inyo National Forest, Mono County, California

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of settlement; request for comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed Administrative Settlement Agreement and Order on Consent (ASAOC), between the Forest Service, United States Department of Agriculture, and specific Cabin Permittees (Respondents), regarding Respondents' access under special use permits (SUPs) to the Mill City Cabin Area (Affected Property) of the Mammoth Stamp Mill Site (Site) located on the Inyo National Forest, Mono County, California. Hazardous substances and/or pollutants or contaminants have come to be located at the Site.

DATES: Comments must be received in writing by July 8, 2022.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the offices of the United States Department of Agriculture, Forest Service, Inyo National Forest, 351 Pacu Lane, Bishop, California 93514, or from Ronald McClain with USDA's Office of the General Counsel, email: *Ronald.mcclain@usda.gov,* phone: (202) 720–4500. Comments should reference the Mammoth Mill City Cabin Area, Inyo National Forest, Mono County, California, and should be addressed to Ronald McClain, USDA Office of the General Counsel, 1400 Independence Ave. SW, Washington, DC 20250–1412. The United States' response to any comments received will be available for public inspection at the USDA, Office of the General Counsel, 1400 Independence Ave. SW, Washington, DC 20250–1412, and at the Forest Service's Inyo National Forest, 351 Pacu Lane, Bishop, California 93514.

FOR FURTHER INFORMATION CONTACT:

Technical information: Noelle Graham-Wakoski, USDA Forest Service Pacific Southwest Region, c/o Cleveland National Forest, 10845 Rancho Bernardo Road, Ste. 200, San Diego, CA 92127–2107; phone: 858–735–7728, email: *noelle.graham@usda.gov.*

Legal information: Ronald McClain, USDA Office of the General Counsel, 1400 Independence Ave. SW, Washington, DC 20250–1412; phone (202) 720–4500, Fax: (202) 720–0973; email: *Ronald.mcclain@usda.gov.* Individuals who use telecommunications devices for the deaf or hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The proposed ASAOC between the Forest Service, the Department of Justice, and Respondents, is entered into in accordance with Section 122(g)(4) of CERCLA, as amended, 42 U.S.C. 9622(g)(4). Among other things, the ASAOC requires Respondents to voluntarily relinquish their respective SUPs to the Forest Service to resolve Respondents' potential civil liability under Section 107 of CERCLA, 42 U.S.C. 9607. The ASAOC further requires Respondents to release the United States from any collateral action which may be brought by Respondents as a result of the voluntary relinquishment of their SUPs. The Forest Service will provide full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), or as otherwise may be provided by law, in accordance with Section XIV of the ASAOC (Effect of Settlement/Contribution); and will release Respondents from obligations of their SUPs requiring removal of improvements upon the Affected Property.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the ASAOC. The United States will consider all comments received and may modify or withdraw its consent to the ASAOC if comments received disclose facts or considerations that indicate that the settlement is inappropriate, improper, or inadequate.

Dated: June 3, 2022.

Jennifer Eberlien,

Regional Forester, Pacific Southwest Region.

[FR Doc. 2022–12362 Filed 6–7–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Missoula Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Lolo National Forest within Missoula County, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/detail/lolo/workingtogether/advisorycommittees/?cid=fsm9_021467.*

DATES: The meeting will be held on June 28, 2022, 3:00 p.m.—6:30 p.m., Mountain Daylight Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Quinn Carver, Designated Federal Officer (DFO), by phone at 406–677–3905 or email at *Charles.Carver@usda.gov* or Kate Jerman, RAC Coordinator, at 406–552–7944 or email at *Katelyn.Jerman@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays. Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY). Additionally, program information may be made available in languages other than English.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve meeting minutes;

2. Discuss 2022 project proposals and make recommendations; and

3. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing at least three days before the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Kate Jerman, 24 Fort Missoula Road, Missoula, MT 59801 or by email to *katelyn.jerman@usda.gov.*

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 2, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–12310 Filed 6–7–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–22–BUSINESS–0005]

Notice of Request for Comments on a New Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the above-named agency to request Office of Management and Budget's (OMB) approval for a new information collection in support of the Rural Business-Cooperative Service's Meat and Poultry Intermediary Lending Program (MPILP).

DATES: Comments on this notice must be received by August 8, 2022.

FOR FURTHER INFORMATION CONTACT: Susan Woolard, Management Analyst, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9631. Email *susan.woolard@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies a new information collection that the Agency is submitting to OMB for approval. A Notice of Funding Opportunity was posted on May 27, 2022 on *Grants.gov* under Opportunity Number RD–RBS–22–01–MPILP.

Comments

Comments are invited on: (a) Whether this 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 of the collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques, or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''RBS'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select [RBS–22–BUSINESS–0005] to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: Meat and Poultry Intermediary Lending Program.

OMB Control Number: 0570–NEW.

Type of Request: New collection.

Abstract: The notice contains general provisions for the Meat and Poultry Intermediary Lending Program grants and applies to intermediaries, and other parties involved in making, servicing, or liquidating such grants. The notice also contains general provisions for ultimate recipients of loans made by intermediaries. The information is used by Agency loan officers for program monitoring.

The estimates do not include burden hours for customary and usual business practices of entities other than the Agency. Therefore, this package only considers the information the Agency requires in excess of what a lender would typically require of a business, as well as the information the Agency regulation requires from the lender in excess of what it would typically do for a non-guaranteed loan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.32 hours per response.

Respondents: Businesses, not-for-profit institutions and others.

Estimated Number of Respondents: 75.

Total Annual Responses: 1,320.

Estimated Number of Responses per Respondent: 17.6.

Estimated Total Annual Burden on Respondents: 4,388 hours.

Copies of this information collection can be obtained from Susan Woolard, Management Analyst, Innovation Center—Regulations Management Division, at (202) 720–9631. Email: *susan.woolard@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–12307 Filed 6–7–22; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–049]

Ammonium Sulfate From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on ammonium sulfate from the People's Republic of China (China) would likely lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2638.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2017, Commerce published the AD order on imports of ammonium sulfate from China.[1] On February 1, 2022, Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 14, 2022, Commerce received a notice of intent to participate from the Committee for Fair Trade in Ammonium Sulfate (the domestic interested party),[3] within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[4] The domestic interested party claims interested party status under section 771(9)(C) and (E) of the Act, as a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product.[5] On February 25, 2022, Commerce received a timely and adequate substantive response to the notice of initiation from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[6] Commerce received no substantive responses from any other interested parties.

On March 21, 2022, Commerce notified the U.S. International Trade Commission that we did not receive an adequate substantive response from respondent interested parties.[7] As a result of the above, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), Commerce is conducting an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The merchandise covered by the *Order* is ammonium sulfate. For a complete description of the scope of the *Order, see* Issues and Decision Memorandum signed concurrently with this notice.[8]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum,[9] which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum are listed in the Appendix to this notice. The Issues and 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 Issues and Decision Memorandum can be accessed directly on the internet at *http://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of dumping, and the magnitude of the weighted-average dumping margin likely to prevail is up to 493.46 percent.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), 771(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 351.221(c)(5).

Dated: June 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–12313 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Ammonium Sulfate from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 82 FR 13094 (March 9, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022) (*Initiation Notice*).

[3] The Committee for Fair Trade in Ammonium Sulfate is an association of AdvanSix Inc. and PCI Nitrogen, LLC.

[4] *See* Domestic Interested Party's Letter, ''Five-Year ('Sunset') Review of Antidumping Duty Order on Ammonium Sulfate from The People's Republic of China: Domestic Interested Party's Notice of Intent to Participate,'' dated February 14, 2022.

[5] *Id.* at 2.

[6] *See* Domestic Interested Party's Letter, ''Five-Year ('Sunset') Review of Antidumping Duty Order on Ammonium Sulfate from The People's Republic of China: Domestic Interested Party's Substantive Response to Notice of Initiation,'' dated February 25, 2022 (Substantive Response).

[7] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2022,'' dated March 21, 2022.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Ammonium Sulfate from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[9] *See* Issues and Decision Memorandum.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–817]

Ripe Olives From Spain: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR),

August 1, 2020, through July 31, 2021. We invite interested parties to comment on these preliminary results.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–4270, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2018, Commerce published in the **Federal Register** the antidumping duty order on ripe olives (olives) from Spain.[1] On August 2, 2021, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On October 7, 2021, based on timely requests for an administrative review, Commerce initiated the administrative review of five companies.[3] On November 10, 2021, Commerce selected Agro Sevilla Aceitunas, S. Coop. And. (Agro Sevilla) and Angel Camacho Alimentacion, S.L. (Camacho) as the mandatory respondents in this administrative review.[4]

On March 31, 2022, Commerce extended the time limit for issuing the preliminary results of this review by 35 days, to no later than June 7, 2022.[5] For a complete description of the events between the initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.[6]

A list of the topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by this *Order* are olives from Spain. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[7]

Verification

Commerce was unable to conduct on-site verifications of the information we will rely upon for the final results of review. However, we took additional steps in lieu of on-site verifications to verify the information which we will rely upon for the final results of review, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[8]

Methodology

Commerce is conducting this review in accordance with section 751 of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Rates for Non-Selected Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we preliminarily calculated weighted-average dumping margins for the mandatory respondents, Agro Sevilla and Camacho that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce is preliminarily assigning to the companies not individually examined, listed in the chart below, a margin of 2.87 percent which is the weighted-average of Agro Sevilla's and Camacho's calculated weighted-average dumping margins.[9]

Preliminary Determination of No Shipments

On October 27, 2021, Alimentary Group Dcoop S. Coop. And. (Dcoop) timely filed a letter certifying that it had no U.S. exports, sales, or entries of subject merchandise to the United States during the POR.[10] Subsequently, we received information from U.S. Customs and Border Protection (CBP) confirming Dcoop's no shipment claims. Based on the foregoing, Commerce preliminarily determines that Dcoop did not have any reviewable transactions during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with Commerce's practice, we are not preliminarily rescinding the review with respect to Dcoop but, rather, we will complete the review with respect to Dcoop and issue appropriate instructions to CBP based on the final results of this review.[11]

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[1] *See Ripe Olives from Spain: Antidumping Duty Order,* 83 FR 37465 (August 1, 2018); *see also Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order,* 83 FR 39691 (August 10, 2018) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 41436 (August 2, 2021).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811 (October 7, 2021).

[4] *See* Memorandum, ''Ripe Olives from Spain; 2020–2021: Respondent Selection,'' dated November 10, 2021.

[5] *See* Memorandum, ''Ripe Olives from Spain; 2020–21: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 31, 2022.

[6] *See* Memorandum, ''Ripe Olives from Spain: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See* Preliminary Decision Memorandum at ''Scope of the *Order*.''

[8] *See* Commerce's Letters, In Lieu of On-Site Verification Questionnaires to Agro Sevilla and Camacho, dated April 18, 2022; Agro Sevilla's Letter, ''Agro Sevilla's Response to the Department's Questionnaire in Lieu of Verification: Ripe Olives From Spain (08/01/2020–07/31/2021),'' dated April 25, 2022; and Camacho's Letter, ''Camacho's Response to Questionnaire in Lieu of Verification Response Ripe Olives From Spain (POR3: 08/01/2020–07/31/2021),'' dated April 25, 2022.

[9] For more information regarding the calculation of this margin, *see* Memorandum, ''Ripe Olives from Spain: Calculation of the Preliminary Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice. As the weighting factor, we relied on the publicly ranged sales data reported in the quantity and value charts submitted by Agro Sevilla and Camacho.

[10] *See* Dcoop's Letter, ''DCOOP's Statement of No Exports, Sales, or Entries During the Period of Review (POR3) Ripe Olives from Span {*sic*} (08/01/2020–07/31/2021),'' dated October 27, 2021.

[11] *See, e.g., Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015,* 81 FR 71057, 71058 (October 14, 2016), unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015,* 82 FR 18432, 18433 (April 19, 2017).

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the respondents for the period August 1, 2020, through July 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas, S. Coop. And	1.84
Angel Camacho Alimentacion, S.L	4.56

Review-Specific Average Rate Applicable to the Following Companies:

Producer/exporter	Weighted-average dumping margin (percent)
Aceitunas Guadalquivir, S.L.U	2.87
Aceitunas Torrent, S.L	2.87

Disclosure and Public Comment

We intend to disclose the calculations performed in connection with these preliminary results to interested parties within five days after public announcement of the preliminary results.[12] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[13] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] Case and rebuttal briefs should be filed using ACCESS and must be served on interested parties.[15] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon completion of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[17] If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[18] If the respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.[19] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[20]

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[21]

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established after the completion of the final results of 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 Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication in the **Federal Register** of the notice of final results of this review for all shipments of olives from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent,[22] the all-others rate

[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303.

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[17] *See* 19 CFR 351.212(b)(1).

[18] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[19] *See Final Modification for Reviews,* 77 FR at 8103; *see also* 19 CFR 351.106(c)(2).

[20] *See* section 751(a)(2)(C) of the Act.

[21] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[22] *See Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 28193 (June 18, 2018).

established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 3, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–12350 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 4, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Ghigi 1870 S.p.A.* v. *United States,* Consol. Court no. 20–00023, sustaining the Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on certain pasta (pasta) from Italy covering the period July 1, 2017, through June 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results and amended final results of the administrative review, and that Commerce is amending the final results and amended final results with respect to the weighted-average dumping margin assigned to Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (the collapsed, single entity Ghigi/Zara), Agritalia S.r.l. (Agritalia), and Tesa S.r.l. (Tesa).

DATES: Applicable May 14, 2022.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, 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) 482–1468.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2020, Commerce published its *Final Results* in the 2017–2018 AD administrative review of pasta from Italy.[1] Commerce calculated weighted-average dumping margins of 91.76 percent and 0.50 percent for the mandatory respondents Ghigi/Zara and Industrie Alimentare Colavita S.p.A. (Indalco), respectively. Commerce assigned an average of the weighted-average dumping margins calculated for Ghigi/Zara and Indalco (*i.e.,* 44.56 percent) to the two non-examined companies Agritalia and Tesa.[2]

After correcting a ministerial error contained in the *Final Results,* on March 3, 2020, Commerce published the *Amended Final Results,* and revised the weighted-average dumping margin for Indalco from 0.50 percent to 0.00 percent. Consequently, Commerce revised the review-specific rate applied to the two non-examined companies of to 91.76 percent, the rate from the *Final Results* for Ghigi/Zara.[3]

Ghigi/Zara, Agritalia, and Tesa appealed Commerce's *Final Results.* On November 30, 2021, the CIT remanded the *Final Results* to Commerce, holding that Commerce's use of adverse facts available with respect to Ghigi's U.S. payment dates was unlawful and unsupported by substantial evidence.[4]

In its final results of redetermination, issued in February 2022, Commerce provided further explanation of why adverse inferences are warranted when selecting from among the facts otherwise available, and thus, continued to use adverse facts available with respect to Ghigi's U.S. payment dates.[5]

Further, when applying adverse facts available to Ghigi's U.S. payment dates, Commerce found an error where it had applied adverse facts available to certain U.S. sales where the payment date was on the record of the administrative review. Accordingly, Commerce corrected this erroneous application of adverse facts available to those U.S. sales for the final results of redetermination.[6]

The CIT sustained Commerce's final redetermination.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's May 4, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results* and *Amended Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Amended Final Results* [10] with respect to Ghigi/Zara, Agritalia, and Tesa as follows:

[1] *See Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 2714 (January 16, 2020) (*Final Results*).

[2] *See* Memorandum, ''Certain Pasta from Italy: Margin for Respondents Not Selected for Individual Examination,'' dated January 10, 2020.

[3] *See Certain Pasta from Italy: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 12518 (March 3, 2020) (*Amended Final Results*).

[4] *See Ghigi 1870 S.p.A.* v. *United States,* 547 F. Supp. 3d 1332 (CIT 2021).

[5] *See* Final Results of Redetermination Pursuant to Court Remand: *Ghigi 1870 S.P.A. and Pasta Zara S.P.A., et al* v. *United States,* Court No. 20–00023, Slip Op. 21–159 (February 25, 2022).

[6] *Id.* at 8.

[7] *See Ghigi 1870 S.p.A.* v. *United States,* Consol. Court No. 20–00023, Slip Op. 22–41 (CIT May 4, 2022).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[10] The current weighted-average dumping margins for Agritalia and Tesa were determined in the *Amended Final Results.*

Exporter or producer	Weighted-average dumping margin (percent)
Ghigi 1870 S.p.A. and Pasta Zara S.pA	91.74
Agritalia S.r.l	91.74
Tesa S.r.l	91.74

Cash Deposit Requirements

Because Ghigi/Zara, Agritalia, and Tesa have superseding cash deposit rates, *i.e.,* there have been final results published in subsequent administrative reviews, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and/or exported by Ghigi/Zara, Agritalia, or Tesa, and were entered, or withdrawn from warehouse, for consumption during the period July 1, 2017, through June 30, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Ghigi/Zara, Agritalia, or Tesa in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[11] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: June 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–12349 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–038]

Certain Amorphous Silica Fabric From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain amorphous silica fabric from the People's Republic of China (China) would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0167.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2017, Commerce published the AD order on certain amorphous silica fabric from China.[1] On February 1, 2022 Commerce published the notice of initiation of the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 16, 2022, Commerce received a notice of intent to participate within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i) from Auburn Manufacturing, Inc. (AMI).[3] AMI claimed interested party status under section 771(9)(C) of the Act as a domestic producer of certain amorphous silica fabric.[4]

On March 3, 2022, Commerce received an adequate substantive response to the notice of initiation from AMI within the 30-day deadline specified in 19 CFR 351.218(d)(3).[5] On March 3, 2022, Commerce also received a letter in response to the notice of initiation from SGL Composites Inc., a manufacturer of certain amorphous silica fabric.[6] We received no substantive response from any respondent interested party with respect to the *Order* covered by this sunset review.

On March 21, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[7] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The merchandise subject to the *Order* consists of certain woven (whether from yarns or rovings) industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica (SiO2) by nominal weight, and a nominal width in excess of 8 inches. For a complete description of the products covered, *see* the Issues and Decision Memorandum.[8]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. The Issues and 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.* A list of topics discussed in the Issues and Decision Memorandum is included as the appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed

[1] *See Certain Amorphous Silica Fabric from the People's Republic of China: Antidumping Duty Order,* 82 FR 14314 (March 17, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022).

[3] *See* AMI's Letter, ''Amorphous Silica Fabric from the People's Republic of China: Five Year (''Sunset'') Review of Antidumping Duty Order—Notice of Intent to Participate,'' dated February 16, 2022.

[4] *Id.* at 2.

[5] *See* AMI's Letter, ''Amorphous Silica Fabric from the People's Republic of China: Five Year (''Sunset'') Review of Antidumping Duty Order—Auburn Manufacturing Inc.'s Substantive Response to Notice of Initiation,'' dated March 3, 2022.

[6] *See* SGL Composites Inc.'s Letter, ''Amorphous Silica Fabric from the People's Republic of China: Five Year (''Sunset'') Review: SGL Composites Inc.'s Substantive Response to Notice of Initiation,'' dated March 3, 2022. Although SGL Composites Inc.'s submission is entitled ''Substantive Response,'' because the company did not file a timely notice of intent to participate pursuant to 19 CFR 351.218(d), we have disregarded this submission for purposes of our analysis.

[7] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2022,'' dated March 21, 2022.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Amorphous Silica Fabric from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Review

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of dumping at weighted-average dumping margins up to 162.47 percent.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: June 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–12309 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs) from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the orders.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Nathan James, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5305.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1991, Commerce published the AD orders on HFHTs from China.[1] On December 1, 2021, Commerce published the notice of initiation of the five-year sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its review, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping.[3] Commerce, therefore, notified the ITC of the magnitude of the dumping margins likely to prevail should the *Orders* be revoked.[4]

On May 26, 2022, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise covered by the *Orders* are HFHTs from China, comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. HFHTs include heads for drilling hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars, and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing, and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, 8201.40.60, and 8205.59.5510. Specifically excluded from the scope are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of

[1] *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China,* 56 FR 6622 (February 19, 1991) (*Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021).

[3] *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Orders,* 87 FR 19073 (April 1, 2022).

[4] *Id.*

[5] *See Heavy Forged Hand Tools from China; Determinations,* 87 FR 32052 (May 26, 2022).

continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next sunset review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–12311 Filed 6–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–036]

Certain Biaxial Integral Geogrid Products From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain biaxial integral geogrid products (geogrids) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2017, Commerce published in the **Federal Register** the AD order on geogrids from China.[1] On February 1, 2022, Commerce initiated the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 16, 2022, Commerce received a timely-filed notice of intent to participate in this review from Tensar Corporation (Tensar), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Tensar claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product in the United States.

On March 3, 2022, Commerce received an adequate substantive response to the *Initiation Notice* from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from any other interested parties. On March 21, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The products covered by the *Order* are geogrids from China. For a complete description of the scope of the *Order, see* Issues and Decision Memorandum signed concurrently with this notice.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum.[7] A list of topics discussed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and 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 Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of dumping and that the magnitude of the margins likely to prevail is up to 372.81 percent.[8]

Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751I, 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: June 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–12314 Filed 6–7–22; 8:45 am]

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[1] *See Certain Biaxial Integral Geogrid Products from the People's Republic of China: Antidumping Duty Order,* 82 FR 12440 (March 3, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022) (*Initiation Notice*).

[3] *See* Tensar's Letter, ''Notice of Intent to Participate,'' dated February 16, 2022.

[4] *See* Tensar's Letter, ''Substantive Response,'' dated March 3, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2022,'' dated March 21, 2022.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Certain Biaxial Integral Geogrid Products from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *Id.*

[8] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–050]

Ammonium Sulfate From the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on ammonium sulfate from the People's Republic of China (China) would likely lead to the continuation or recurrence of countervailing subsidies at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2638.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2017, Commerce published the CVD order on imports of ammonium sulfate from China.[1] On February 1, 2022, Commerce published the notice of initiation of the first sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 14, 2022, Commerce received a notice of intent to participate, within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i), from the Committee for Fair Trade in Ammonium Sulfate, an association of AdvanSix Inc. and PCI Nitrogen, LLC (collectively, the domestic interested party).[3] The domestic interested party claimed interested party status under section 771(9)(C) and (E) of the Act, as manufacturers in the United States of the domestic like product.[4] On February 25, 2022, Commerce received a timely and adequate substantive response to the notice of initiation from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce received no substantive responses from any other interested parties.

On March 21, 2022, Commerce notified the U.S. International Trade Commission that we did not receive an adequate substantive response from the Government of China or from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)–(C), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The merchandise covered by the *Order* is ammonium sulfate. For a complete description of the scope of the *Order, see* Issues and Decision Memorandum signed concurrently with this notice.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum.[8] The issues discussed in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and 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 Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of countervailable subsidies at the rates listed below.

Exporter/producer	Subsidy rate (percent)
Wuzhoufeng Agricultural Science & Technology Co. Ltd *	206.72
Yantai Jiahe Agriculture Means of Production Co. Ltd *	206.72
All Others	206.72

** Non-cooperative company to which an adverse facts available rate was applied.*

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), 771(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 351.221(c)(5).

Dated: June 1, 2022.

Lisa Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–12315 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Ammonium Sulfate from the People's Republic of China: Antidumping Duty and Countervailing Duty Orders,* 82 FR 13094 (March 9, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 5467 (February 1, 2022) (*Initiation Notice*).

[3] *See* Domestic Interested Party's Letter, ''Five-Year (''Sunset'') Review of Countervailing Duty Order on Ammonium Sulfate from The People's Republic of China: Domestic Interested Party's Notice of Intent to Participate,'' dated February 14, 2022.

[4] *Id.* at 2.

[5] *See* Domestic Interested Party's Letter, ''Five-Year (''Sunset'') Review of Countervailing Duty Order on Ammonium Sulfate from the People's Republic of China: Domestic Interested Party's Substantive Response to Notice of Initiation,'' dated February 25, 2022.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2022,'' dated March 21, 2022.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Ammonium Sulfate from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that steel concrete reinforcing bar (rebar) from Mexico was sold in the United States at less than normal value during the period of review (POR), November 1, 2019, through October 31, 2020.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: David Lindgren or Kyle Clahane, 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) 482–1671 or (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2021, Commerce published the *Preliminary Results* for this review in the **Federal Register** and invited interested parties to comment on those results.[1] From January 2 to February 11, 2022, Commerce received case briefs on behalf of Deacero S.A.P.I. de C.V. (Deacero), Grupo Simec,[2] Sidertul S.A. de C.V. (Sidertul), and Grupo Acerero S.A. de C.V. (Grupo Acerero). From February 18 to 24, 2022, the petitioners[3] and Grupo Simec submitted rebuttal briefs and comments.[4]

Commerce extended the deadline for the final results by 27 days on March 7, 2022, and by an additional 33 days on April 22, 2022.[5] The deadline for the final results of this review is now June 1, 2022. For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[6]

Scope of the Order[7]

The product covered by the *Order* is rebar from Mexico. For a complete description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached at the appendix to this notice. The Issues and 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 Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding the *Preliminary Results,* we made certain changes to the margin calculation for Deacero. For a discussion of the issues, *see* the Issues and Decision Memorandum.[8]

Use of Adverse Facts Available

We continue to find that the application of facts available with an adverse inference (AFA), pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), is warranted in determining Grupo Simec's dumping margin because it withheld information regarding its sales and cost reconciliations and potential affiliations, incorrectly reported control numbers, and provided unreliable and unusable sales and cost databases.[9] Therefore, as in the *Preliminary Results,* as AFA, we assigned Grupo Simec a dumping margin of 66.70 percent. *See* the Issues and Decision Memorandum for further discussion.[10]

Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.[11] Because the 66.70 percent rate was applied in a separate segment of this proceeding, Commerce does not need to corroborate the rate in this review.

Rates for Companies Not Selected for Individual Examination

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not examine in an administrative review.

When the rates for individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate.

We calculated a zero percent dumping margin for one of the mandatory respondents in this review, Deacero, and we based the dumping margin on facts available with an adverse inference for the other mandatory respondent, Grupo Simec. Therefore, we assigned the companies not selected for examination a dumping margin equal to the simple average of the dumping margins for Deacero and Grupo Simec, consistent with the guidance in section 735(c)(5)(B) of the Act.[12]

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period November 1, 2019, through October 31, 2020:

[1] *See Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 68632 (December 3, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] Commerce has previously collapsed the following entities into a single entity, collectively, Grupo Simec: Grupo Simec; Aceros Especiales Simec Tlaxcala, S.A. de C.V.; Compania Siderurgica del Pacifico S.A. de C.V.; Fundiciones de Acero Estructurales, S.A. de C.V.; Grupo Chant S.A.P.I. de C.V.; Operadora de Perfiles Sigosa, S.A. de C.V.; Orge S.A. de C.V.; Perfiles Comerciales Sigosa, S.A. de C.V.; RRLC S.A.P.I. de C.V.; Siderúrgicos Noroeste, S.A. de C.V.; Siderurgica del Occidente y Pacifico S.A. de C.V.; Simec International 6 S.A. de C.V.; Simec International, S.A. de C.V.; Simec International 7 S.A. de C.V.; and Simec International 9 S.A. de C.V. *See, e.g., Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 50527, 50528 (September 9, 2021).

[3] The petitioners are the Rebar Trade Action Coalition and its individual members, Nucor Corporation; Ameristeel US Inc.; Commercial Metals Company; Cascade Steel Rolling Mills, Inc.; and Byer Steel Corporation.

[4] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See* Memorandum, ''Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Administrative Review; 2019–2020; Extension of Deadline for Final Results,'' dated March 7, 2022; *see also* ''Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Administrative Review; 2019–2020; Extension of Deadline for Final Results,'' dated April 22, 2022.

[6] *See* Issues and Decision Memorandum.

[7] *See Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order,* 79 FR 65925 (November 6, 2014) (*Order*).

[8] *Id.* at 3 and 6.

[9] *See Preliminary Results.*

[10] *See* Issues and Decision Memorandum at Comment 4; *see also* Memorandum, ''Grupo Simec Questionnaire Deficiencies Analysis,'' dated concurrently with this notice.

[11] *See* section 776(c)(2) of the Act.

[12] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 16.

Producer and/or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I de C.V	0.00
Grupo Simec (Aceros Especiales Simec Tlaxcala, S.A. de C.V.; Compania Siderurgica del Pacifico S.A. de C.V.; Fundiciones de Acero Estructurales, S.A. de C.V.; Grupo Chant S.A.P.I. de C.V.; Operadora de Perfiles Sigosa, S.A. de C.V.; Orge S.A. de C.V.; Perfiles Comerciales Sigosa, S.A. de C.V.; RRLC S.A.P.I. de C.V.; Siderúrgicos Noroeste, S.A. de C.V.; Siderurgica del Occidente y Pacifico S.A. de C.V.; Simec International 6 S.A. de C.V.; Simec International, S.A. de C.V.; Simec International 7 S.A. de C.V.; and Simec International 9 S.A. de C.V.)	66.70
Grupo Acerero S.A. de C.V	33.35
Sidertul S.A. de C.V	33.35

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping 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**, in accordance with 19 CFR 356.8(a). If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by Deacero for which it did not know that the merchandise it sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Because we are applying total AFA to Grupo Simec, we will instruct CBP to apply an assessment rate to all entries Grupo Simec produced and/or exported equal to the dumping margin indicated above in the ''Final Results of Review.'' Further, the assessment rate for antidumping duties for each of the companies not selected for individual examination will be equal to the weighted-average dumping margin identified above in the ''Final Results of Review.''

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the ''Final Results of Review'' will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.58 percent, the rate established in the investigation of this proceeding.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[13] *See Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 79 FR 54967 (September 15, 2014).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: June 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–12316 Filed 6–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–906]

Sodium Nitrite From India: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, 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) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2022, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of sodium nitrite from India.[1] Currently, the preliminary determination is due no later than June 22, 2022.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On May 27, 2022, the petitioner[2] submitted a timely request that Commerce postpone the preliminary determination in this LTFV investigation.[3] The petitioner stated that it requests postponement because Commerce is still collecting information from the respondent, and the petitioner will need additional time to review the responses and prepare comments for Commerce's consideration.[4]

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.,* no more than 190 days after the date on which the investigation was initiated). As a result, Commerce will issue its preliminary determination no later than August 11, 2022. In accordance with section 735(a)(1) of the Act and 19 CFR 351.201(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 2, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–12348 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Sodium Nitrite from India and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 7122 (February 8, 2022).

[2] The petitioner is Chemtrade Chemicals US LLC.

[3] *See* Petitioner's Letter, ''Sodium Nitrite from India: Chemtrade's Request to Postpone the Antidumping Investigation Preliminary Determination,'' dated May 27, 2022.

[4] *Id.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Alaĝum Kanuux̂ Site Added to the Inventory of Areas for Possible Designation as National Marine Sanctuaries

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: On June 13, 2014, NOAA published a final rule establishing the Sanctuary Nomination Process, allowing communities to submit nominations to NOAA for consideration as new national marine sanctuaries. The rule included the final review process, national significance criteria, and management considerations that NOAA uses to evaluate new national marine sanctuary nominations for inclusion in the inventory of areas that could be considered for designation as national marine sanctuaries. The rule also states that NOAA will publish a **Federal Register** notice when areas have been added to the inventory of successful nominations. This notice announces that NOAA added the Alaĝum Kanuux̂ (Heart of the Ocean) sanctuary nomination to the inventory.

DATES: This notice is effective on June 8, 2022.

ADDRESSES: Kristina Kekuewa, Pacific Islands Regional Director, NOAA Office of National Marine Sanctuaries, 1845 Wasp Blvd., Honolulu, Hawaii 96818, and at *https://nominate.noaa.gov/nominations/.*

FOR FURTHER INFORMATION CONTACT: Kristina Kekuewa, Pacific Islands Regional Director, NOAA Office of National Marine Sanctuaries, *kristina.kekuewa@noaa.gov,* or at 808–725–5252.

SUPPLEMENTARY INFORMATION:

I. Background

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to identify and designate as national marine sanctuaries areas of the marine environment, including the Great Lakes, which are of special national significance; to manage these areas as the National Marine Sanctuary System; and to provide for the comprehensive and coordinated conservation and management of these areas and the activities affecting them in a manner which complements existing regulatory

authorities. Section 303 of the NMSA, 16 U.S.C. 1433, provides national marine sanctuary designation standards and factors required in determining whether an area qualifies for consideration as a potential national marine sanctuary, and section 304, 16 U.S.C. 1434, establishes procedures for national marine sanctuary designation and implementation. Regulations implementing the NMSA and each national marine sanctuary are codified in part 922 of title 15 of the Code of Federal Regulations.

On June 13, 2014, NOAA issued a final rule that established the Sanctuary Nomination Process and finalized the national significance criteria and management considerations it will use to review new national marine sanctuary nominations (79 FR 33851). If NOAA determines a nomination adequately meets the final criteria and considerations, it may place that nomination in an inventory of areas to consider for designation as a national marine sanctuary. NOAA also stated that it would send a letter of notification to the nominator and publish a **Federal Register** notice identifying areas that have been added to the inventory of successful nominations. This notice documents that NOAA is adding the Alaĝum Kanuux̂ (Heart of the Ocean) nomination to the inventory.

NOAA is not designating any new national marine sanctuaries with this action. Any proposed designations resulting from the nomination process would be conducted by NOAA as a separate process under the NMSA, Administrative Procedure Act (5 U.S.C. subchapter II), National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and other applicable authorities.

II. Alaĝum Kanuux̂ Sanctuary Nomination Added to the Inventory

The Aleut Community of St. Paul Island (ACSPI) Tribal Government, a federally recognized tribe,[1] submitted an initial nomination for Alaĝum Kanuux̂ (Heart of the Ocean) for consideration as a national marine sanctuary on December 17, 2021. The original nomination identified an estimated 52,920 mi^2 (39,961 nm^2) area in the Bering Sea encompassed by a 100 nm circular boundary around the two inhabited islands of St. Paul and St. George off the coast of Alaska for possible sanctuary designation. The nominated area excluded a quarter-mile buffer zone around the St. George and St. Paul Harbors and all shoreside and submerged industrial facilities on both islands. After further communication with the community of St. George Island, the ACSPI Tribal Government submitted a revised nomination on April 14, 2022, that removed the initial proposed boundaries and any implied commitments of St. George Island (*i.e.,* City of St. George and the St. George Traditional Council) to encourage future community input on the ideal boundaries and co-management arrangements during any potential sanctuary designation process. In the revised nomination, the nominators proposed utilizing Indigenous knowledge and empirical science to assess numerous biological, ecological, and physical features of the Pribilof Islands marine ecosystem (*e.g.,* oceanographic features, foraging and migratory dynamics of seabirds and marine mammals, and population dynamics) and working with co-managing partners and advisors to determine appropriate sanctuary boundaries should ONMS move forward with sanctuary designation. The revised nomination proposes excluding buffer zones around harbors and all shoreside and submerged industrial facilities from any future proposed boundary.

The ACSPI Tribal Government nominated the area for consideration as a national marine sanctuary to protect nationally significant biological and cultural resources in the area. The area's ecosystem supports globally significant populations of marine mammals, seabirds, and fish, including various ecological and cultural keystone species such as northern fur seals and Steller sea lions. The oceanographic features of the area results in a highly productive zone that supports representative biogeographic assemblages of biodiversity and maintenance of critical habitat for foraging and for important life stages of many threatened and endangered species, as well as species considered to be keystone, foundation, or focal.

The nomination also describes the importance of the Pribilof Islands and surrounding waters to the history and heritage of the Unangan (Aleut) communities. In addition to being ecologically significant, the biological resources in the nominated area are vital for the subsistence of the Unangan people and are integral to their belief systems and identities. The ACSPI Tribal Government's nomination proposes a management framework for the area that would include a formal co-management agreement between State, Federal, and Tribal governments, as well as emphasize Indigenous-led marine stewardship. More information can be found in the nomination at *https://nominate.noaa.gov/nominations/.*

Based on information included in the nomination, including the comment letters submitted with the nomination, as well as internal analysis of relevant information about the Alaĝum Kanuux̂ proposal, NOAA has determined that the nomination is responsive to the national significance criteria and management considerations and added it to the inventory of successful nominations. This notice serves to inform the public of this decision to add the Alaĝum Kanuux̂ nomination to the inventory.

Prior to moving forward with a proposed sanctuary designation, ONMS would work with the ACSPI Tribal Government, the St. George Traditional Council, the City of St. George, Alaska Native corporations, the State of Alaska, Federal agencies, and other organizations to further consider the Alaĝum Kanuux̂ nomination. In carrying out further coordination with respect to any proposed designation, as applicable, NOAA would fulfill its responsibilities under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and NOAA implementing policy and procedures. Executive Order 13175 requires Federal agencies to establish procedures for meaningful consultation and coordination with Tribal officials in the development of Federal policies that have Tribal implications. Under these policies and procedures, NOAA offers affected federally recognized Tribes government-to-government consultation at the earliest practicable time it can reasonably anticipate that a proposed policy or initiative may have tribal implications.

III. Classification

A. National Environmental Policy Act (NEPA)

NOAA has concluded that this action will not have a significant effect, individually or cumulatively, on the human environment, because this action is a notice of an administrative and legal nature and does not designate any new national marine sanctuaries. NOAA has further determined that this action is not connected to a larger action, and

[1] The Department of the Interior includes Saint Paul Island and Saint George Island on the list of Federally Recognized Alaska Native Villages/Tribes Within the State of Alaska. Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 87 FR 4636, 4641 (January 28, 2022). The Department of the Interior list further notes, ''Pribilof Islands Aleut Communities of St. Paul & St. George Islands (Saint George Island and Saint Paul Island)—is not included in the official count of 574 federally recognized Tribes but is recognized as an entity authorized to act on behalf of Saint George Island and Saint Paul Island).'' *Id.*

does not involve extraordinary circumstances precluding the use of a categorical exclusion. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, in accordance with NOAA Administrative Order 216–6A Environmental Review Procedures, and the NOAA NEPA Companion Manual. As defined in the NOAA NEPA Companion Manual, Appendix E, categorical exclusion category G7, the proposed action is a notice of administrative and legal nature and for which any environmental effects are too broad and speculative to lend themselves to meaningful analysis at this time and will be subject later to the NEPA process, as applicable. Should NOAA decide to propose the designation of a national marine sanctuary, each individual national marine sanctuary designation process will be subject to case-by-case analysis, as required under NEPA and as outlined in section 304(a)(2)(A) of the NMSA.

B. Paperwork Reduction Act

Notwithstanding any other provisions 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 Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Nominations for national marine sanctuaries discussed in this notice involve a collection-of-information requirement subject to the requirements of the PRA. OMB has approved this collection-of-information requirement under OMB control number 0648–0682.

Authority: 16 U.S.C. 1431 *et seq.*

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–11954 Filed 6–7–22; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Conduct Scoping and To Prepare a Draft Environmental Impact Statement for the Proposed Hudson Canyon National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent to hold public scoping meetings and prepare a draft environmental impact statement; request for comments.

SUMMARY: In accordance with the National Marine Sanctuaries Act (NMSA) and National Environmental Policy Act (NEPA), the National Oceanic and Atmospheric Administration (NOAA) is initiating a scoping process to consider designating a national marine sanctuary in the Hudson Canyon area approximately 100 miles offshore southeast of New York City. NOAA is initiating this scoping process based on the area's diverse qualities, which are described in the Wildlife Conservation Society's (WCS's) November 2016 Hudson Canyon national marine sanctuary nomination. Specifically, WCS's nomination provides important context and background regarding the natural and cultural resources in the region, the potential benefits of national marine sanctuary designation, recommendations for management of the sanctuary, and a proposed sanctuary boundary, which NOAA will take under consideration, but does not represent an official boundary proposal at this time. As a first step in this scoping process, NOAA invites comments on the factors that will contribute to its determination of whether to designate the area as a national marine sanctuary; designation would include preparation and release of a draft environmental impact statement (including national marine sanctuary boundary alternatives), proposed regulations, and a draft management plan. This scoping process will also inform the initiation of any consultations with Federal, State, or local agencies, Tribes, and other interested parties, as appropriate. In support of the scoping process, the nomination package and additional information regarding the qualities of the Hudson Canyon area can be found at *https://sanctuaries.cnoaa.gov/hudson-canyon/.*

DATES:

Comments due: August 8, 2022.

Public Meetings: NOAA will host four public meetings during the scoping process, two virtual and two in-person. The virtual public scoping meetings will occur at the following dates and times:

- Thursday, June 23, 2022, 3:00 p.m. to 5:00 p.m. Eastern Time.
- Wednesday, August 3, 2022, 5:00 p.m. to 7:00 p.m. Eastern Time.

The in-person scoping meetings will occur at the following dates and times:

- New York City, NY; *Date:* July 19, 2022; *Location:* Alexander Hamilton U.S. Customs House, Naval Officers Room; *Address:* 1 Bowling Green, New York, NY 10004; *Time:* 6:30–8:00 p.m.
- West Long Branch, NJ; *Date:* July 21, 2022; *Location:* Monmouth University, Urban Coast Institute, Edison Building Atrium-E201; *Address:* 400 Cedar Avenue, West Long Branch, NJ 07764; *Time:* 6:30–8:00 p.m.

Please check *https://sanctuaries.noaa.gov/hudson-canyon/* for meeting links and the most up-to-date information, should plans for these public meetings change. NOAA may end a virtual or in-person meeting before the time noted above if all participants have concluded their oral comments.

ADDRESSES: You may submit comments, identified by NOAA–NOS–2022–0053, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and enter ''NOAA–NOS–2022–0053'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comment.
- *Mail:* Send any hard copy public comments by mail to: LeAnn Hogan, NOAA Office of National Marine Sanctuaries, 1305 East-West Highway, SSMC4, Silver Spring, MD 20910. Note the docket number (*i.e.,* NOAA–NOS–2022–0053) at the top of the comment.
- *Public Scoping Meetings:* Provide oral comments during public scoping meetings, as described under **DATES**. Webinar registration details and additional information about how to participate in these virtual and in-person public scoping meetings is available at *https://sanctuaries.noaa.gov/hudson-canyon/.*

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personally identifiable information (for example,

name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Comments that are not responsive or contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: LeAnn Hogan, (202) 731–0678, *LeAnn.Hogan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Area Under Consideration

The National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.,* authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS).

In November 2016, WCS submitted a nomination to NOAA through the Sanctuary Nomination Process (79 FR 33851), asking NOAA to consider designating the Hudson Canyon area as a national marine sanctuary to conserve its nationally significant ecological and biological resources and to expand upon existing local and state efforts to study, interpret, and promote the area's ecological and biological uniqueness. The nomination was endorsed by a diverse coalition of organizations and individuals at local, state, and national levels including elected officials, businesses, shipping industry representatives, recreational users, conservation and academic organizations, tourism companies, aquariums and zoos, historical societies, and education groups. NOAA added the area to the inventory of successful nominations that are eligible for designation in February 2017, and extended it on the inventory in February 2022 after its five-year review of the nomination (87 FR 11049).

The Hudson Canyon (Canyon) is the largest submarine canyon along the United States' Atlantic coast and is one of the largest in the world. Its presence is critical to the support of resident and migratory marine wildlife in the New York Bight, as well as in the Mid-Atlantic region. Rivaling the depth and scale of the Grand Canyon, the Canyon extends about 560 km (350 mi) seaward, reaches depths of 3–4 km (2–2.5 mi), and is up to 12 km (7.5 mi) wide. Despite its size and proximity to one of the world's largest metropolitan centers in New York City, few know of this area that William Beebe described as a ''stately, invisible gorge'' when he first explored it during his 1925 expedition on the vessel *Arcturus.*

The Canyon's grand scale and diverse structure—steep slopes, firm outcrops, diverse sediments, flux of nutrients, and areas of upwelling—make it an ecological hotspot for a vast array and abundance of marine wildlife. The Canyon provides habitat for a range of endangered, protected, and sensitive species including the sperm whale, sea turtles, and unique and diverse seep communities. The Canyon also provides invaluable habitat for hundreds of species of bony and cartilaginous fishes and invertebrates. One unique aspect of the Canyon among marine habitats in the New York Bight is the presence of deep sea, cold-water coral communities. Rocky outcrops and boulders at the head of the Canyon and along its steep walls provide the hard substrate needed for attachment by hard and soft corals, sea pens, anemones, and sponges.

The robust biodiversity of the Canyon directly supports the local economy by providing productive waters and habitats for the fish and invertebrates on which commercial and recreational fisheries depend. Recreational divers explore some of the shallower areas in and around the Canyon, and the yearly migration of whales and seabirds through the Canyon attracts whale watchers and birders. In addition to supporting diverse fisheries and wildlife tourism, the waters surrounding the Canyon also hold historical and cultural importance to those living along its shores in New York and New Jersey. The types of shipwrecks found within the Hudson Canyon area vary from freighters to United States military radar platforms, some dating back to the mid-19th Century.

The area also supports a number of human activities. Commercial vessels regularly traverse the waters above the Canyon to enter New York City, one of the world's busiest ports. New York is also a critical trans-Atlantic telecommunications hub, connecting the east coast of the United States to the rest of the world. There are 26 submarine telecommunication cables and cable segments that make landfall in New York and New Jersey, with at least nine of these cables crossing, or running adjacent to, the Canyon. Various types of commercial and recreational fishing occur in and around the Canyon.

There are nine federally and state-recognized Tribes and Tribal Nations in New York State (*i.e.,* Cayuga Nation, Oneida Nation of New York, Onondaga Nation, Saint Regis Mohawk Tribe, Seneca Nation, Shinnecock Nation, Tonawanda Band of Seneca, Tuscarora Nation of New York, and the Unkechaug Nation) and three Tribes acknowledged by the State of New Jersey, which serve on the New Jersey Commission of American Indian Affairs (*i.e.,* the Nanticoke Lenni-Lenape, Powhatan Renape, and the Ramapough Lenape Tribes). Past and current Indigenous communities have maintained strong oral traditions and cultural practices tied to the ocean and coastal waters in this region. They rely on a number of species that depend on the Canyon for part of their life cycle. In order to strengthen our knowledge of the historical and cultural significance of the Canyon, NOAA is requesting input on Tribal and Indigenous communities' connections to this area.

The Hudson Canyon begins approximately 100 miles southeast of New York City and extends 350 miles seaward, reaching depths of up to two and a half miles and expanding up to seven miles at its widest points. A visual of the Canyon and its adjacent waters, which may be considered for sanctuary designation, can be found at *https://sanctuaries.noaa.gov/hudson-canyon/.* This visual is for reference purposes only during the scoping process; it does not constitute a proposed boundary for sanctuary designation. Instead, NOAA is seeking recommendations for the sanctuary boundary during the public scoping process, and based on this and other formal input, NOAA will release draft sanctuary boundary alternatives for public review and comment should it decide to move forward with the designation process.

Based on the WCS nomination and guided by the purposes and policies of the NMSA, NOAA has identified five overarching goals for the proposed sanctuary designation:

- Support conservation of the area's marine wildlife, habitats, and maritime cultural resources;
- Work closely with Tribal partners to identify and raise awareness of Indigenous connections to the area;
- Highlight and promote sustainable uses of the area;
- Expand ocean science and monitoring in, and education and awareness of the area; and

• Provide a platform for collaborative and diverse partnerships that support effective and inclusive long-term management of the area.

II. Items of Particular Interest During the Public Scoping Process

While the public may comment on all matters viewed as relevant to the potential designation of a national marine sanctuary in the Canyon, NOAA is requesting input on the following specific topics to help guide the scoping process:

• boundary alternatives for the proposed sanctuary that strive to meet the goals identified above;
• the location, nature, and value of natural and cultural resources in the area under consideration;
• specific threats to these resources;
• information on the Indigenous and Tribal heritage of the area;
• the non-regulatory actions NOAA should prioritize within its draft management plan for the proposed sanctuary;
• the regulatory framework most appropriate for management of the proposed sanctuary;
• the benefits to the ''blue economy'' of the region, including promoting sustainable tourism and recreation; and
• a permanent name for the proposed sanctuary.

Comments may be submitted to NOAA by August 8, 2022 using the methods described in **ADDRESSES**. NOAA will host public scoping meetings during the public comment period, as described under **DATES**.

III. Sanctuary Designation Process

The designation process includes the following well-established and highly participatory stages:

1. Public Scoping Process—Information collection and characterization, including the consideration of public comments received during scoping;
2. Preparation of Draft Documents—Preparation and release of draft designation documents, including: a draft environmental impact statement (DEIS), prepared pursuant to NEPA, that identifies boundary and/or regulatory alternatives; a draft management plan; and a notice of proposed rulemaking to define proposed sanctuary regulations. Draft documents would be used to initiate consultations with Federal, State, or local agencies, Tribes, and other interested parties, as appropriate;
3. Public Comment—Through public meetings and in writing, allow for public review and comment on a DEIS, draft management plan, and notice of proposed rulemaking;
4. Preparation of Final Documents—Preparation and release of a final environmental impact statement (FEIS), final management plan, including a response to public comments, and a final rule and regulations.
5. Review Period—The sanctuary designation and regulations would take effect after the end of a review period of forty-five days of a continuous session of Congress. During this same period, should the designation include State waters, the Governor of the State has the opportunity to concurrently review the terms of designation including boundaries within State waters.

IV. Development of a Draft Environmental Impact Statement

In accordance with the NMSA and NEPA, NOAA must draft an environmental impact statement when designating a new national marine sanctuary. The input gathered during the public scoping process is fundamental to NOAA's development of a DEIS.

A. Purpose and Need for Sanctuary Designation

The purpose and need for a sanctuary designation in the Hudson Canyon area is to fulfill the purposes and policies outlined in section 301(b) of the NMSA, 16 U.S.C. 1431(b), including to identify and designate as national marine sanctuaries areas of the marine environment that are of special national significance, provide authority for comprehensive and coordinated conservation and management of these marine areas, and protect the resources of these areas. In particular, a sanctuary designation would:

• Develop coordinated and collaborative marine science, education and outreach, and cultural heritage programs to assist in promoting and managing the area's nationally significant resources;
• Highlight the many diverse human activities, cultural connections and maritime heritage of the area, from the Indigenous communities to existing activities in the area;
• Respond to community interest in conserving the natural environments, wildlife and cultural resources of this area; and
• Provide additional conservation and comprehensive ecosystem-based management to address threats to the area's nationally significant resources.

B. Preliminary Description of Proposed Action and Alternatives

NOAA's proposed action is to consider designating the Hudson Canyon national marine sanctuary in accordance with the sanctuary designation process described in section 304 of the NMSA (16 U.S.C. 1434). Through the public scoping process and as part of the sanctuary designation process, NOAA will develop draft designation documents including a draft sanctuary management plan, proposed sanctuary regulations, and proposed terms of designation. The NEPA process for sanctuary designation will include preparation of a DEIS to consider alternatives and describe potential effects of the sanctuary designation on the human environment. A DEIS will evaluate a reasonable range of action alternatives that could include different options for management plan goals, sanctuary regulations, and potential boundaries. A DEIS will also consider a No Action Alternative, wherein NOAA would not designate a national marine sanctuary.

C. Summary of Expected Impacts of Sanctuary Designation

A DEIS will identify and describe the potential effects of the proposed action and reasonable alternatives on the human environment. Potential impacts may include, but are not limited to, impacts on the area's biological and physical resources, including habitats, plants, birds, sea turtles, marine mammals, and special status species; maritime, cultural, and historical resources; and human uses and socioeconomics of the area, including research, recreation, education, energy production, and fishing. Based on a preliminary evaluation of the resources listed above, NOAA expects potential positive impacts to the environment from enhanced protection of the area's natural, cultural, and historical resources; improved planning and coordination of research, monitoring, and management actions; reduced harmful human activities and disturbance of special status species; reduced threats and stressors to resources; and minimal disturbance during research.

D. Schedule for the Decision-Making Process

NOAA expects to make a DEIS and other draft documents available to the public by spring 2023. NOAA expects to make a FEIS available to the public by spring 2024. A Record of Decision and the final management plan and final rule will be completed no sooner than 30 days after the FEIS is made available to the public, in accordance with 40 CFR 1506.11.

E. NEPA Lead and Cooperating Agency Roles

NOAA is the lead Federal agency for the NEPA process for the proposed action. NOAA may invite other Federal, Tribal, State, and local government agencies to become cooperating agencies in the preparation of the EIS for the proposed action. NEPA regulations specify that a cooperating agency means any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) (40 CFR 1508.1(e)).

F. Anticipated Permits, Authorizations, and Consultations

Federal, state, and local permits, authorizations, or consultations may be required for the proposed action, including consultation or review under section 304(a)(5) of the NMSA, 16 U.S.C. 1434(a)(5), regarding consultation with appropriate Fishery Management Councils, Endangered Species Act, 16 U.S.C. 1531 *et seq.,* Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* National Historic Preservation Act, 54 U.S.C. 300101 *et seq.,* and Executive Order 13175, consistency review under the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.,* and possibly reviews under other laws and regulations determined to be applicable to the proposed action. To the fullest extent possible, NOAA will prepare a DEIS concurrently and integrated with analyses required by other Federal environmental review requirements, and a DEIS will list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposed action. *See* 40 CFR 1502.24.

V. Consultation Under Section 106 of the National Historic Preservation Act and Executive Order 13175

This notice confirms that NOAA will coordinate its responsibilities under section 106 of the National Historic Preservation Act (NHPA) during the sanctuary designation process and is soliciting public and stakeholder input to meet section 106 compliance requirements. The NHPA section 106 consultation process specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(l)(1), historic properties include: ''any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization that meet the National Register criteria.''

This notice also confirms that, with respect to the proposed sanctuary designation process, NOAA will fulfill its responsibilities under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and NOAA's implementing policies and procedures. Executive Order 13175 requires Federal agencies to establish procedures for meaningful consultation and coordination with tribal officials in the development of Federal policies that have Tribal implications. NOAA implements Executive Order 13175 through NOAA Administrative Order 218–8 (Policy on Government-to-Government Consultation with Federally-Recognized Indian Tribes and Alaska Native Corporations), and the NOAA Tribal Consultation Handbook. Under these policies and procedures, NOAA offers affected federally recognized Tribes government-to-government consultation at the earliest practicable time it can reasonably anticipate that a proposed policy or initiative may have Tribal implications.

Authority: 16 U.S.C. 1431 *et seq.;* 42 U.S.C. 4321 *et seq.;* 40 CFR 1500–1508 (NEPA Implementing Regulations); Companion Manual for NOAA Administrative Order 216–6A.

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

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BILLING CODE 3510–NK–P

COMMODITY FUTURES TRADING COMMISSION

Request for Information on Climate-Related Financial Risk

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for information.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is seeking public responses to this Request for Information to better inform its understanding and oversight of climate-related financial risk as pertinent to the derivatives markets and underlying commodities markets. Public responses to this request will help to inform the Commission's next steps in furtherance of its purpose to, among other things, promote responsible innovation, ensure the financial integrity of all transactions subject to the Commodity Exchange Act, and avoid systemic risk. The information received will also inform the Commission's response to the recommendations of the Financial Stability Oversight Council 2021 Report on Climate-Related Financial Risk and inform the ongoing work of the Commission's Climate Risk Unit. The Commission may use this information to inform potential future actions including, but not limited to, issuing new or amended guidance, interpretations, policy statements, regulations, or other potential Commission action within its authority under the Commodity Exchange Act as well as its participation in any domestic or international fora.

DATES: Comments must be received on or before August 8, 2022.

ADDRESSES: You may submit comments, identified by the name of the release, ''Climate-Related Financial Risk RFI'', by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this release and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above. Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission

[1] 17 CFR 145.9.

from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain responses to the Request for Information will be retained in the public comment file and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Abigail S. Knauff, (202) 418–5123, *aknauff@cftc.gov,* Deputy, Climate Risk Unit; Brigitte C. Weyls, (312) 596–0547, *bweyls@cftc.gov,* Assistant Chief Counsel, Division of Market Oversight; Andrew Ruggiero, (202) 379–8919, *aruggiero@cftc.gov,* Attorney Advisor, Market Participants Division; Richard Haynes, (202) 418–5063, *rhaynes@cftc.gov,* Deputy Director, Division of Clearing and Risk; Diana Dietrich, (202) 418–6767, *ddietrich@cftc.gov,* Senior Assistant General Counsel; or Mark Fajfar, (202) 418–6636, *mfajfar@cftc.gov,* Senior Assistant General Counsel, Legal Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Climate-Related Financial Risks

The effects of climate change and the transition to a low-carbon economy present emerging climate-related financial risks, which fall into two broad categories: Physical risks and transition risks.[2] Physical risks generally are characterized by harm caused by acute, climate-related events such as hurricanes, wildfires, floods, and heatwaves; and chronic shifts in precipitation patterns, sea level rise, and ocean acidification.[3] These extreme weather events and natural disasters, especially as they increase in frequency and/or intensity, can damage assets, disrupt operations, and increase costs.[4] Transition risks generally are characterized by stresses to certain financial institutions or sectors that result from shifts in policy, regulations, customer and business preferences, technology, credit or insurance availability, or other market or social forces that can affect business operations.[5]

Climate-related financial risk may directly or indirectly impact Commission registered entities,[6] registrants,[7] and other market participants as well as the derivatives markets and the underlying commodities markets themselves. Effects may include, but are not limited to, heightened market volatility, disruptions of historical price correlations, and challenges to existing risk management assumptions. The Commission is seeking comment on all applicable aspects of its existing regulatory framework and market oversight, as they may be affected by climate-related financial risk.

B. Executive Order 14030

On May, 20, 2021, President Biden signed Executive Order 14030 on Climate-Related Financial Risk (''Executive Order 14030''), which outlines a whole-of-government strategy to mitigating climate-related financial risk. Executive Order 14030 recognizes that the failure of financial institutions to appropriately and adequately account for and measure physical and transition risks threatens the competitiveness of U.S. companies and markets.[8] Executive Order 14030 articulates a policy to advance the disclosure of climate-related financial risk and act to mitigate that risk and its drivers while achieving a net-zero emissions economy by 2050.[9]

Section 3 of Executive Order 14030 directs the FSOC, of which the Chairman of the Commission is a voting member, to consider ''assessing, in a detailed and comprehensive manner, the climate-related financial risk, including both physical and transition risks, to the financial stability of the Federal Government and the stability of the U.S. financial system.'' [10] Executive Order 14030 directs the FSOC to issue a report to the President identifying FSOC members' efforts ''to integrate consideration of financial risk in their policies and programs.'' [11]

C. FSOC Climate-Related Financial Risk Report Recommendations

In response to Executive Order 14030, the FSOC issued the Climate-Related Financial Risk Report in October 2021 with thirty-five recommendations for the FSOC and its member agencies to: (1) Build capacity and expand efforts to address climate-related financial risks; (2) fill climate-related data and methodological gaps; (3) enhance public climate-related disclosures; and (4) assess and mitigate climate-related risks that could threaten the stability of the financial system.[12] A key recommendation is that member

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[2] *E.g.,* Financial Stability Oversight Council (''FSOC''), ''Report on Climate-Related Financial Risk 2021'' (Oct. 21, 2021), available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf* (''FSOC Report''), at 12.

[3] See Financial Stability Board (''FSB''), ''The Implications of Climate Change for Financial Stability (Nov. 2020),'' available at *https://www.fsb.org/2020/11/the-implications-of-climate-change-for-financial-stability/,* at 6 (''Increased physical risks could result in both market and credit risks to the financial system. Market risks—that is, the risk of reductions in the value of financial assets—could result in losses for banks, asset owners, and other financial institutions. Market risks might also emerge due to abrupt increases in risk premia due to uncertainty concerning financial assets' future payoffs. Physical risks can also give rise to credit losses due to reductions in the income—or reductions in the profitability—of borrowers.'').

[4] See FSOC Report at 101–02 (discussing climate change physical-risk implications for financial sector operations; regarding the potential impact of rising sea levels and increased flood risk in the northeastern United States, notes ''the concentration of sector critical infrastructure in the New York City metro area, . . . home to five of the current seven U.S.-based global systemically important banks and five of the current eight FSOC-designated financial market utilities'').

[5] Id. at 12–13. For example, economic measures that raise implicit carbon prices to reduce greenhouse gas (''GHG'') emissions could raise transition risk for suppliers and users of GHG-intensive production processes, products, or services. The FSOC Report notes that ''the financial sector may experience credit and market risks associated with loss of income, defaults and changes in the values of assets, liquidity risks associated with changing demand for liquidity, operational risks associated with disruptions to infrastructure or other channels, or legal risks.'' Id. at 13–14.

[6] As relevant here, a ''Registered Entity'' as defined in the Commodity Exchange Act (''CEA'') includes designated contract market (''DCM''); derivatives clearing organization (''DCO''); swap execution facility (''SEF''); and swap data repository (''SDR''). CEA sec. 1a(40), 7 U.S.C. 1a(40).

[7] ''Registrant'' means a commodity pool operator (''CPO''); commodity trading advisor (''CTA''); futures commission merchant (''FCM''); introducing broker (''IB''); leverage transaction merchant; floor broker; floor trader; major swap participant (''MSP''); retail foreign exchange dealer; or swap dealer (''SD'') that is subject to the Commission's regulations; or an associated person of any of the foregoing other than an associated person of a SD or MSP. 17 CFR 1.3 (2021).

[8] FSOC Report at section 1.

[9] E.O. 14030, 87 FR 27967 (May 20, 2021) (Climate-Related Financial Risk), at *https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk;* see also E.O. 14008, 86 FR 7619 (January 27, 2021) (Tackling the Climate Crisis at Home and Abroad), at *https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad;* E.O. 13990, 86 FR 7037 (January 20, 2021) (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis), at *https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis.*

[10] Executive Order 14030, 87 FR 27968.

[11] Id. More specifically, Executive Order 14030 directs the FSOC Report to include a discussion of: (A) The necessity of any actions to enhance climate-related disclosures by regulated entities to mitigate climate-related financial risk to the financial system or assets and a recommended implementation plan for taking those actions; (B) any current approaches to incorporating the consideration of climate-related financial risk into their respective regulatory and supervisory activities and any impediments they faced in adopting those approaches; (C) recommended processes to identify climate-related financial risk to the financial stability of the United States; and (D) any other recommendations on how identified climate-related financial risk can be mitigated, including through new or revised regulatory standards as appropriate.

[12] FSOC Report at 5–9.

agencies, consistent with their legal authority, ''expand their respective capacities to define, identify, measure, monitor, assess, and report on climate-related financial risks and their effects on financial stability.'' [13] The Commission is seeking information and feedback on how, consistent with its statutory authority, it may responsibly act on the FSOC Report's recommendations. The Commission is also seeking information to better inform any actions it may undertake in the future to address climate-related financial risk.

D. Commodity Exchange Act and Commission Regulations

The derivatives markets that the Commission oversees pursuant to the CEA are ''affected with a national public interest'' because they facilitate risk management and price discovery ''through trading in liquid, fair and financially secure trading facilities.'' [14] The purpose of the CEA is to serve this public interest through ''a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission.'' [15] The Commission's purpose also includes deterring disruptions to market integrity, ensuring the financial integrity of transactions, avoiding systemic risk, and promoting responsible innovation and fair competition.[16] In its oversight of these derivatives markets, the Commission establishes appropriate tolerances and guardrails to minimize market disruptions and promote a level playing field.

The Commission's regulations apply to various derivatives market participants, including, but not limited to, DCMs,[17] SEFs,[18] SDRs,[19] DCOs,[20] FCMs,[21] IBs,[22] SDs,[23] MSPs,[24] CPOs,[25] and CTAs.[26] The Commission is seeking comment to consider how climate-related financial risk may affect any of its registered entities, registrants, or other market participants, and the soundness of the derivatives markets. This includes assessing how registrants and registered entities may need to adapt their risk management frameworks—including, but not limited to, margin models, scenario analysis, stress-testing, collateral haircuts, portfolio management strategies, counterparty and third-party service provider risk assessments, and enterprise risk management programs—as well as how market participants may need to adapt their dealing, trading, and advisory businesses in the derivatives markets. The Commission is also seeking comment to understand how market participants use the derivative markets to hedge and speculate on various aspects of physical and transition risk, as they exist today and as they may evolve in the future.[27] The Commission aims to consider how it may need to adapt its oversight of the derivatives markets, including any new or amended derivative products created to hedge climate-related financial risk.

The Commission is considering climate-related financial risk through various workstreams in addition to its FSOC participation. Commission staff members participate on the FSOC's Climate-Related Financial Risk Committee, including its scenario analysis and risk assessment working groups. Commission staff members also participate on Treasury's Financial Literacy and Education Commission Study on Climate Change and the Financial Resilience of American Households and Communities. Chairman Rostin Behnam serves as co-chair of the Carbon Markets Workstream within the International Organization of Securities Commissions' Sustainable Finance Task Force.[28] Agency participation in these initiatives is largely staffed from the Commission's Climate Risk Unit, an interdivisional staff group led by the Office of the Chairman that was formed ''to focus on the role of derivatives in understanding, pricing, and mitigating climate-related risk, and supporting the orderly transition to a low-carbon economy through market-based initiatives.'' [29]

II. Request for Information

The Commission is seeking public feedback on all aspects of climate-related financial risk as it may pertain to the derivatives markets, underlying commodities markets, registered entities, registrants, and other related market participants. In addition to any general input, the Commission is interested in responses to the questions posed below. The Commission may use this information to inform potential future actions including, but not limited to, the issuance of new or amended guidance, interpretations, policy statements, or regulations, or other potential Commission action. The Commission welcomes any relevant comments, including on related topics that may not be specifically mentioned but that a commenter believes should be considered.

Data

1. What types of data would help the Commission evaluate the climate-related financial risk exposures of registered entities, registrants, and other participants in the derivative markets that the Commission oversees? Are there data sources that registered entities, registrants, and/or other market participants currently use to understand and/or assess climate-related financial risk? What steps should the Commission consider in order to have better access to consistent and reliable data to assess climate-related financial risks?

2. Would it help the Commission, registered entities, registrants, market participants and/or the public to understand and/or to manage climate-related financial risk if Commission reporting requirements included information about climate-related aspects of listed derivatives products, reported transactions, and/or open positions? Are there data standards or definitions that the Commission should consider incorporating into any such reporting?

3. What steps should the Commission consider to better inform the public of its efforts to assess and address climate-

[13] Id. at 5 (Recommendation 1.3).

[14] CEA sec. 3(a), 7 U.S.C. 5(a).

[15] CEA sec. 3(b), 7 U.S.C. 5(b).

[16] Id.

[17] CEA sec. 5, 7 U.S.C. 7; 17 CFR part 38.

[18] CEA secs. 1a(50), 5h, 7 U.S.C. 1a(50), 7b–3; 17 CFR part 37.

[19] CEA secs. 1a(48), 21, 7 U.S.C. 1a(48), 24a; 17 CFR part 49.

[20] CEA secs. 1a(15), 5b, 7 U.S.C. 1a(15), 7a–1; 17 CFR part 39.

[21] CEA secs. 1a(28), 4f, 7 U.S.C. 1a(28), 6f; 17 CFR 3.10.

[22] CEA secs. 1a(31); 17 CFR part 1.

[23] CEA secs. 1a(49), 4s, 7 U.S.C. 1a(49), 6s; 17 CFR 3.10, part 23.

[24] CEA secs. 1a(33), 4s, 7 U.S.C. 1a(33), 6s; 17 CFR 3.10, part 23.

[25] CEA secs. 1a(11), 4k, 7 U.S.C. 1a(11), 6k; 17 CFR 3.10, part 4.

[26] CEA secs. 1a(12), 4k, 7 U.S.C. 1a(12), 6k; 17 CFR 3.10, part 4.

[27] See Rostin Behnam, Chairman, CFTC, Keynote Address at the FIA Boca 2022 International Futures Industry Conference, Boca Raton, Florida (Mar. 16, 2022), at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam21.*

[28] Press Release, International Organization of Securities Commissions, IOSCO's 2022 Sustainable Finance work plan strengthens the organization's commitment to increasing transparency and mitigating greenwashing (Mar. 14, 2022), at *https://www.iosco.org/news/pdf/IOSCONEWS635.pdf.*

[29] Rostin Behnam, Chairman, CFTC, State of the CFTC, Testimony Before the H. Comm. on Agric, 117 Cong. (Mar. 31, 2022), at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam22;* see also Press Release Number 8368–21, CFTC, ''CFTC Acting Chairman Behnam Creates New Climate Risk Unit'' (Mar. 17, 2021), at *https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.*

related financial risks? What information could the Commission publish that would be useful in this regard? What steps should the Commission consider to make climate-related data more available to registrants, registered entities, other market participants, and/or the public (as appropriate and subject to any applicable data confidentiality requirements) in order to help understand and/or manage climate-related financial risk?

Scenario Analysis and Stress Testing

4. Are there any climate forecasts, scenarios, or other data tools that would be useful to the Commission, registered entities, and/or registrants to better understand the exposure of any registered entities or registrants to climate-related financial risk and how those risks translate to economic and financial impacts?

5. Are there any common scenarios, in addition to the scenarios developed by the Network for Greening the Financial System [30] and/or the Financial Stability Board,[31] that the Commission should consider incorporating into its oversight, and/or consider for registered entities and/or registrants?

6. Is a long-term (*e.g.,* 30-year or 50-year) stress testing scenario relevant for derivatives markets subject to CFTC oversight? Is there a more relevant set of forward-looking climate relevant scenarios? Should these scenarios account for geographical stress? Should these scenarios try to target certain asset types? Can scenarios be customized to be more relevant for certain types of derivatives markets or registered entities?

7. Should registered entities and registrants be required to incorporate climate stress tests into their risk management processes? Do registered entities and registrants have the capability currently to conduct climate-related stress tests? If not, what would be needed in order to achieve this capability and on what timeline?

Risk Management

8. How might registered entities and/or registrants need to adapt their risk management frameworks—including, but not limited to, margin models, scenario analysis, stress-testing, collateral haircuts, portfolio management strategies, counterparty and third-party service provider risk assessments, and/or enterprise risk management programs—to address climate-related financial risk?

9. Are there ways in which the Commission's existing regulations and/or guidance could better address climate-related financial risk, including credit risks, market risks, counterparty risks, and other financial and operational risks? Are there ways in which the Commission's regulations and/or guidance relating to risk management, system safeguards, business continuity, governance, recordkeeping, and/or internal audit could better address such risk?

10. Could the Commission's existing regulations and guidance better clarify expectations regarding management of climate risks, taking into account a registered entity's or registrant's size, complexity, risk profile, and existing enterprise risk management processes? Would it be helpful for the Commission to promulgate regulations or issue guidance for registrants and/or registered entities regarding the implementation of policies and procedures to measure, track, and account for physical and transition risk?

11. DCOs' risk management frameworks focus on market risk aspects with add-ons for liquidity, concentration, wrong way risk, settlement risk as well other asset class appropriate risks. Should these risk management frameworks directly incorporate climate-related risk specific to clearing member firms, or their clients' climate-related risks, and, if so, how?

12. Should the Commission consider amending its minimum capital and liquidity requirements to better recognize climate-related risks?

Disclosure

13. The Commission staff is evaluating the Commission's public disclosure, including public information, requirements to assess whether existing requirements need to be updated to effectively provide decision-useful, consistent, and comparable information on climate-related risks. Are there ways in which updated disclosure requirements could aid market participants in better assessing climate-related risks?

14. A goal of climate-related financial disclosure is to offer meaningful information about climate-related financial risks, and to foster increased transparency into those risks. In connection with any assessment of whether updated requirements are needed, what specific disclosures, building on the Task Force on Climate-Related Financial Disclosures' (''TCFD'') four core elements of governance, strategy, risk management, and metrics and targets,[32] would be most helpful for the Commission to consider?

15. Should the Commission, consistent with its statutory mandate and regulatory authority, consider the establishment by registrant category (*e.g.,* CPOs, CTAs, FCMs, IBs, and SDs) of climate-related risk disclosure requirements based on the TCFD's four core elements?

16. Are there any standardized data formats, such as structured data, that the Commission should consider for public climate-related data disclosures? Would the use of complementary protocols, where applicable, be helpful for comparability across other regulatory agencies?

17. FSOC Report Recommendation 3.4 [33] suggests that FSOC members issuing requirements for climate-related disclosures consider whether such disclosures should include GHG emissions, as appropriate and practicable, to help determine exposure to material climate-related financial risks. Should registered entities and registrants be required to disclose information relating to GHG emissions?

Product Innovation

18. What derivatives products are currently used to manage climate-related financial risk, facilitate price discovery for climate-related financial risk, and/or allocate capital to climate-benefiting projects? Please explain how these products are used, negotiated, and traded. What, if any, conditions, including market practices and/or regulatory requirements, may constrain or promote their expanded use or development to address climate-related financial risk? Are there ways in which Commission regulations or guidance could better address particular considerations relating to the listing of these types of products for trading?

19. Are there customer protections or other guardrails that the Commission could consider to promote market integrity in climate-related derivatives products?

20. Are there any potential innovations in climate-risk-related technology that could shape derivatives product innovation or are otherwise likely to impact the derivatives markets overseen by the Commission?

[30] Network for Greening the Financial System, ''NGFS Climate Scenarios for Central Banks and Supervisors'' (June 2020), available at *https://www.ngfs.net/sites/default/files/medias/documents/820184_ngfs_scenarios_final_version_v6.pdf.*

[31] See generally Financial Stability Board, ''Supervisory and Regulatory Approaches to Climate-Related Risks Interim Report'' (Apr. 29, 2022), *https://www.fsb.org/wp-content/uploads/P290422.pdf.*

[32] Task Force on Climate-Related Financial Disclosures, *https://www.fsb-tcfd.org/* (last visited May 13, 2022).

[33] FSOC Report at 7.

21. Are the pricing and terms of climate-related derivatives products affected by or related to the pricing and terms of other products? Are climate-related derivatives products effective hedges for a portion of the risks related to transactions in commodities other than the commodities underlying the derivative products? Are there any climate-risk factors that will specifically affect derivatives products and their respective underlying commodities that should be addressed within the Commission's regulations, guidance, or oversight of these markets?

Voluntary Carbon Markets

22. Are there way in which the Commission could enhance the integrity of voluntary carbon markets and foster transparency, fairness, and liquidity in those markets?

23. Are there aspects of the voluntary carbon markets that are susceptible to fraud and manipulation and/or merit enhanced Commission oversight?

24. Should the Commission consider creating some form of registration framework for any market participants within the voluntary carbon markets to enhance the integrity of the voluntary carbon markets? If so, what would a registration framework entail?

Digital Assets

25. Are digital asset markets creating climate-related financial risk for CFTC registrants, registered entities, other derivatives market participants, or derivatives markets? Are there any aspects of climate-related financial risk related to digital assets that the Commission should address within its statutory authority? Do digital assets and/or distributed ledger technology offer climate-related financial risk mitigating benefits?

Financially Vulnerable Communities

26. Consistent with the CFTC's statutory mandate and regulatory authority, what factors are important, when the Commission analyzes climate-related financial risks, to better understand the impacts on households and communities?

27. Consistent with the CFTC's statutory mandate and regulatory authority, are there any climate-related financial impacts or potential policy solutions addressed to climate-related financial impact that the Commission should consider as it pertains to financially vulnerable populations in particular? Are there any steps that the Commission should consider when assessing how the impact of climate change on the derivatives markets and/or underlying commodities markets, or proposed policy solutions to address such impact, may affect financially vulnerable populations?

Public-Private Partnerships/Engagement

28. What mechanism(s), if any, would be useful for the Commission to employ to foster public-private partnerships to address climate-related financial risk within the derivatives markets?

29. Are there experts with whom it would be useful for Commission staff to collaborate to identify climate forecasts, scenarios, and other tools necessary to better understand the exposure of registered entities and registrants to climate-related financial risks and how those risks translate into economic and financial impacts?

30. What specific literature and research should the Commission review and consult related to climate risks as applicable to the derivative markets, underlying commodities markets, registrants, registered entities, or other derivatives market participants?

31. During the IBOR transition, the Alternative Reference Rate Committee was formed, in part, to identify best practices for robustness of inter-bank offered rates. Would the formation of a similar standard-setting committee be useful in the development of climate-related indices designed for mitigation of the long-term risks of climate change, such as temperature and sea level rise or carbon concentration within the atmosphere, or the development of other standards or best practices?

32. Assuming a standard setting committee or other body could generate information to improve the hedging utility of long-dated climate risk derivative products, what sort of impact might that have on liquidity in those products, what benefits might be realized by market participants, and could one expect a material improvement in price discovery for long-term climate risk, in general?

Capacity and Coordination

33. What steps should the Commission consider in order to expand its capacity to define, identify, measure, monitor, assess, and report on climate-related financial risks and their effects on financial stability? For example, what factors should the Commission consider when it looks to prioritize staffing, training and expertise on climate-related issues? Which analytic, data modeling, and monitoring methodologies would be helpful to the Commission in this regard?

34. How should the Commission coordinate its efforts with international groups and other regulatory bodies and supervisors? Are there standards, definitions, or metrics that could facilitate the sharing of relevant climate-related information amongst regulatory bodies and supervisors, and/or their analyses and aggregation of climate-related data? Are there specific steps that could be taken to enhance global coordination and regulatory comity?

Issued in Washington, DC, on June 2, 2022, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

Appendices To Request for Information on Climate-Related Financial Risk—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson and Goldsmith Romero voted in the affirmative. Commissioners Mersinger and Pham concurred. No Commissioner noted in the negative.

Appendix 2—Statement of Support of Commissioner Kristin N. Johnson

According to data gathered by the National Oceanic and Atmospheric Administration's (NOAA's) National Centers for Environmental Information, since 1980, the United States has sustained more than three hundred weather and climate disasters, including droughts, floods, severe storms, cyclones, wildfires, and winter storm events that, in the aggregate, led to costs or damage exceeding more than $1 billion.[1] Notwithstanding our long history of navigating severe-weather related events, the increasing frequency, severity, and intensity as well as the rising costs of these events raise important questions and remarkable concerns.

In May of 2021, President Biden issued an Executive Order on Climate-Related Financial Risk[2] directing the Secretary of the Treasury to engage with Financial Stability Oversight Council (FSOC) members to consider issuing a report on member agencies' efforts to consider climate-related financial risk. In response to the Executive Order, the FSOC issued the *Report on Climate-Related Financial Risk* (Report).[3] The Report contains thirty-five recommendations aimed to:

(1) Build capacity and expand efforts to address climate-related financial risks;

(2) Fill climate-related data and methodological gaps;

(3) Enhance public climate-related disclosures; and

[1] NOAA, ''Billion-Dollar Weather and Climate Disasters: Overview,'' available at *https://www.ncdc.noaa.gov/billions/.*

[2] Executive Order 14030 of May 20, 2021, Climate-Related Financial Risk, 86 FR 27967 (May 25, 2021).

[3] Financial Stability Oversight Council, ''Report on Climate-Related Financial Risk 2021'' (Oct. 21, 2021), available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.*

(4) Assess and mitigate climate-related risks that could threaten the stability of the financial system.

Today's Request for Information on Climate-Related Financial Risk (RFI) reflects the CFTC's established leadership in response to requests to better understand the role of voluntary carbon markets as well as the agency's commitment to ensuring a comprehensive effort to understand how our markets, market participants, including large and small agricultural and energy sector commercial and end users may be impacted by physical risks or acute climate-related events and transition risks or the stresses that result from shifts in policies, regulations, customer preferences, and technology. Consistent with the CFTC's mandate to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation, the RFI seeks comments on how climate-related financial risk may affect ''registered entities, registrants, or other market participants, and the soundness of the derivatives markets,'' including an assessment of ''how registrants and registered entities may need to adapt their risk management frameworks—including, but not limited to, margin models, scenario analysis, stress-testing, collateral haircuts, portfolio management strategies, counterparty and third-party service provider risk assessments, and enterprise risk management programs—as well as how market participants may need to adapt their dealing, trading, and advisory businesses in the derivatives markets.''

These inquiries are well within the ambit of the CFTC's statutory authority and continue a long-established tradition of engaging in thoughtful dialogue with our market participants and diverse stakeholders in order to understand their concerns related to emerging and evolving risk management oversight. Among many complimentary and comprehensive efforts, careful evaluation of carbon markets may reveal a useful path for mitigating climate-related financial risk. This RFI is an important step toward learning from our market participants how these markets may help them to hedge and efficiently manage existing and evolving climate-related risk. Consequently, I support the Commission's RFI on Climate-Related Financial Risk and I look forward to the public responses.

Appendix 3—Statement of Support of Commissioner Christy Goldsmith Romero

As expressed in President Biden's Executive Order on Climate-Related Financial Risk, a whole-of-government approach will lead to greater understanding of the financial risks that climate change poses, and to the development of effective strategies to mitigate those risks. The CFTC should be at the forefront of financial regulatory efforts to understand, and identify actions to mitigate, climate-related financial risks that impact CFTC-regulated markets. This Request for Information reflects the Financial Stability Oversight Council's recommendations for U.S. financial regulators, seeks climate-related data, and asks questions about the appropriate role of the CFTC in this emerging space.[1]

I support the Commission's Request for Information because it seeks public input on both physical risks and transition risks related to climate issues that impact our markets. First, the Commission can benefit significantly in understanding physical climate risk directly from those in our markets who bear the risk. Second, the United States has an opportunity to be a leader in emerging voluntary carbon/sustainability markets, and public input can help realize that opportunity.

As a market regulator, the CFTC's mission is to promote the resilience, vibrancy and integrity of our derivatives markets. Commodities markets have been impacted by significant climate disasters such as wildfires, hurricanes, flooding, and other disaster events that have caused devastating financial losses to farmers, ranchers, and producers—losses that impact our derivatives markets. In determining how to promote the resilience and vibrancy of these markets, it is appropriate for the Commission to seek data and input on climate-related physical risk from those in our markets who bear the brunt of that risk as well as the public. The Commission should be thoughtful and deliberate in any future action, and consider potential consequences on farmers, ranchers, and producers.

Additionally, the Commission's role extends to promoting responsible innovation, which includes the evolution of climate/sustainability products in our markets. There is a growing global market demand for derivatives products that could serve as a hedge against both physical risks of climate change as well as transition risks as companies move toward a net zero environment. With a growing number of companies making net zero pledges, there is notable interest in carbon offset or sustainability products. However, concerns about transparency, credibility, and greenwashing may hamper the integrity and growth of these markets. I look forward to public input on whether there are customer protections, guardrails or standards that the Commission should consider as part of its mission to promote market integrity and transparency and to keep our markets free of fraud and manipulation. The Commission has a critical role to play to ensure that our markets remain the strongest and safest in the world.

Appendix 4—Concurring Statement of Commissioner Summer K. Mersinger

For the purpose of engaging the public through this Request for Information (''RFI''), I concur because I will always support efforts to engage market participants, industry, and the general public in the policy-making process at the Commodity Futures Trading Commission (''CFTC'' or ''Commission''). While other agencies may take liberties with process in order to impose a ''government-knows-best'' approach, traditionally, the CFTC has not been that agency.

However, I do not want my concurrence to be mistaken for support of the substance of this RFI or all the questions being asked. I have strong concerns with the discussion and several of the questions included in the RFI that extend beyond the scope of our statutory jurisdiction. Asking these questions causes confusion as to the role that Congress has tasked the CFTC to perform in our governing statute, the Commodity Exchange Act (''CEA''). Clarity about our statutory jurisdiction is foundational to our ability to successfully achieve the mission that Congress has set for the CFTC in the CEA.

Reading the RFI, I was struck by the lack of concern or interest in legacy agriculture contracts and futures markets. Growing up, I watched drought, flooding, and violent weather destroy our livelihood in a matter of hours. I remember many mornings riding in my Dad's truck, surveying what was left of our corn fields after a hail storm, or seeing the burnt spikes of the wheat that turned too soon because of extreme heat and lack of rain. The financial risk of climate and extreme weather is and has always been real, and our farmers and ranchers have been using legacy agriculture contracts and the futures markets to hedge those risks since the inception of those markets.

With this in mind, where are the questions in this RFI about financial risk due to climate change on our legacy agriculture contracts and futures markets? What is not asked in this RFI is just as important as what is asked. Not one question focuses on the agricultural sector. Is this an unintentional oversight or a strategic decision to cut agriculture from this conversation? Unfortunately, the RFI gives no reason for leaving agriculture out of the discussion when our agency's roots and history are embedded in the agriculture community.

With respect to what is asked in the RFI, information is only useful if it can further our efforts to achieve our mission, which is why I find it concerning that we are requesting information that we cannot use and not asking questions on well-functioning markets where climate risk is already hedged. I can only conclude that the RFI reflects either inadvertent ''mission creep'' at best, or a power grab to expand the CFTC's authority at worst.

Specific instances in which the RFI extends beyond the CFTC's jurisdictional boundaries under the CEA include, but are not limited to, the following:

- The first sentence of Section II (which sets out the requests for information) states that the Commission ''is seeking public feedback on all aspects of climate-related financial risk as it may pertain to the derivatives markets, *underlying commodities markets,* registered entities, registrants, and other related market participants.'' [1] Let me be crystal clear: The CFTC does not regulate commodities markets. The CEA provides the CFTC with statutory authority to regulate only derivatives markets, not commodities markets. Requesting feedback on all aspects of climate-related financial risk as it may pertain to underlying commodities markets

[1] Financial Stability Oversight Council, ''Report on Climate-Related Financial Risk 2021'' (Oct. 21, 2021), available at *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.*

[1] All italics in quotations from the RFI are added, unless otherwise noted.

covers a huge expanse of territory that is far outside the CFTC's statutory authority over derivatives markets under the CEA.

• Request no. 3 asks what steps the Commission should consider, in addition to publishing information in its possession, ''*to make climate-related data more available to* registrants, registered entities, other market participants, and/or the public (as appropriate and subject to any applicable data confidentiality requirements) in order to help understand and/or manage climate-related financial risk?'' This suggests that the CFTC has statutory authority under the CEA to order, as it deems appropriate, any individual or entity to make data available for the benefit of registrants, registered entities, other market participants, and/or the public. It does not.

• Request no. 18 asks what derivatives products ''are currently used to manage climate-related financial risk, facilitate price discovery for climate-related financial risk, *and/or allocate capital to climate-benefiting projects?*'' In Section 3(a) of the CEA, Congress found that the derivatives transactions regulated by the CFTC provide ''a means for managing and assuming price risks [and] discovering prices . . .'' In Section 3(b) of the CEA, Congress then identified the CEA's purposes as including deterring and preventing manipulation or other market disruptions; ensuring the financial integrity of transactions; avoiding systemic risk; protecting market participants from fraud, abusive sales practices, and misuses of customer assets; and promoting responsible innovation and fair competition.[2] Nowhere in the CEA did Congress suggest that it is a purpose of the CEA, or the mission of the CFTC, to allocate capital—whether to climate-benefiting projects or otherwise.

• Request no. 24 asks whether the Commission should consider ''creating some form of *registration framework* for any market participants within the *voluntary carbon markets* to enhance the integrity of the voluntary carbon markets?'' The CFTC does not have statutory authority under the CEA to create a registration framework for market participants within voluntary carbon markets unless they engage in activities relating to derivatives.

• Request no. 25 asks whether ''*digital assets and/or distributed ledger technology* offer climate-related financial risk mitigating benefits?'' The CFTC does not have statutory authority under the CEA to regulate digital assets or distributed ledger technology except to the extent they involve derivatives.

• Request no. 27 asks whether there are ''any steps that the Commission should consider when assessing how the impact of climate change on the derivatives markets *and/or underlying commodities markets,* or proposed policy solutions to address such impact, may affect financially vulnerable populations?'' The CFTC does not have authority under the CEA to take any regulatory steps with respect to underlying commodities markets, regardless of whether they affect financially vulnerable populations.

• Request no. 30 asks what literature and research the Commission should consult ''related to climate risks as applicable to the derivatives markets, *underlying commodities markets,* registrants, registered entities, or other derivatives market participants?'' As noted above, Congress has not provided the CFTC with regulatory authority in the CEA with respect to climate risks applicable to underlying commodities markets.

I have no opposition to requesting the information we need to consider the implications of climate-related financial risk in fulfilling our mission under the CEA. But I am concerned that requesting information on matters over which the CFTC has no statutory authority and ignoring opportunities to ask questions of market participants already using our markets to hedge their climate exposure will not further the purported goal of this RFI.

Appendix 5—Concurring Statement of Commissioner Caroline D. Pham

I respectfully concur with the publication of the Request for Information (RFI) on Climate-Related Financial Risk in the **Federal Register** because it is imperative that the public has an opportunity to provide input and share expertise.

In our work in this area, however, we must be mindful of our statutory mandate: oversight of the commodity derivatives markets.[1] In particular, as the RFI recognizes, our markets are ''affected with a national public interest'' because they facilitate risk management and price discovery ''through trading in liquid, fair and financially secure trading facilities.''[2] Further, as the RFI also recognizes, the Commodity Exchange Act mandates that the Commission serve this public interest through our oversight of ''a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals,'' and by deterring and preventing price manipulation and other disruptions to market integrity, ensuring the financial integrity of transactions in our markets, avoiding systemic risk, protecting market participants from ''fraudulent or other abusive sales practices and misuses of customer assets,'' and promoting ''responsible innovation and fair competition.''[3] This statutory mandate bears repeating because it makes clear that the Commission is a market regulator over our markets and products, market infrastructure, market integrity, market conduct, market participants, and market professionals.

We are not, for instance, a prudential banking regulator like the Fed, OCC, or FDIC, nor are we a primarily disclosures-based market regulator like the SEC. Keeping our focus on our markets, products, and purpose—keeping our eyes on the ball—will help us avoid the risk of diluting our limited resources and potentially straying from our core expertise and responsibilities into areas already tasked to others.

As we do our work on climate-related financial risks within our statutory authority—such as by fostering the development of new products and markets to manage physical risk and transition risk—we also should be thoughtful when considering the steps we take. Any actions that may impose new obligations and costs on our market participants, especially end-users that rely upon our markets for hedging, must be balanced and carefully considered.

For registrants that have other regulators and are already subject to climate risk management frameworks, we should seek to harmonize from the start with existing prudential and other regulatory regimes in order to be efficient and avoid imposing duplicative or unnecessarily burdensome and complex requirements.

And most importantly, I caution that for any potential future Commission action, we must take care to consider the impact on small entities and evaluate alternatives that would accomplish the objectives of any potential rule without unduly burdening the substantial numbers of growers, producers, and other end-users who depend on our markets for risk management and price discovery.[4] That is, after all, the original purpose of our markets and the Commission.

[FR Doc. 2022–12302 Filed 6–7–22; 8:45 am]

BILLING CODE 6351–01–P

[2] CEA sections 3(a), 3(b), 7 U.S.C. 5(a), 5(b).

[1] Commodity Exchange Act (''CEA'') section 2(a)(1)(A), 7 U.S.C. 2(a)(1)(A).

[2] CEA section 3(a), 7 U.S.C. 5(a).

[3] CEA section 3(b), 7 U.S.C. 5(b).

[4] *See* Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, 110 Stat. 857 (codified at 5 U.S.C. 601 *et seq.*).

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0058]

Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (Commission or CPSC) requests comments on a proposed extension of approval of a collection of information relating to testing and recordkeeping requirements in the Safety Standard for Walk-Behind Power Lawn Mowers, approved previously under OMB Control No. 3041–0091. CPSC will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by August 8, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0058, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *couscous;cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2012–0058, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Walk-Behind Power Lawn Mowers.

OMB Number: 3041–0091.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of walk-behind power lawn mowers.

Estimated Number of Respondents: Approximately 29 manufacturers and importers of walk-behind power lawn mowers.

Estimated Time per Response: Walk-behind power lawn mowers are manufactured seasonally to meet demand. They are manufactured during an estimated 130 days out of the year. When they are manufactured, firms are required to test and maintain records of those tests. Staff estimates three hours daily for testing and recordkeeping per firm totaling 390 hours per firm (3 hours × 130 days). In addition, to produce labels and apply labels on the newly manufactured lawn mowers, staff estimates one hour daily for each firm during the production cycle for a total of 130 hours per firm (1 hour × 130 days).

Total Estimated Annual Burden: Staff estimates 11,310 hours on testing and recordkeeping (29 firms × 390 hours) and 3,770 hours for labeling (29 firms × 130 hours). Aggregate annual burden hours related to testing, recordkeeping, and labeling are estimated to be 520 hours (390 + 130) per firm and 15,080 hours (11,310 + 3,770) for the industry. Annual testing, reporting and recordkeeping costs burden is estimated to be $796,224 based on 11,310 hours × $70.40 (total compensation for management, professional, and related workers in goods-producing industries) and annual cost burden related to labeling is estimated to be $132,628.60 based on 3,770 hours × $35.18 (total compensation for all sales and office workers in goods-producing industries).[1] Aggregate annual burden costs related to testing, recordkeeping, and labeling are estimated to be $928,852.60 ($796,224 + $132,628.60) for the industry.

General Description of Collection: In 1979, the Commission issued the Safety Standard for Walk-Behind Power Lawn Mowers (16 CFR part 1205) to address blade contact injuries. Subpart B of the standard sets forth regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for walk-behind power lawn mowers. 16 CFR part 1205, subpart B.

In addition, section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program. The information collection is necessary because these regulations require manufacturers and importers to establish and maintain records to demonstrate compliance with the requirements for testing and labeling to support the certification of compliance.

[1] U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' December 2021, Table 4. Private industry workers by occupational and industry group—2021 Q04 Results (*bls.gov*).

Request for Comments

The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–12323 Filed 6–7–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for Bremerton Waterfront Infrastructure Improvements, Bremerton, Kitsap County, WA, and To Announce a Virtual Public Scoping Meeting

AGENCY: Department of the Navy (DON), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations, the Department of the Navy (DON) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental impacts associated with construction, modification, replacement, demolition,

and operation of multiple waterfront infrastructure and facilities at the Puget Sound Naval Shipyard and Intermediate Maintenance Facility (PSNS & IMF) at Naval Base (NAVBASE) Kitsap Bremerton, Washington. The DON is initiating a 30-day public scoping period to receive comments on the scope of the EIS including identification of potential alternatives, information, and analyses relevant to the Proposed Action, identification of environmental concerns, issues the public would like to see addressed in the EIS, and the project's potential to affect historic properties pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966.

DATES: The public 30-day scoping period begins on June 8, 2022, and extends to July 11, 2022. Comments must be postmarked or submitted electronically via email or the website no later than 11:59 p.m. Pacific Daylight Time (PDT) on July 11, 2022, for consideration in the Draft EIS.

The DON will hold a virtual public scoping meeting, consisting of presentations and a question-and-answer session. The meeting will be held on June 23, 2022, 5:30 p.m. to 6:30 p.m. PDT. Information about how to participate in the meeting, including how to submit questions to be discussed at the meeting, is available at the DON project website address below. The DON will also publish participation details for the virtual public scoping meeting in local newspapers and in press releases.

ADDRESSES: The DON invites all interested parties to submit scoping comments on the Bremerton Waterfront Infrastructure Improvements EIS to the physical and electronic addresses listed in the section below. Please visit the project website at *www.BremertonWaterfront ImprovementsEIS.com* for further information.

Comments may be received:

- *electronically via email: info@ BremertonWaterfront ImprovementsEIS.com;*
- electronically via the project website: *www.BremertonWaterfront ImprovementsEIS.com;* or
- *by mail, postmarked no later than July 11, 2022, to the following address:* Naval Facilities Engineering Systems Command Northwest, Attn: Bremerton EIS Project Manager, 1101 Tautog Circle, Room 210, Silverdale, WA 98315.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Systems Command Northwest, Attn: Ms. Christine Stevenson, Bremerton EIS Project Manager, 1101 Tautog Circle, Room 210, Silverdale, WA 98315, *info@ BremertonWaterfront ImprovementsEIS.com,* 360–396–0080.

SUPPLEMENTARY INFORMATION: The purpose of the Proposed Action is to address critical deficiencies in dry dock capability, capacity, and seismic survivability at NAVBASE Kitsap Bremerton to enable PSNS & IMF to meet its mission to support the DON's nuclear fleet. The Proposed Action is needed because PSNS & IMF does not have the dry dock capability to support the DON's newest class of nuclear-powered aircraft carrier (CVN), USS Gerald R. Ford (CVN 78); PSNS & IMF does not have the dry dock and pier capacity to conduct the required future overhauling, refueling, inactivating, and recycling of submarines; and Dry Dock (DD) 6, the only dry dock on the West Coast that can accommodate a CVN, and other existing infrastructure do not meet current Department of Defense Unified Facilities Criteria design standards for seismic performance.

The Proposed Action will address critical deficiencies in dry dock capability, capacity, and seismic survivability at NAVBASE Kitsap Bremerton to enable PSNS & IMF to meet its mission to support the DON's nuclear fleet. The DON considers an EIS the appropriate document for comprehensively analyzing the Proposed Action, which will affect existing facilities and construct new infrastructure and facilities at PSNS & IMF.

The Proposed Action would occur along the PSNS & IMF waterfront, beginning as early as 2026. Components include: construction of a new multi-mission dry dock (M2D2) at PSNS & IMF that can accommodate all classes of CVNs along the PSNS & IMF waterfront; seismic upgrade of existing DD6; and modification, demolition, and/or replacement of other piers, wharves, quay walls, buildings, cranes, and utilities. Although the majority of the Proposed Action is expected to occur at NAVBASE Kitsap Bremerton, the DON could replace some demolished facilities at other NAVBASE Kitsap installations.

The DON has identified two preliminary action alternatives to carry forward for analysis in the EIS along with the No Action alternative. These alternatives will be further refined based on input received from the public and resource agencies during scoping.

Under Alternative 1 (No Action Alternative), there would be no change from the status quo. The DON would not build an M2D2, upgrade DD6 to meet current seismic standards, or take other component actions. However, the DON would continue to rely on, maintain, and repair existing facilities to perform its mission.

Under Alternative 2, the DON would construct a new M2D2 on the east side of PSNS & IMF, at the location of existing DD3. Additionally, the DON would seismically upgrade DD6 and construct a new Forge Shop at NAVBASE Kitsap Bangor. The DON would also demolish Piers 4, 5, 6, and 7, including the Hammerhead Crane on Pier 6, and construct a new Pier 2. The DON would replace Piers 4 and 6 with new piers. The DON would dredge bottom sediments to create entrance channels and provide adequate draft at wharves and piers.

Under Alternative 3, the DON would construct an M2D2 in the center of the PSNS & IMF waterfront, at the current location of Mooring A. Additionally, the DON would seismically upgrade DD6. The DON would also demolish Mooring A, the Hammerhead Crane on Pier 6, and Pier 4. The DON would replace Pier 4 with a new pier. The DON would dredge bottom sediments to create entrance channels and adequate draft at wharves and piers.

The environmental issues and resource areas the DON would examine in the EIS include, but are not limited to, the following: Air Quality, Water Quality, Geological Resources, Biological Resources, Cultural Resources, American Indian Traditional Resources, Land Use and Recreation, Visual Resources, Noise, Infrastructure and Utilities, Transportation and Traffic, Marine Navigation, Public Health and Safety, Hazardous Materials and Waste, Socioeconomics, and Environmental Justice. The EIS will also analyze measures that would avoid, minimize, or mitigate environmental effects.

Additionally, the DON will conduct all coordination, consultation, and permitting activities required by the Clean Water Act, Rivers and Harbors Act, Endangered Species Act, Marine Mammal Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, NHPA, Coastal Zone Management Act, and other laws and regulations applicable to the project. Since project components would be phased over multiple years, the DON will coordinate with each agency regarding timing of consultations and permitting.

The DON encourages federal, state, and local agencies, tribes, and interested persons to provide comments concerning potential alternatives and environmental issues for analysis in the EIS, as well as to identify specific

environmental resources that the DON should consider when developing the Draft EIS. Additionally, the DON encourages interested persons to submit comments concerning historic resources under Section 106 of the NHPA. The DON will prepare the Draft EIS, including analysis of potential effects on those resources that the DON and the public identify. The DON will consider all comments received during the public scoping period during EIS preparation.

The project website is available at *www.BremertonWaterfront ImprovementsEIS.com.* The project website provides information on the Proposed Action, NEPA process and schedule, and includes a document library. The public can use this website to submit scoping comments electronically between June 8, 2022, and July 11, 2022. In addition, the public can submit substantive questions for discussion with DON representatives at the virtual public meeting. Questions should be submitted by email to *info@BremertonWaterfront ImprovementsEIS.com* or by completing the form at *www.BremertonWaterfront ImprovementsEIS.com* between June 8, 2022, and June 22, 2022.

Additional opportunities for public comment will occur after the release of the Draft EIS. The DON intends to publish the Draft EIS in spring 2023, publish the Final EIS in spring 2024, and sign a Record of Decision following the 30-day Final EIS wait period.

Dated: May 27, 2022.

J.M. Pike,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–11852 Filed 6–7–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Report From the Study of State Policies To Prohibit Aiding and Abetting Sexual Misconduct in Schools

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of availability.

SUMMARY: The Department of Education (Department) is announcing the availability of the report entitled ''Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools.'' The report and a summary (*i.e.,* a fact sheet summarizing the key findings of the study) are on the Office of Elementary and Secondary Education web page (*https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/*).

FOR FURTHER INFORMATION CONTACT: Victoria Hammer, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Room 5B242, Washington, DC 20202. Telephone: (202) 453–6396. Email: *Victoria.Hammer@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: The Department announces the availability of the report entitled ''Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools.'' Under the Consolidated Appropriations Act, 2022, the Department is required to publish the results of the study in the **Federal Register**. The report and a summary (*i.e.,* a fact sheet summarizing the key findings of the study) are on the Office of Elementary and Secondary Education web page *https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/.*

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Ruth Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2022–12297 Filed 6–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Proposed subsequent arrangement.

SUMMARY: This document is being issued under the authority of the Atomic Energy Act of 1954, as amended. The Department is providing notice of a proposed subsequent arrangement under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the Government of the United States of America and the Government of Canada, as amended.

DATES: This subsequent arrangement will take effect no sooner than June 23, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea Ferkile, Office of Nonproliferation and Arms Control, National Nuclear Security Administration, Department of Energy. Telephone: 202–586–8868 or email: *andrea.ferkile@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION: This subsequent arrangement concerns the retransfer of 8,713,018,000 g of U.S.-obligated natural uranium hexafluoride (UF6), 5,890,000,000 g of which is natural uranium, from Cameco Corporation in Port Hope, Ontario, Canada, to Urenco Ltd. Capenhurst Works, Chester, United Kingdom, for toll enrichment. Upon transfer to the United Kingdom, the material will become subject to the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for Cooperation in Peaceful Uses of Nuclear Energy.

Pursuant to the authority in section 131 a. of the Atomic Energy Act of 1954, as delegated, I have determined that this proposed subsequent arrangement concerning the retransfer of U.S.-obligated nuclear material will not be inimical to the common defense and security of the United States of America.

Signing Authority

This document of the Department of Energy was signed on May 31, 2022, by Corey Hinderstein, Deputy Administrator for Defense Nuclear Nonproliferation, 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 June 3, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–12373 Filed 6–7–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4678–053; Project No. 4679–050]

New York Power Authority; Notice of Applications Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* New Major Licenses.

b. *Project Nos.:* 4678–053 and 4679–050.

c. *Date Filed:* May 25, 2022.

d. *Applicant:* New York Power Authority (NYPA).

e. *Names of Projects:* Crescent and Vischer Ferry Hydroelectric Projects.

f. *Location:* The Crescent Projects is located on the Mohawk River in Saratoga, Albany, and Schenectady Counties, New York. The Vischer Ferry Project is located on the Mohawk River in Saratoga and Schenectady Counties, New York The projects do not occupy any federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rob Daly, Director of Licensing, NYPA, 123 Main Street, White Plains, NY 10601; Telephone: (914) 681–6564 or *Rob.Daly@nypa.gov.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278, or *jody.callihan@ferc.gov.*

j. The applications are not ready for environmental analysis at this time.

k. *Project Descriptions:*

Crescent Project

The Crescent Project consists of: (1) Crescent Dam, which includes two main concrete gravity overflow sections that are 901 feet long, 52 feet high (eastern section) and 534 feet long, 32 feet high (western section), and a smaller 16-foot-high, 530-foot-long dam located immediately downstream of the main western dam; (2) an impoundment with an area of 2,108 acres and gross storage capacity of 50,000 acre-feet at an elevation of 184 feet Barge Canal Datum (BCD) (1-foot-high flashboards seasonally installed during the navigation season add 2,000 acre-feet of storage); (3) a regulating structure consisting of an 8-foot-wide sluiceway and a 30-foot-wide Tainter gate; (4) a brick and concrete powerhouse that is 73 feet wide, 180 feet long, and contains two Francis turbine-generator units rated at 2.8 megawatts (MW) each and two vertical Kaplan turbine-generator units rated at 3.0 MW each; (5) navigation lock E–6 of the Erie Canal and Guard Gates 1 and 2 of the Waterford Flight; (6) a switchyard; (7) generator leads and transformer banks; and (8) appurtenant facilities.

Vischer Ferry Project

The Vischer Ferry Project consists of: (1) The Vischer Ferry Dam, a concrete gravity structure composed of three connected spillway sections with a total length of 1,919 feet, the outer ogee-shaped weir sections having an average height of 30 feet and the middle broad-crested weir sections with a height varying from 1 foot to 3 feet; (2) an impoundment with an area of 1,137 acres and gross storage capacity of 25,000 acre-feet at an elevation of 211 feet BCD (27-inch-high flashboards seasonally installed during the navigation season add 2,400 acre-feet of storage); (3) a low-level regulating structure at the northern end of the spillway with four sluice gates; (4) a headrace with a longitudinal retaining wall containing the sluice gates; (5) a brick and concrete powerhouse that is 73 feet wide, 186 feet long, and contains two Francis turbine-generator units rated at 2.8 MW each and two vertical Kaplan turbine-generator units rated at 3.0 MW each; (6) an unlined 65-foot-long, 150-foot-wide tailrace; (7) navigation lock E–7 of the Erie Canal; (8) an earthen embankment located to the west of Lock E–7; (9) a switchyard; (10) generator leads and transformer banks; and (11) appurtenant facilities.

Both projects are operated in a run-of-river mode such that outflow from each project approximates inflow, and the impoundments are maintained within 6 inches of the dam crest (or top of the flashboards, when installed). Year-round minimum flows of 100 cubic feet per second (cfs) and 200 cfs are provided at the Crescent and Vischer Ferry Projects, respectively. During the navigation season (typically mid-May through mid-October), the minimum flows are provided as part of the fish passage flows that are released through notches in each project's flashboards; during the remainder of the year (non-navigation season), the minimum flows are typically provided as part of generation flows. An acoustic deterrent system is seasonally deployed upstream of each project, from May through October, to guide blueback herring that are migrating downstream towards non-turbine routes of passage (the notches in the flashboards through which the fish passage flows are provided). Average annual generation at the Crescent and Vischer Ferry Projects was 58,250 MW-hours and 56,323 MW-hours, respectively, across years 2012–2021. NYPA is not proposing any new project facilities or changes to the operation of the projects at this time.

l. Copies of the applications can be viewed on the Commission's website at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–4678 or P–4679). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The applications will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	June 2022.
Request Additional Information (if necessary)	July 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis	October 2022.
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	December 2022.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12333 Filed 6–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP01–382–032.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Carlton Reimbursement Report.
Filed Date: 6/1/22.
Accession Number: 20220601–5353.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP19–262–002.
Applicants: Hardy Storage Company, LLC.
Description: Compliance filing: Amended Stipulation and Settlement Agreement to be effective N/A.
Filed Date: 6/1/22.
Accession Number: 20220601–5178.
Comment Date: 5 p.m. ET 6/13/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP22–960–000.
Applicants: Eastern Shore Natural Gas Company.
Description: § 4(d) Rate Filing: Fuel Retention & Cash Out Adjustment 2022 to be effective 7/1/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5065.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP22–961–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate and Non-Conforming Agreement Housekeeping to be effective 7/1/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5073.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP22–962–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46428 to TotalEnergies 55364) to be effective 6/1/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5080.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP22–963–000.
Applicants: TransCameron Pipeline, LLC.
Description: § 4(d) Rate Filing: Normal filing 2022 June to be effective 6/1/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5210.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP22–964–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco June 2, 2022) to be effective 6/2/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5215.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP22–965–000.
Applicants: TransCameron Pipeline, LLC.
Description: § 4(d) Rate Filing: Normal filing 2022 July to be effective 7/1/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5223.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP22–966–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—6/1/2022 to be effective 6/1/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5261.
Comment Date: 5 p.m. ET 6/13/22.

Docket Numbers: RP22–967–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated Rates—Various June 1 2022 Capacity Releases to be effective 6/1/2022.
Filed Date: 6/1/22.
Accession Number: 20220601–5301.
Comment Date: 5 p.m. ET 6/13/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12330 Filed 6–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2905–035]

Village of Enosburg Falls, Vermont; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. Project No.: 2905–035.

c. *Date Filed:* April 30, 2021.

d. *Applicant:* Village of Enosburg Falls, Vermont (Village).

e. *Name of Project:* Enosburg Falls Hydroelectric Project (project).

f. *Location:* On the Missisquoi River in Franklin County, Vermont. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Abbey Miller, Director of Finance, Village of Enosburg Falls, 42 Village Drive, Village of Enosburg Falls, VT 05450; phone at (802) 933–4443; email at *amiller@enosburg.net.*

i. *FERC Contact:* John Baummer at (202) 502–6837, or *john.baummer@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments,

recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2905–035.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see *National Environmental Policy Act Implementing Regulations Revisions,* 87 FR 23,453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. Project *Description:* The existing Enosburg Falls Project consists of: (1) a 284-foot-long, 18.5-foot-high concrete and steel gravity dam that includes the following sections: (a) a 5-foot-long east abutment section; (b) a 105-foot-long east spillway section with a 2-foot-high pneumatic crest gate and an elevation of 386.87 feet National Geodetic Vertical Datum of 1929 (NGVD 29) at the top of the gate; (c) a 4-foot-long pier; (d) a 60-foot-long west spillway section with a 2-foot-high pneumatic crest gate and an elevation of 386.87 feet NGVD 29 at the top of the gate; (e) a 46-foot-long west abutment section; and (f) an approximately 64-foot-long, 24-foot-high steel headgate structure that is equipped with: (i) a 60-foot-wide, 20-foot-high inclined steel trashrack with 1-inch clear bar spacing; (ii) two 10-foot-wide, 8-foot-high hydraulically-powered sluice gates; and (iii) a 12-foot-wide, 8-foot-high hydraulically-powered intake gate; (2) a 121-acre impoundment at surface elevation of 386.87 feet NGVD 29; (3) an 80-foot-long, 5.6-foot-diameter steel penstock that extends from the intake gate; (4) a 39.9-foot-long, 24.3-foot-wide concrete and brick masonry powerhouse (Kendall Plant) containing a 375-kilowatt (kW) semi-Kaplan regulated turbine-generator unit that discharges into the Missisquoi River approximately 170 feet downstream of the project dam; (5) an approximately 210-foot-long, 29-foot-wide headrace canal; (6) an intake structure at the downstream end of the headrace canal that is equipped with an approximately 30.1-foot-wide, 11.4-foot-high stoplog slot and an approximately 30.1-foot-wide, 11.4-foot-high inclined trashrack; (7) a 28.7-foot-long, 29.9-foot-wide concrete and brick masonry powerhouse (Village Plant) containing a 600-kW vertical Kaplan turbine-generator unit that discharges to an approximately 240-foot-long, 25-foot-wide tailrace; (8) two 2.4-kilovolt (kV) generator lead lines, respectively 200-foot-long and 250-foot-long, and a 4.16/12.47-kV transformer that connect the project to the local utility distribution system; and (9) appurtenant facilities. The project creates an approximately 1,400-foot-long bypassed reach of the Missisquoi River.

The Village voluntarily operates the project in a run-of-river mode using an automatic pond level control system to regulate turbines operation, such that outflow from the project approximates inflow. Article 401 of the current license requires the Village to: (1) maintain a minimum flow of 293 cubic feet per second (cfs) from April 15–June 15, and 120 cfs from J une 16–April 14, or inflow, whichever is less, from the Kendall Plant to the bypassed reach; and (2) maintain a year-round minimum flow of 293 cfs or inflow, whichever is less, from the Village Plant to the downstream reach of the Missisquoi River. Downstream fish passage is provided by a bypass facility located on the west abutment that consists of a 3-foot-wide, 5-foot-high weir gate, a 3-foot-wide, 6-foot-long concrete fish collection box, and an approximately 65-foot-long, 2-foot-diameter concrete encased fish passage pipe that empties into the bypassed reach approximately 110 feet downstream of the dam.

The Village proposes to: (1) continue operating the project in a run-of-river mode; (2) provide a year-round minimum flow of 243 cfs or inflow, whichever is less, from the Kendall Plant to the bypassed reach; (3) develop a recreation management plan for improving recreation at the project; (4) release 1 inch of spill over the top of the project dam crest gates to provide an aesthetic veil of flow over the dam; (5) develop an operation compliance monitoring plan for maintaining minimum flows, impoundment levels, and run-of-river operation; and (6) develop a historic properties management plan to address and mitigate project effects on historic properties.

m. A copy of the application can be viewed on the Commission's website at *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. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served

upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://www.ferc.gov/ferc-online/overview* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. Procedural schedule: The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for filing interventions, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	August 2022.
Deadline for filing reply comments	September 2022.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12334 Filed 6–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1999–000]

Number Three Wind 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 Number Three Wind 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 June 22, 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: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12337 Filed 6–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15236–000]

Norton Pump Storage, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 1, 2021, Norton Pump Storage, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Norton Pump Storage Project to be located near the city of Norton, in Summit County and Medina County, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) a new excavated, diked, asphalt-lined 255-acre upper reservoir having a maximum water surface area of about 200 acres and a total volume of 7,800 acre-feet; (2) an existing lower 338-million cubic foot (7,760 acre-feet) underground reservoir created by previous limestone mining activities; (3) a possible diversion channel around the upper reservoir; (4) an underground powerhouse and appurtenant structures

including six 250-megawatt variable speed, reversible pump turbines; (5) power plant buildings and surface structures; (6) a 7000-foot-long, 28-foot-diameter concrete-lined power tunnel connected to two 2400-foot-long, 17.5-foot-diameter concrete vertical shafts that are connected to the underground powerhouse; (7) an underground transformer gallery; (8) six 235-foot-long, 6.25-foot-diameter steel-and concrete-lined penstocks; (9) four 345-kilovolt overhead transmission line circuits, 2.4 miles long, arranged in two parallel double circuit tower sets within an existing transmission line corridor located south of the reservoir; and (10) offsite and onsite recreational facilities. The estimated annual generation of the Norton Pump Storage Project would be between 1,300 and 2,000 million kilowatt-hours.

Applicant Contact: Mr. Alain Berger; Norton Pump Storage, LLC; 251 Little Falls Drive, Wilmington, Delaware 19808; phone: (866) 963–8506; ext. 68941.

FERC Contact: Tyrone Williams; phone: (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15236–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15236) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12332 Filed 6–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1862–190]

City of Tacoma, Washington; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Temporary variance of ramping rate and planned spill requirements.

b. *Project No.:* 1862–190.

c. *Date Filed:* May 6, 2022.

d. *Applicant:* City of Tacoma, Washington.

e. *Name of Project:* Nisqually Hydroelectric Project.

f. *Location:* The project is located on the Nisqually River in Pierce, Thurston, and Lewis Counties, Washington, partly on lands of the Mount Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Travis Nelson, Tacoma Power, 3628 South 35th Street, Tacoma, Washington 98409; (253) 579–4082; *TNelson1@cityoftacoma.org.*

i. *FERC Contact:* Linda Stewart, (202) 502–8184, *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* July 5, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–1862–190. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

k. *Description of Request:* The City of Tacoma, Washington (licensee) requests a temporary variance to deviate from the downramping rate and the timing of planned spill events pursuant to Articles 405 and 409, respectively, of the license. The variance would allow the licensee to perform critical maintenance to project infrastructure, which necessitates that the licensee suspend generation at the LaGrande powerhouse for approximately three to five weeks. The licensee proposes to perform the powerhouse outage and maintenance work in July and August 2022.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting, or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12335 Filed 6–7–22; 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: EC22–71–000.

Applicants: Canal Generating LLC, Canal 3 Generating LLC, Bucksport Generation LLC, Stonepeak Kestrel Energy Marketing LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Canal Generating LLC, et al.

Filed Date: 6/1/22.

Accession Number: 20220601–5359.

Comment Date: 5 p.m. ET 6/22/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2341–003.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2022–06–02_SA 3518 Deficiency Response ITC Midwest-Interstate Sub FSA (J416) to be effective 7/1/2020.

Filed Date: 6/2/22.

Accession Number: 20220602–5067.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER20–2382–003.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2022–06–02_SA 3516 Deficiency Response Ameren-Broadlands 2nd Sub FSA GIA (J468) to be effective 10/1/2020.

Filed Date: 6/2/22.

Accession Number: 20220602–5065.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER20–2385–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2022–06–02_SA 3025 Deficiency Response Ameren-Broadland Sub 1st Rev FCA (J468) to be effective 7/9/2020.

Filed Date: 6/2/22.

Accession Number: 20220602–5058.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER20–2386–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2022–06–02_SA 3024 Deficiency Response Broadlands-Ameren Sub 2nd Rev GIA (J468) to be effective 7/9/2020.

Filed Date: 6/2/22.

Accession Number: 20220602–5063.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER20–2408–003.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2022–06–02_SA 3524 Deficiency Response Ameren-Broadlands 2nd Sub FSA (J468) to be effective 10/1/2020.

Filed Date: 6/2/22.

Accession Number: 20220602–5054.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER21–57–000.

Applicants: Shell Energy North America (US), L.P.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 6/2/22.

Accession Number: 20220602–5145.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER22–2009–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP—Excel—Generation Replacement Coordinator Agreement RS No. 404 to be effective 8/1/2022.

Filed Date: 6/1/22.

Accession Number: 20220601–5267.

Comment Date: 5 p.m. ET 6/22/22.

Docket Numbers: ER22–2011–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-Excel Generation Replacement Coordinator Agreements RS No. 588 to be effective 8/1/2022.

Filed Date: 6/1/22.

Accession Number: 20220601–5274.

Comment Date: 5 p.m. ET 6/22/22.

Docket Numbers: ER22–2012–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Monte Alto Windpower 5th A&R Generation Interconnection Agreement to be effective 5/6/2022.

Filed Date: 6/2/22.

Accession Number: 20220602–5052.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER22–2013–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-House Mountain 1st A&R Generation Interconnection Agreement to be effective 5/9/2022.

Filed Date: 6/2/22.

Accession Number: 20220602–5057.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER22–2015–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submitted a Motion Requesting Waiver of The Formula Rate Implementation with Shortened Comment Period Request under ER22–2015.

Filed Date: 5/27/22.

Accession Number: 20220527–5369.

Comment Date: 5 p.m. ET 6/6/22.

Docket Numbers: ER22–2016–000.

Applicants: Louisiana Energy and Power Authority.

Description: Request to Recover Costs Associated with Acting as a Local Balancing Authority of Louisiana Energy and Power Authority.

Filed Date: 6/2/22.

Accession Number: 20220602–5108.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER22–2017–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Dugway Non-Conforming Amended SGIA to be effective 8/2/2022.

Filed Date: 6/2/22.

Accession Number: 20220602–5114.

Comment Date: 5 p.m. ET 6/23/22.

Docket Numbers: ER22–2018–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–06–02 Interconnection Process Enhancements Tariff Amendment to be effective 9/1/2022.

Filed Date: 6/2/22.

Accession Number: 20220602–5133.
Comment Date: 5 p.m. ET 6/23/22.
Docket Numbers: ER22–2019–000.
Applicants: Manchief Power Company LLC.
Description: Tariff Amendment: Notice of Cancellation to be effective 6/3/2022.
Filed Date: 6/2/22.
Accession Number: 20220602–5141.
Comment Date: 5 p.m. ET 6/23/22.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF22–683–000.
Applicants: Saint-Gobain Abrasives.
Description: Form 556 of Saint-Gobain Abrasives.
Filed Date: 6/1/22.
Accession Number: 20220601–5228.
Comment Date: 5 p.m. ET 6/22/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12331 Filed 6–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2008–000]

SEPV Sierra, 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 SEPV Sierra, 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 June 22, 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: June 2, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–12336 Filed 6–7–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0566; FRL–9868–01–OAR]

Notice of June 2022 Alternative Compliance Demonstration Approach for Certain Small Refineries Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its action to provide an alternative compliance demonstration approach (the ''June 2022 Compliance Action'') to certain small refineries whose 2016, 2017, and/or 2018 petitions for small refinery exemptions (SREs) under the Renewable Fuel Standard (RFS) program were denied in April and June 2022 after being judicially remanded to EPA for reconsideration. EPA is providing this notice for public awareness of, and the basis for, the June 2022 Compliance Action announced on June 3, 2022, which supplements the April 2022 Compliance action announced on April 7, 2022.

DATES: June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4657; email address: *nelson.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) provides that a small refinery [1] may at any time petition EPA for an extension of the exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).[2] In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic

[1] The CAA defines a small refinery as ''a refinery for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels.'' CAA section 211(*o*)(1)(K).

[2] CAA section 211(*o*)(9)(B)(i).

factors.[3] In separate actions announced on April 7, 2022, and June 3, 2022, EPA denied 36 and 69 small refinery exemption (SRE) petitions, respectively, for the 2016–2021 compliance years by finding the petitioning small refineries did not face DEH caused by compliance with the RFS program.[4] Forty-one of those 105 SRE petitions were for the 2016, 2017, or 2018 compliance years, and 34 of those 41 SRE petitions had previously been granted, and those decisions were reversed on remand. It is the 2016, 2017, and 2018 RFS renewable volume obligations (RVOs or ''RFS obligations'') created by the denial of these 34 SRE petitions that are the subject of the June 2022 Compliance Action.[5]

II. Compliance Action

Concurrent with issuing the April 2022 SRE Denial on April 7, 2022, EPA announced[6] the availability of the April 2022 Compliance Action,[7] which provided an alternative compliance demonstration approach for the 31 small refineries whose SRE petitions had been previously granted for the 2018 compliance year and were denied upon remand and reconsideration.[8] With this notice, EPA is announcing the availability of the June 2022 Compliance Action, which supplements the April 2022 Compliance Action to include three additional SRE petitions for the 2016 or 2017 compliance year that had not yet been decided at that time.[9] EPA is providing 31 specific small refineries with an alternative approach to demonstrating compliance with their 2016, 2017, and/or 2018 RVOs created by the SRE Denials. Each of the 31 specified small refineries had previously been granted an SRE for the 2016, 2017, and/or 2018 compliance year; however, each of their petitions again came before EPA as the result of judicial remands. As established in the June 2022 Compliance Action, EPA has determined there are extenuating circumstances that warrant an alternative compliance demonstration approach that the specified small refineries may use to meet their 2016, 2017, and/or 2018 RFS obligations without retiring any additional RINs.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable . . . final actions taken by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii) described in the preceding sentence.

This final action is ''nationally applicable'' within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[10] This final action provides an alternative approach to demonstrating compliance with the 2016, 2017, and/or 2018 RFS obligations for 31 small refineries across the country and applies to small refineries located within 16 states in 7 of the 10 EPA regions and in 7 different Federal judicial circuits.[11] This final action is based on the extenuating circumstances applicable to these 31 small refineries and the impacts their compliance with their newly created 2016, 2017, and/or 2018 RFS obligations under the existing compliance scheme would have on the RFS program. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by August 8, 2022.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2022–12357 Filed 6–7–22; 8:45 am]

BILLING CODE 6560–50–P

[3] CAA section 211(*o*)(9)(B)(ii).

[4] ''April 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–005, April 2022; ''June 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–011, June 2022 (hereinafter the ''SRE Denials'').

[5] ''June 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,'' EPA–420–R–22–012, June 2022.

[6] 87 FR 24294 (April 25, 2022).

[7] ''April 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,'' EPA–420–R–22–006, April 2022.

[8] *Sinclair Wyoming Refining Co.* v. *EPA*, No. 19–1196 (D.C. Cir.), Dec. 8, 2021 Order, Doc. No. 1925942.

[9] The June 2022 Compliance Action covers a total of 34 SRE petitions; however, the three additional SRE petitions were all submitted by small refineries that were previously covered in the April 2022 Compliance Action. Thus, the June 2022 Compliance Action still applies to 31 small refineries.

[10] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

[11] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0566; FRL–9867–01–OAR]

Notice of June 2022 Denial of Petitions for Small Refinery Exemptions Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petitions.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its final action entitled June 2022 Denial of Petitions for RFS Small Refinery Exemptions (''SRE Denial'') in which EPA denied 69 small refinery exemption (SRE) petitions under the Renewable Fuel Standard (RFS) program. EPA is providing this notice for public awareness of, and the basis for, EPA's decision announced on June 3, 2022.

DATES: June 8, 2022.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4657; email address: *nelson.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) provides that a small refinery[1] may at any time petition EPA for an extension of the

[1] The CAA defines a small refinery as ''a refinery for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels.'' CAA section 211(*o*)(1)(K).

exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).[2] In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a Department of Energy (DOE) study and other economic factors.[3]

II. Decision

In the SRE Denial,[4] we conducted an extensive analysis and review of information provided to EPA by small refineries in their SRE petitions and in the comments submitted in response to the Proposed Denial.[5] We sought comment on all aspects of the Proposed Denial, including on our conclusions that the CAA requires small refineries to demonstrate that DEH is caused by compliance with the RFS program. We also sought comment on our economic analyses and conclusion that no small refineries face disproportionate costs of compliance due to the RFS program, no economic hardship, and, therefore, no DEH caused by RFS compliance. We requested additional data that would show the relationship between RFS compliance costs and the price of transportation fuel blendstocks. We also sought comment on our proposed change in approach to SRE eligibility based on receipt of the original statutory exemption, and our proposed decision to deny all pending SRE petitions based on the proportional nature of the RFS requirements and our findings regarding RIN cost passthrough. We considered all the comments received and have responded to them in the SRE Denial and its corresponding appendices.

In the SRE Denial, we find that all refineries face the same costs to acquire RINs regardless of whether the RINs are created through the act of blending renewable fuels or are purchased on the open market. This happens because the market price for these fuels increases to reflect the cost of the RIN, much as it would increase in response to higher crude prices. In other words, this increased price for gasoline and diesel fuel allows obligated parties to recover their RIN costs through the market price of the fuel they produce. Because the market behaves this way for all parties subject to the RFS program, there is no disproportionate cost to any party, including small refineries, and no hardship given that the costs are recovered. As a result, we conclude that small refineries do not face DEH. Given this conclusion and the other reasons described in the SRE Denial, we have denied 69 SRE petitions for the 2016–2021 compliance years by finding the petitioning refineries do not face DEH caused by compliance with their RFS obligations.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of ''nationally applicable . . . final actions taken by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii) described in the preceding sentence.

This final action is ''nationally applicable'' within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1).[6] This final action denies 69 petitions for exemptions from the RFS program for over 30 small refineries across the country and applies to small refineries located within 15 states in 7 of the 10 EPA regions and in 8 different Federal judicial circuits.[7] This final action is based on EPA's revised interpretation of the relevant CAA provisions and the RIN discount and RIN cost passthrough principles that are applicable to all small refineries no matter the location or market in which they operate. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by August 8, 2022.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2022–12359 Filed 6–7–22; 8:45 am]

BILLING CODE 6560–50–P

[2] CAA section 211(*o*)(9)(B)(i).

[3] CAA section 211(*o*)(9)(B)(ii).

[4] ''June 2022 Denial of Petitions for RFS Small Refinery Exemptions,'' EPA–420–R–22–011, June 2022.

[5] ''Proposed RFS Small Refinery Exemption Decision,'' EPA–420–D–21–001, December 2021 (hereinafter the ''Proposed Denial''). 86 FR 70999 (December 14, 2021).

[6] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

[7] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0288; FR ID 90242]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it

displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 8, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0288.

Title: 47 CFR 78.33, Special Temporary Authority (Cable Television Relay Stations).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 3 respondents and 3 responses.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 12 hours.

Total Annual Costs: $600.

Needs and Uses: The information collection requirements contained in 47 CFR 78.33 permits cable television relay station (CARS) operators to file informal requests for special temporary authority (STA) to install and operate equipment in a manner different than the way normally authorized in the station license. The special temporary authority also may be used by cable operators to conduct field surveys to determine necessary data in connection with a formal application for installation of a radio system, or to conduct equipment, program, service, and path tests.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–12277 Filed 6–7–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201388.

Agreement Name: Sealead Shipping DMCC/T.S. Lines Ltd. Vessel Sharing Agreement.

Parties: Sealead Shipping DMCC and T.S. Lines Ltd. Vessel Sharing Agreement.

Filing Party: Neal Mayer; Hoppel, Mayer & Coleman.

Synopsis: The Agreement authorizes the parties to operate a service string between ports in China and Korea on the one hand and the U.S. East Coast on the other hand.

Proposed Effective Date: 5/31/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/64502.

Agreement No.: 201258–002.

Agreement Name: Sealand/Zim Gulf-ECSA Space Charter Agreement.

Parties: Maersk A/S d/b/a Sealand and Zim Integrated Shipping Services Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment changes the amount of space being chartered, changes the name of the Agreement and the contact information for one of the parties, and restates the Agreement.

Proposed Effective Date: 7/16/22.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/13183.

Dated: June 3, 2022.

William Cody,

Secretary.

[FR Doc. 2022–12352 Filed 6–7–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

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 July 8, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *National Bank Holdings Corporation, Greenwood Village, Colorado;* to merge with Community Bancorporation, Orem, Utah, and thereby indirectly acquire Rock Canyon Bank, Provo, Utah.

2. *National Bank Holdings Corporation, Greenwood Village, Colorado;* to merge with Bancshares of Jackson Hole, Incorporated, Jackson, Wyoming, and thereby indirectly acquire Bank of Jackson Hole, Jackson, Wyoming.

3. *Old Glory Holding Company, Oklahoma City, Oklahoma;* to become a bank holding company by acquiring Elmore City Bancshares, Inc., and thereby indirectly acquire First State Bank, both of Elmore City, Oklahoma.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–12341 Filed 6–7–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 23, 2022.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Sally Hawkins and Kyle Hawkins, Guymon, Oklahoma; Bill Pittman, Ginger Pittman, Frank Pittman, Paige Pittman Burgin, and Jerry Hart, all of Spearman, Texas; Bill Jack Pittman and Christi Pittman, Morse, Texas; and Jana Pittman Ivey, Amarillo, Texas;* to join the Pittman Family Control Group, a group acting in concert, to retain voting shares of Panhandle Bancshares, Inc., and thereby indirectly retain voting shares of Bank of the Panhandle, both of Guymon, Oklahoma.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Andrew A. Black Living Trust, dated June 21, 2019, Andrew A. Black and Lesa A. Black as co-trustees, all of Princeville, Illinois;* to become members of the German Family Control Group, a group acting in concert to retain voting shares of Main Street Bancorp, Inc., and thereby indirectly retain voting shares of Princeville State Bank, both of Princeville, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–12340 Filed 6–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Common Formats for Patient Safety Data Collection

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of availability—new Common Formats.

SUMMARY: As authorized by the Secretary of HHS, AHRQ coordinates the development of common definitions and reporting formats (Common Formats) for reporting on health care quality and patient safety. The purpose of this notice is to announce the availability of Common Formats for Event Reporting—Diagnostic Safety (CFER–DS) Version 1.0.

DATES: Ongoing public input.

ADDRESSES: The *Common Formats for Event Reporting—Diagnostic Safety (CFER–DS) Version 1.0* can be accessed electronically at the following website: *https://www.psoppc.org/psoppc_web/publicpages/commonFormatsOverview.*

FOR FURTHER INFORMATION CONTACT: Dr. Hamid Jalal, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background on Common Formats Development

The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), 42 U.S.C. 299b–21 to b–26, and the related Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR part 3, published in the **Federal Register** on November 21, 2008, 73 FR 70731–70814, provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The collection of patient safety work product allows for the aggregation of data that help to identify and address underlying causal factors of patient safety and quality issues.

The Patient Safety Act provides for AHRQ to develop standardized reporting formats using common language and definitions (Common Formats) for reporting on health care quality and patient safety that will ensure that data collected by PSOs and other entities have comparable clinical meaning. The Common Formats facilitate aggregation of comparable data at local, PSO, regional and national levels.

Since February 2005, AHRQ has convened the Federal Patient Safety Work Group (PSWG) to assist AHRQ in developing and maintaining the Common Formats. The PSWG includes major health agencies within HHS as well as the Departments of Defense and Veterans Affairs. The PSWG helps assure the consistency of definitions/formats with those of relevant government agencies. In addition, AHRQ has solicited comments from the private and public sectors, since 2008, regarding proposed versions of the Common Formats through a contract with the National Quality Forum (NQF), which is a non-profit organization focused on health care quality. After receiving comments, the NQF solicits review of the formats by its Common Formats Expert Panel. Subsequently, NQF provides this input to AHRQ who then uses it to refine the Common Formats before issuing a production version.

AHRQ previously developed and maintains Common Formats for three settings of care—acute care hospitals, skilled nursing facilities, and community pharmacies—for use by healthcare providers and PSOs. AHRQ-listed PSOs are required to collect patient safety work product in a standardized manner to the extent practical and appropriate, a requirement the PSO can meet by collecting such information using Common Formats. Additionally, health care providers and other organizations not working with an AHRQ-listed PSO can use the Common Formats in their work to improve quality and safety; however, they cannot benefit from the Federal confidentiality

and privilege protections of the Patient Safety Act.

The CFER–DS is the first AHRQ Common Formats for Event Reporting that can be used across healthcare settings. It is designed to capture standardized, structured data to facilitate the reporting of diagnostic safety events for the purpose of learning about how to improve diagnostic safety and better support the diagnostic process.

The CFER–DS is not designed for frontline incident reporting. It is intended to facilitate the collection and organization of a basic set of meaningful data about diagnostic safety events that can be used, aggregated and analyzed for learning and improvement. Having a common frame of reference and standardized data elements makes shared learning possible at local, regional, and national levels. Users decide if and how to integrate collection of specific CFER data elements into their incident reporting systems and other existing work processes.

At this time, AHRQ is releasing the CFER–DS Version 1.0 Event Description and some supporting materials, including the Users' Guide and Form. A Sample Preliminary Clinician Event Report is also being made available as a convenience for optional use or adaptation as a supporting resource to the CFER–DS. Additional supporting documents and technical specifications for the CFER–DS (*e.g.,* Data Dictionary, Flow Charts, Resources Workbook) are anticipated to be released in Fall 2022.

Information on how to comment on Common Formats is available at: *http://www.qualityforum.org/Project_Pages/Common_Formats_for_Patient_Safety_Data.aspx.*

Additional information about the AHRQ Common Formats can be obtained through AHRQ's PSO website: *https://pso.ahrq.gov/common-formats.*

Dated: June 3, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–12353 Filed 6–7–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0618]

Advisory Committee; Drug Safety and Risk Management Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Drug Safety and Risk Management Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Drug Safety and Risk Management Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the May 31, 2024, expiration date.

DATES: Authority for the Drug Safety and Risk Management Advisory Committee will expire on May 31, 2024, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Philip Bautista, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–762–8729, *DSaRM@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services (HHS) and by the General Services Administration, FDA is announcing the renewal of the Drug Safety and Risk Management Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates information on risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use and for any other product for which FDA has regulatory responsibility. The Committee also advises the Commissioner regarding the scientific and medical evaluation of all information gathered by HHS and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances, and recommends actions to be taken by HHS with regard to the marketing, investigation, and control of such drugs or other substances.

The Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of risk communication, risk management, drug safety, medical, behavioral, and biological sciences as they apply to risk management, and drug abuse. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives, or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/drug-safety-and-risk-management-advisory-committee/drug-safety-and-risk-management-advisory-committee-charter* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: June 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12369 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0622]

Advisory Committee; Pulmonary-Allergy Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Pulmonary-Allergy Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Pulmonary-Allergy Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the May 30, 2024, expiration date.

DATES: Authority for the Pulmonary-Allergy Drugs Advisory Committee will expire on May 30, 2022, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, *PADAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Pulmonary-Allergy Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner.

The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms and makes appropriate recommendations to the Commissioner of Food and Drugs.

The Committee shall consist of a core of 11 voting members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of pulmonary medicine, allergy, clinical immunology, and epidemiology or statistics. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives, or ex-officio members. Federal members will serve as Regular Government Employees or ex-officio members. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/pulmonary-allergy-drugs-advisory-committee/pulmonary-allergy-advisory-committee-charter* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: June 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12370 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0008]

Advisory Committee; Psychopharmacologic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Psychopharmacologic Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Psychopharmacologic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the June 4, 2024, expiration date.

DATES: Authority for the Psychopharmacologic Drugs Advisory Committee will expire on June 4, 2024, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Joyce Frimpong, Division of Advisory Committee and Consultant Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *PDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Psychopharmacologic Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields and make appropriate recommendations to the Commissioner.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other

information can be found at *https://www.fda.gov/advisory-committees/psychopharmacologic-drugs-advisory-committee/psychopharmacologic-drugs-advisory-committee-charter* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: June 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12366 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1425]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Mitigation Strategies To Protect Food Against Intentional Adulteration

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 8, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0812. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Mitigation Strategies To Protect Food Against Intentional Adulteration—21 CFR Part 121

OMB Control Number 0910–0812—Extension

Under the Federal Food, Drug, and Cosmetic Act (FD&C Act) certain provisions protect against the intentional adulteration of food. Section 418 of the FD&C Act (21 U.S.C. 350g) addresses intentional adulteration in the context of facilities that manufacture, process, pack, or hold food and are required to register under section 415 of the FD&C Act (21 U.S.C. 350d). Section 419 of the FD&C Act (21 U.S.C. 350h) addresses intentional adulteration in the context of fruits and vegetables that are raw agricultural commodities. Section 420 of the FD&C Act (21 U.S.C. 350i) addresses intentional adulteration in the context of high-risk foods and exempts farms except for farms that produce milk. These provisions are codified at 21 CFR part 121 (part 121) and include requirements that an owner, operator, or agent in charge of a facility must:

- Prepare and implement a written food defense plan that includes a vulnerability assessment to identify significant vulnerabilities and actionable process steps, mitigation strategies, and procedures for food defense monitoring, corrective actions, and verification (§ 121.126);
- identify any significant vulnerabilities and actionable process steps by conducting a vulnerability assessment for each type of food manufactured, processed, packed, or held at the facility using appropriate methods to evaluate each point, step, or procedure in a food operation (§ 121.130);
- identify and implement mitigation strategies at each actionable process step to provide assurances that the significant vulnerability at each step will be significantly minimized or prevented and the food manufactured, processed, packed, or held by the facility will not be adulterated. For each mitigation strategy implemented at each actionable process step, include a written explanation of how the mitigation strategy sufficiently minimizes or prevents the significant vulnerability associated with the actionable process step (§ 121.135);
- establish and implement mitigation strategies management components, as appropriate to ensure the proper implementation of each such mitigation strategy, taking into account the nature of the mitigation strategy and its role in the facility's food defense system (§ 121.138);
- establish and implement food defense monitoring procedures, for monitoring the mitigation strategies, as appropriate to the nature of the mitigation strategy and its role in the facility's food defense system (§ 121.140);
- establish and implement food defense corrective action procedures that must be taken if mitigation strategies are not properly implemented, as appropriate to the nature of the actionable process step and the nature of the mitigation strategy (§ 121.145);
- establish and implement specified food defense verification activities, as appropriate to the nature of the mitigation strategy and its role in the facility's food defense system (§ 121.150);
- conduct a reanalysis of the food defense plan (§ 121.157);
- ensure that all individuals who perform required food defense activities are qualified to perform their assigned duties (§ 121.4); and
- establish and maintain certain records, including the written food defense plan (vulnerability assessment, mitigation strategies and procedures for food defense monitoring, corrective actions, and verification) and documentation related to training of personnel. All records are subject to certain general recordkeeping and record retention requirements (§§ 121.301 through 121.330).

Under the regulations, an owner, operator, or agent in charge of a facility must prepare, or have prepared, and implement a written food defense plan, including written identification of actionable process steps, written mitigation strategies, written procedures for defense monitoring, written food defense corrective actions, and written food defense verification procedures.

The purpose of the information collection is to ensure compliance with the provisions under part 121 related to protecting food from intentional adulteration. The regulations are intended to address hazards that may be intentionally introduced to foods, including by acts of terrorism, with the intent to cause widespread harm to public health. Under the regulations,

domestic and foreign food facilities that are required to register under the FD&C Act are required to identify and implement mitigation strategies to significantly minimize or prevent significant vulnerabilities identified at actionable process steps in a food operation.

In an effort to reduce burden and assist respondents, FDA offers tools and educational materials related to protecting food from intentional adulteration, including FDA's Food Defense Plan Builder, a user-friendly tool designed to help owners and operators of food facilities develop a personalized food defense plan, and the Mitigation Strategies Database, a database for the food industry providing a range of preventative measures that firms may choose to implement. These and other informational resources are available at *https://www.fda.gov/food/food-defense/food-defense-tools-educational-materials.* FDA also offers a small entity compliance guide entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration'' (August 2017) to inform domestic and foreign food facilities about compliance with regulations to protect against intentional adulteration. Further, FDA developed two draft guidance documents entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration: Draft Guidance for Industry'' (March 2019) and ''Supplemental Draft Guidance for Industry: Mitigation Strategies to Protect Food Against Intentional Adulteration'' (February 2020). Once finalized, the draft guidance documents would assist the food industry in developing and implementing the elements of a food defense plan. These guidance documents are available at *https://www.fda.gov/food/food-defense.* All Agency guidance documents are issued in accordance with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time.

Description of Respondents: The respondents to this information collection are manufacturers, processors, packers, and holders of retail food products marketed in the United States.

In the **Federal Register** of December 17, 2021 (86 FR 71646), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Exemption for food from very small businesses; § 121.5.	18,080	1	18,080	0.5 (30 minutes)	9,040

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Certain facilities may qualify for an exemption under the regulations. Because these facilities must provide documentation upon request to verify their exempt status, we have characterized this as a reporting burden.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity; 21 CFR Section	Number of record-keepers	No. of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Food Defense Plan; § 121.126	3,247	1	3,247	23	74,681
Actionable Process Steps; § 121.130 ..	9,759	1	9,759	20	195,180
Mitigation Strategies; § 121.135(b)	9,759	1	9,759	20	195,180
Monitoring Corrective Actions, Verification; §§ 121.140(a), 121.145(a)(1), and 121.150(c).	9,759	1	9,759	175	1,707,825
Training;§ 121.160	367,203	1	367,203	0.67 (40 minutes) ..	246,026
Records; §§ 121.305 and 121.310	9,759	1	9,759	10	97,590
Total	.....	.....	.....	.....	2,516,482

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments other than to increase the burden estimate by 1,224 hours due to a corrected calculation for the estimate related to training (§ 121.160).

Dated: June 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12361 Filed 6–7–22; 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; Submission for Office of Management and Budget Review; Comment Request; New Animal Drug Applications and Veterinary Master Files

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 8, 2022.

ADDRESSES: To ensure that comments on the information collection are received,

OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0032. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

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 preapplication 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 recommend submission of data supporting discrete technical sections during the investigational phase, rather than submitting all data for review as part of a complete application. This ''phased review'' of data submissions creates efficiencies in the review process for both FDA 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.

In the **Federal Register** of March 2, 2022 (87 FR 11713), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received but did not pertain to the information collection requirements.

FDA estimates the burden of this collection of information as follows:

[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]

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
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: June 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12355 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1192]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Generally Recognized as Safe: Notification Procedure

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 8, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0342. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substances Generally Recognized as Safe: Notification Procedure—21 CFR Part 170, Subpart E and 21 CFR Part 570, Subpart E

OMB Control Number 0910–0342—Extension

The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that all food additives (as defined by section 201(s) (21 U.S.C. 321(s)) be approved by FDA before they are marketed. Section 409 of the FD&C Act (21 U.S.C. 348) establishes a premarket approval requirement for ''food additives.'' Section 201(s) of the FD&C Act provides an exclusion to the definition of food additive and, thus, from the premarket approval requirement for uses of substances that are generally recognized as safe (GRAS) by qualified experts. The GRAS provision of section 201(s) of the FD&C Act is implemented in parts 170

and 570 (21 CFR parts 170 and 570) for human food and animal food, respectively. Part 170, subpart E and part 570, subpart E provide a standard format for the submission of a notice. This collection utilizes a voluntary administrative procedure for notifying FDA about a conclusion that a substance is GRAS under the conditions of its intended use in human food or animal food. The information submitted to us in a GRAS notice is necessary to allow us to administer efficiently the FD&C Act's various provisions that apply to the use of substances added to food, specifically with regard to whether a substance is GRAS under the conditions of its intended use or is a food additive subject to premarket review. We use the information collected through the GRAS notification procedures to complete our evaluation within specific timelines.

To assist respondents with submissions to the Center for Food Safety and Applied Nutrition, we offer Form FDA 3667 entitled ''Generally Recognized as Safe Notice'' (*http://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM350015.pdf*). The form, and elements prepared as attachments to the form, may be submitted in electronic format via the Electronic Submission Gateway (*https://www.fda.gov/industry/electronic-submissions-gateway*), or may be submitted in paper format, or as electronic files on physical media with paper signature page. While we do not expect Form FDA 3667 to reduce reporting time for respondents, use of the form helps to expedite our review of the information being submitted.

Description of Respondents: The respondents to this collection of information are manufacturers of substances used in human food and animal food and feed.

In the **Federal Register** of November 19, 2021 (86 FR 64945), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment responsive to the four information collection topics solicited in the 60-day notice.

The comment offers that FDA underestimated the average burden per response for information collection activities related to animal food GRAS notices. It asserts that GRAS notices for animal food and feed require peer reviewed journal publications to support the safety of ingredients, rather than accepting additional ways to demonstrate general recognition of safety of an ingredient for an intended use.

For any substance used in animal food to be GRAS under the conditions of its intended use, the data and information relied on to establish the safety of the use of the substance must be generally available, and that information can be in published scientific literature or other publicly available sources (*e.g.,* textbooks, journal articles). While the notifier may conduct their own study and publish it in a peer reviewed journal, the information provided in a GRAS notice can include other generally available information (*i.e.,* in the public domain). The notifier is not required to conduct de novo studies (and get that information published) in order to submit a GRAS notice. The regulations for human food GRAS notifications and animal food GRAS notifications are similar, thus the average burden provided for animal food GRAS notifications is therefore consistent with the estimates for GRAS notifications for human food. Therefore, the average burden hours for this collection remain unchanged.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
GRAS notification procedure for human food; 170.210–170.280 (part 170, subpart E)	100	1	100	170	17,000
GRAS notification procedure for animal food and animal feed; 570.210–570.280 (part 570, subpart E)	25	1	25	170	4,250
Total			125		21,250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. This estimate is based on our experience with this information collection and the number of notifications received in the past 3 years, which has remained constant.

Dated: June 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12367 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0691]

Advisory Committee; Peripheral and Central Nervous System Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Peripheral and Central Nervous System Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Peripheral and Central Nervous System Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the June 4, 2024, expiration date.

DATES: Authority for the Peripheral and Central Nervous System Drugs Advisory Committee will expire on June 4, 2024, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring,

MD 20993–0002, 301–796–7699, email: *PCNS@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Peripheral and Central Nervous System Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

The Committee shall consist of a core of nine voting members, including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives or ex-officio members. Federal members will serve as Regular Government Employees or ex-officio members. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/peripheral-and-central-nervous-system-drugs-advisory-committee/peripheral-and-central-nervous-system-drugs-advisory-committee-charter* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: June 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12368 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2021–M–0228, FDA–2021–M–0202, FDA–2021–M–0203, FDA–2021–M–0178, FDA–2021–M–0153, FDA–2021–M–0135, FDA–2021–M–0325, FDA–2021–M–0303, FDA–2021–M–0288, FDA–2021–M–0421, FDA–2021–M–0416, FDA–2021–M–0355, FDA–2021–M–0354, FDA–2021–M–0520, FDA–2021–M–0615, FDA–2021–M–0531, FDA–2021–M–0527, FDA–2021–M–0820, FDA–2021–M–0769, FDA–2021–M–0766, FDA–2021–M–0676, FDA–2021–M–0690, FDA–2021–M–0656, FDA–2021–M–0494, FDA–2021–M–0915, FDA–2021–M–0911, FDA–2021–M–0853, FDA–2021–M–0805, FDA–2021–M–1046, FDA–2021–M–1010, FDA–2021–M–0991, FDA–2021–M–0989, FDA–2021–M–0975, FDA–2021–M–0962, FDA–2021–M–1176, FDA–2021–M–1119, FDA–2021–M–1116, FDA–2021–M–0532, FDA–2021–M–1058, FDA–2021–M–1182, FDA–2021–M–1023, FDA–2021–M–1207, FDA–2021–M–1284, FDA–2021–M–1271, FDA–2021–M–1317, FDA–2021–M–1321, FDA–2021–M–1316, FDA–2021–M–1325, FDA–2021–M–1352, FDA–2022–M–0029, FDA–2022–M–0071, FDA–2022–M–0087, FDA–2022–M–0089, FDA–2022–M–0090, and FDA–2022–M–0171].

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is publishing a list of premarket approval applications (PMAs) that have been approved from January 1, 2021, through February 14, 2022. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the internet and the Agency's Dockets Management Staff. This is the last notice of this kind considering FDA's rule discontinuing the practice of publishing such summaries in the **Federal Register**. As indicated in that rule, FDA will continue to publish to make available on the internet and place on public display summaries of safety and effectiveness for approved PMAs.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket Nos. FDA–2021–M–0228, FDA–2021–M–0202, FDA–2021–M–0203, FDA–2021–M–0178, FDA–2021–M–0153, FDA–2021–M–0135, FDA–2021–M–0325, FDA–2021–M–0303, FDA–2021–M–0288, FDA–2021–M–0421, FDA–2021–M–0416, FDA–2021–M–0355, FDA–2021–M–0354, FDA–2021–M–0520, FDA–2021–M–0615, FDA–2021–M–0531, FDA–2021–M–0527, FDA–2021–M–0820, FDA–2021–M–0769, FDA–2021–M–0766, FDA–2021–M–0676, FDA–

2021–M–0690, FDA–2021–M–0656, FDA–2021–M–0494, FDA–2021–M–0915, FDA–2021–M–0911, FDA–2021–M–0853, FDA–2021–M–0805, FDA–2021–M–1046, FDA–2021–M–1010, FDA–2021–M–0991, FDA–2021–M–0989, FDA–2021–M–0975, FDA–2021–M–0962, FDA–2021–M–1176, FDA–2021–M–1119, FDA–2021–M–1116, FDA–2021–M–0532, FDA–2021–M–1058, FDA–2021–M–1182, and FDA–2021–M–1023, FDA–2021–M–1207, FDA–2021–M–1284, FDA–2021–M–1271, FDA–2021–M–1317, FDA–2021–M–1321, FDA–2021–M–1316, FDA–2021–M–1325, FDA–2021–M–1352, FDA–2022–M–0029, FDA–2022–M–0071, FDA–2022–M–0087, FDA–2022–M–0089, FDA–2022–M–0090, and FDA–2022–M–0171 for ''Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Dharmesh Patel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–3289, *Dharmesh.Patel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is published in the **Federal Register**. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

Prior to February 14, 2022, the regulations provided that FDA publish a list of available safety and effectiveness summaries of PMA approvals and denials that were announced in the **Federal Register**. FDA issued a rule discontinuing this practice on January 13, 2022 (87 FR 2042). At that time, FDA committed to continue to publish lists of safety and effectiveness summaries of PMA approvals and denials on its website. The following list of approved PMAs for which summaries of safety and effectiveness that were placed on the internet from January 1, 2021, through February 14, 2022, will, therefore, be our last such list to be published in this manner. There were no denial actions during this period. The list in table 1 provides the manufacturer's name, the product's generic name or trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS AND SAFETY AND PROBABLE BENEFIT SUMMARIES FOR APPROVED HDES MADE AVAILABLE FROM JANUARY 1, 2021, THROUGH FEBRUARY 14, 2022

PMA No., docket No.	Applicant	Trade name	Approval date
P200003, FDA–2021–M–0070	Seno Medical Instruments, Inc ...	Imagio® Breast Imaging System	1/11/21
P200028, FDA–2021–M–0135	Medtronic, Inc	DiamondTemp™ Ablation System consisting of DiamondTemp™ AblaDiamondTemp Ablation Catheter (Models CEDT100S, CEDT200L, CEDTB300S, CEDTB400L); DiamondTemp™ RF Generator (Model CEDTG200); DiamondTemp™ Irrigation Pump (Model CEDTP100); DiamondTemp™ Irrigation Tubing Set (Model CEDTTS100); DiamondTemp™ Catheter-to-RF Generator Cable (Model CEDTC100); DiamondTemp™ GenConnect Cable (Model CEDTGC100); DiamondTemp™ EGM Cable (Model CEDTEGM100).	1/28/2021
P140029/S027, FDA–2021–M–0153.	Q-Med AB	Restylane® Defyne	1/29/2021
P190005, FDA–2021–M–0178	Roche Diagnostics	Elecsys Anti-HBe, PreciControl Anti-HBe	2/3/2021
P200039, FDA–2021–M–0202	Shockwave Medical, Inc	Shockwave Intravascular Lithotripsy (IVL) System with the Shockwave C^2 Coronary Intravascular Lithotripsy (IVL) Catheter.	2/12/2021
P190013, FDA–2021–M–0288	AED Battery Exchange, LLC	AED Battery Exchange (Models 9146–ABE, G5–ABE, 5070–ABE, FR3–ABE).	2/13/2021

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PMA No., docket No.	Applicant	Trade name	Approval date
H200001, FDA–2021–M–0203	Additive Orthopaedics, LLC	Patient Specific Talus Spacer	2/17/2021
P190034, FDA–2021–M–0228	Roche Diagnostics	Elecsys Anti-HBs II, PreciControl Anti-HBs, Anti-HBs CalCheck.	2/23/2021
P200029, FDA–2021–M–0303	Boston Scientific Corporation	TheraSphere™	3/17/2021
P200025, FDA–2021–M–0325	Bausch Health	ClearVisc Ophthalmic Viscosurgical Device (OVD)	3/23/2021
P200046, FDA–2021–M–0354	Medtronic, Inc	Medtronic Harmony Transcatheter Pulmonary Valve (TPV) System.	3/26/2021
P200022/S003, FDA–2021–M–0355.	Simplify Medical, Inc	Simplify® Cervical Artificial Disc	4/1/2021
P200019, FDA–2021–M–0416	Ventana Medical Systems, Inc	VENTANA MMR RxDx Panel	4/22/2021
P980040/S124, FDA–2021–M–0421.	Johnson & Johnson Surgical Vision, Inc.	TECNIS Synergy™ IOL, Model ZFR00V, TECNIS Synergy™ Toric II IOL, Models ZFW150, ZFW225, ZFW300, ZFW375, TECNIS Synergy™ IOL with TECNIS Simplicity™ Delivery System, Model DFR00V, TECNIS Synergy™ Toric II IOL with TECNIS Simplicity™ Delivery System, Model DFW150, DFW225, DFW300, DFW375.	4/28/2021
P200002, FDA–2021–M–0418	AtriCure, Inc	EPi-Sense® Guided Coagulation System	4/28/21
P140031/S125, FDA–2021–M–0473.	Edwards Lifesciences, LLC	Edwards SAPIEN 3 and SAPIEN 3 Ultra Transcatheter Heart Valve System.	5/13/21
P200010/S001, FDA–2021–M–0520.	Guardant Health, Inc	Guardant360 CDx	5/21/2021
P110027/S012, FDA–2021–M–0531.	QIAGEN GmbH	therascreen® KRAS RGQ PCR Kit	5/28/2021
P110033/S053, FDA–2021–M–0527.	Allergan	JUVÉDERM® VOLBELLA® XC	5/28/2021
P200010/S002, FDA–2021–M–0494.	Guardant Health, Inc	Guardant360 CDx	5/28/2021
P100010/S110, FDA–2021–M–0690.	Medtronic, Inc	Arctic Front AdvanceTM Cardiac Cryoablation Catheters, Arctic Front Advance ProTM Cardiac Cryoablation Catheters, FreezorTM MAX Cardiac Cryoablation Catheter, CryoConsole Manual Retraction Kit.	6/18/2021
P200021, FDA–2021–M–0615	Oticon Medical	Neuro Cochlear Implant System	6/23/2021
P110019/S115, FDA–2021–M–0656.	Abbott Vascular	XIENCE Alpine Everolimus Eluting Coronary Stent Systems (XIENCE Alpine EECSS), XIENCE Sierra Everolimus Eluting Coronary Stent Systems (XIENCE Sierra EECSS), and the XIENCE Skypoint Everolimus Eluting Coronary Stent Systems (XIENCE Skypoint EECSS).	6/25/2021
P140029/S032, FDA–2021–M–0676.	Q-Med AB, a Galderma affiliate	Restylane® Contour	6/28/2021
P200017, FDA–2021–M–0766	Siemens Healthcare Diagnostics Inc.	ADVIA Centaur® Anti-HBe2 (aHBe2) assay	7/14/2021
P190032/S001, FDA–2021–M–0707.	Foundation Medical, Inc	FoundationOne® Liquid CDx (F1 Liquid)	7/15/21
P130022/S039, FDA–2021–M–0769.	Nervo Corporation	Senza® Spinal Cord Stimulation (SCS) System	7/16/2021
P200037, FDA–2021–M–0820	Kestra Medical Technologies, Inc.	ASSURE® Wearable Cardioverter Defibrillator (WCD) System (ASSURE System).	7/27/2021
P200011, FDA–2021–M–0853	Pillar Biosciences, Inc	ONCO/Reveal™ Dx Lung & Colon Cancer Assay	7/30/2021
P200045, FDA–2021–M–0805	Bolton Medical, Inc	RelayPro Thoracic Stent-Graft System	8/5/2021
P200049, FDA–2021–M–0911	Abbott Medical	Amplatzer™ Amulet™ Left Atrial Appendage Occluder	8/14/2021
P210001, FDA–2021–M–0915	Ventana Medical Systems, Inc	VENTANA MMR RxDx Panel	8/17/2021
P160045/S028, FDA–2021–M–0962.	Life Technologies Corporation	Oncomine® Dx Target Test	8/25/2021
P210007, FDA–2021–M–0991	MicroTransponder Inc	MicroTransponder® Vivistim® Paired VNS™ System (Vivistim® System).	8/27/2021
P050052/S129, FDA–2021–M–0975.	Merz North America, Inc	RADIESSE® (+) Lidocaine injectable implant	9/1/2021
P180051, FDA–2021–M–0989	TransMedics, Inc	Organ Care System (OCS™) Heart System	9/3/2021
P160045/S029, FDA–2021–M–1023.	Life Technologies Corporation	Oncomine™ Dx Target Test	9/15/2021
P190023, FDA–2021–M–1010	Abbott Medical	Portico™ Transcatheter Aortic Valve Implantation System: Portico™ Transcatheter Aortic Heart Valve, FlexNav™ Delivery System, FlexNav™ Loading System.	9/17/2021
P200004, FDA–2021–M–1046	ConMed Corporation	ConMed PadPro Multifunction Electrodes, ConMed PadPro Multifunction Electrode Adapters.	9/26/2021
P200031, FDA–2021–M–1058	TransMedics, Inc	Organ Care System (OCS™) Liver	9/28/2021
P210026, FDA–2021–M–1116	Agilent Technologies, Inc	Ki-67 IHC MIB–1 pharmDx (Dako Omnis)	10/12/2021

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PMA No., docket No.	Applicant	Trade name	Approval date
P190012, FDA–2021–M–1119	Spatz FGIA Inc	Spatz3 Adjustable Balloon System	10/15/2021
P160046/S010, FDA–2021–M–0532.	Ventana Medical Systems, Inc ...	VENTANA PD–L1 (SP263) Assay	10/15/2021
P150031/S040, FDA–2021–M–1176.	Boston Scientific Corporation	Vercise PC, Vercise Gevia and Vercise Genus DBS Systems.	10/20/2021
P150038/S014, FDA–2021–M–1182.	INSIGHTEC, Inc	Exablate Model 4000 Type 1.0 and 1.1 System (''Exablate Neuro'').	10/29/21
P130026/S070, FDA–2021–M–1207.	Abbott Medical	TactiCath Contact Force Ablation Catheter, Sensor Enabled (Uni-Directional); TactiCath Contact Force Ablation Catheter, Sensor Enabled (Bi-Directional); TactiSys Quartz Equipment; Ampere RF Generator and Cool Point Irrigation Pump.	11/4/21
P210020, FDA–2021–M–1284	Urotronic, Inc	Optilume® Urethral Drug Coated Balloon	12/3/21
P190022, FDA–2021–M–1271	OPKO Health, Inc	4Kscore® Test	12/7/21
P200035, FDA–2021–M–1317	OrganOx Limited	OrganOx metra® System	12/9/21
P210014, FDA–2021–M–1321	Svelte Medical Systems, Inc	SLENDER Sirolimus-Eluting Coronary Stent Integrated Delivery System and DIRECT Sirolimus-Eluting Coronary Stent Rapid Exchange Delivery System.	12/13/21
P200041, FDA–2021–M–1316	OrbusNeich Medical (Shenzhen) Co., Ltd.	Scoreflex NC Scoring PTCA Catheter	12/21/21
P200015/S011, FDA–2021–M–1325.	Edwards Lifesciences LLC	Edwards SAPIEN 3 Transcatheter Pulmonary Valve System with Alterra Adaptive Prestent.	12/16/21
P200040, FDA–2021–M–1352	Delphinus Medical Technologies, Inc.	SoftVue Automated Whole Breast Ultrasound System with Sequr Breast Interface Assembly.	10/6/21
P170002/S012, FDA–2022–M–0029.	TEOXANE S.A	RHA® Redensity™	12/22/21
P970051/S205, FDA–2022–M–0071.	Cochlear Americas	Nucleus 24 Cochlear Implant System	1/10/22
P130022/S042, FDA–2022–M–0087.	Nevro Corporation	Senza® Spinal Cord Stimulation (SCS) System	1/18/22
P840001/S469, FDA–2022–M–089.	Medtronic Neuromodulation	Restore, Itrel, Synergy, Intellis, and Vanta Spinal Cord Stimulation Systems, Pisces, Specify and Vectris Spinal Cord Stimulation Leads.	1/21/22
P080012/S068, FDA–2022–M–0090.	Flowonix Medical, Inc	Prometra® Programmable Infusion Pump System	1/12/22
P160048/S016, FDA–2022–M–0171.	Senseonics, Incorporated	Eversense® E3 Continuous Glucose Monitoring System	2/10/22

II. Electronic Access

Persons with access to the internet may obtain the documents at *https://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm.*

Dated: June 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–12371 Filed 6–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request Information Collection Request Title: HRSA Ryan White HIV/AIDS Program HIV Quality Measures Module, OMB No. 0906–0022—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than August 8, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: HIV Quality Measures (HIVQM) Module OMB No. 0906–0022—Extension.

Abstract: The HRSA Ryan White HIV/AIDS Program (RWHAP) funds and coordinates with cities, states, and local clinics/community-based organizations to deliver efficient and effective HIV care, treatment, and support to low-income people with HIV. Since 1990, the RWHAP has developed a comprehensive system of safety net providers who deliver high quality direct health care and support services to over half a million people with HIV—more than 50 percent of all people diagnosed with HIV in the United States. Nearly two-thirds of clients live at or below 100 percent of the federal poverty level and approximately three-quarters of RWHAP clients are racial/ethnic minorities.[1]

RWHAP Parts A, B, C, and D recipients and sub recipients must follow legislative requirements for the establishment of clinical quality management programs to assess the extent to which their HIV services are consistent with the most recent Department of Health and Human Services Clinical Treatment guidelines. In support of these requirements, HRSA created the HIV Quality Measures (HIVQM) Module as an online tool to assist recipients in meeting the clinical quality management program requirement by allowing recipients to input data for the HRSA performance measures. HRSA maintains over 40 performance measures across the following categories: (1) core, (2) all ages, (3) adolescent/adult, (4) HIV-infected children, (5) HIV-exposed children, (6) medical case management, (7) oral health, (8) AIDS Drug Assistance Program, and (9) systems. The HIVQM Module also supports the requirement imposed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Health and Human Service Award (45 CFR 75.301) that recipients relate financial data to performance accomplishments of their federal awards. The HIVQM Module helps recipients set goals and monitor performance measures and quality improvement projects. The use of the HIVQM Module is voluntary for RWHAP recipients but strongly encouraged.

Need and Proposed Use of the Information: The HIVQM Module supports recipients and sub-recipients in their clinical quality management programs, performance measurement, service delivery, and monitoring of client health outcomes and quality HIV services. The HIVQM Module is accessible via the RWHAP Services Report, an existing online portal that RWHAP recipients use for required data collection of their services. Recipients may enter performance measures data into the HIVQM Module four times a year and then generate reports to assess their performance. Recipients have the option to enter data for specific populations for a subset of performance measures based on age, gender, race/ethnicity, and risk factor. Recipients may also compare their performance against other recipients in their state, region, and nationally. Additionally, recipients can choose the performance measures they want to monitor and enter data accordingly. For recipients and sub-recipients participating in the Centers for Medicare & Medicaid Incentive Programs, such as the Medicare Promoting Interoperability Program and the Merit-based Incentive Payment System, the HIVQM Module may be used to monitor the HRSA measures that qualify and comply with the requirements to receive incentives from these programs.

Likely Respondents: RWHAP Part A, Part B, Part C, and Part D recipients and their sub-recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
HIVQM Report	2,063	4	8,252	1	8,252
	2,063		8,252		8,252

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–12287 Filed 6–7–22; 8:45 am]

BILLING CODE 4165–15–P

[1] HRSA. Ryan White HIV/AIDS Program Data Report, 2020.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Post-Award Reporting Requirements Including Research Performance Progress Report Collection (OD)

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or email your request, including your address to *ProjectClearanceBranch@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Public Health Service (PHS) Post-award Reporting Requirements Revision, OMB 0925–0002, Expiration Date 9/30/2024, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Starting in January 2023, NIH will require applicants and recipients to submit and address Data Management and Sharing Plans within the SF424 Research and Related (R&R) application and the Research Performance Progress Report (RPPR) in accordance with the final NIH Policy for Data Management and Sharing (DMS Policy) to promote the management and sharing of scientific data generated from NIH-funded or conducted research. The application and progress report forms will be updated to align with this requirement. NIH will also be updating the PHS 2271 Statement of Appointment form so that trainees appointed to institutional Ruth L. Kirschstein National Service Research Awards (NSRA) can document when they receive support for childcare costs. The RPPR is required to be used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality (AHRQ) grantees. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. The phased transition to the RPPR required the maintenance of dual reporting processes for a period of time. Continued use of the PHS Non-competing Continuation Progress Report (PHS 2590), exists for a small group of grantees. This collection also includes other PHS post-award reporting requirements: PHS 416–7 NRSA Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, HHS 568 Final Invention Statement and Certification, iEdison, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant. The PHS 416–7, 2271, and 6031–1 is used by NSRA recipients to activate, terminate, and provide for payback of a NSRA. Closeout of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. iEdison allows grantees and Federal agencies to meet statutory requirements for reporting inventions and patents. The PHS 3734 serves as the official record of grantee relinquishment of a PHS award when an award is transferred from one grantee institution to another. Pre-award reporting requirements are simultaneously consolidated under 0925–0001 and the changes to the collection here are related. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for NIH to ensure participant safety, data integrity, and accountability of the use of public funds. NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information in the PHS applications and pre-award reporting requirements as well as continued monitoring and update during the post-award reporting requirements will facilitate NIH's oversight of clinical trials. In addition, some of the data reported in the RPPR will ultimately be accessible to investigators to update certain sections of forms when registering or reporting their trials with *ClinicalTrials.gov. Frequency of response:* Applicants may submit applications for published receipt dates. For NSRA awards, fellowships are activated, and trainees appointed.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 532,249.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
REPORTING				
PHS 416–7	12,580	1	30/60	6,290
PHS 6031–1	1,778	1	20/60	593
PHS 568	11,180	1	5/60	932
iEdison	5,697	1	15/60	1,424
PHS 2271	22,035	1	15/60	5,509
PHS 2590	243	1	18	4,374
RPPR—Core Data	32,098	1	8	256,784
Biosketch (Part of RPPR)	2,544	1	2	5,088

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Data Tables (Part of RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information	6,420	1	3	25,680
Publication Reporting	97,023	3	5/60	24,256
Final RPPR—Core Data	18,000	1	10	180,000
Data Tables (Part of Final RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of Final RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of Final RPPR)	3,600	1	4	14,400
PHS 3734	479	1	30/60	240
Reporting Burden Total	.....	.....	.....	531,874
RECORDKEEPING				
SBIR/STTR Life Cycle Certification	1,500	1	15/60	375
Grand Total	.....	411,699	.....	532,249

Dated: June 1, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–12279 Filed 6–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Endocrinology and Metabolism.

Date: July 1, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–281: Fertility Status as a Marker for Overall Health.

Date: July 12, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 435–5000, *chana2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory System, Cognition and Memory.

Date: July 12, 2022.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pablo M. Blazquez Gamez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *pablo.blazquezgamez@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innate Immunity and Inflammation.

Date: July 13, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Disease and Immunology B.

Date: July 14–15, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Uma Basavanna, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–1398, *uma.basavanna@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.

Date: July 14–15, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Biomaterials, Biointerfaces, Gene and Drug Delivery.

Date: July 15, 2022.

Time: 10:00 a.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; HEAL Initiative: Secondary Analysis and Integration of Existing Data Related to Acute and Chronic Pain Development or Management in Humans.

Date: July 21, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 2, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12303 Filed 6–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; PHS Applications and Pre-Award Reporting Requirements (OD)

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Program Analyst, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland 20892, or call a non-toll-free number 301–435–0941 or email your request, including your address to *ProjectClearanceBranch@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Public Health Service (PHS) Applications and Pre-Award Reporting Requirements, Revision, OMB 0925–0001, Expiration Date 9/30/2024, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Starting in January 2023, NIH will require applicants and recipients to submit and address Data Management and Sharing Plans within the SF424 Research and Related (R&R) application and the Research Performance Progress Report (RPPR) in accordance with the final NIH Policy for Data Management and Sharing (DMS Policy) to promote the management and sharing of scientific data generated from NIH-funded or conducted research. The application and progress report forms will be updated to align with this requirement. This collection also continues to include PHS applications and pre-award reporting requirements: PHS 398 [paper] Public Health Service Grant Application forms and instructions; PHS 398 [electronic] PHS Grant Application component forms and agency specific instructions used in combination with the SF424 (R&R); PHS Fellowship Supplemental Form and agency specific instructions used in combination with the SF424 (R&R) forms/instructions for Fellowships [electronic]; PHS 416–1 Ruth L. Kirschstein National Research Service Award (NRSA) Individual Fellowship Application Instructions and Forms used only for a change of sponsoring institution application [paper]; Instructions for a Change of Sponsoring Institution for NRSA Fellowships (F30, F31, F32 and F33) and non-NRSA Fellowships; PHS 416–5 Ruth L. Kirschstein National Research Service Award Individual Fellowship Activation Notice; and PHS 6031 Payback Agreement. The PHS 398 (paper and electronic are currently approved under 0925–0001). All forms expire 2/28/2023. Post-award reporting requirements are simultaneously consolidated under 0925–0002 and include the RPPR. The PHS 398 and SF 424 applications are used by applicants to request Federal assistance funds for traditional investigator-initiated research projects and to request access to databases and other PHS resources. The PHS 416–1 is used only for a change of sponsoring institution application. PHS Fellowship Supplemental Form and agency specific instructions is used in combination with the SF424 (R&R) forms/instructions for Fellowships and is used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The PHS 416–5 is used by individuals to indicate the start of their NRSA awards. The PHS 6031 Payback Agreement is used by individuals at the time of activation to certify agreement to fulfill the payback provisions. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for NIH to ensure participant safety, data integrity, and accountability of the use of public funds. NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information in the PHS applications and pre-award reporting requirements will facilitate NIH's development of data systems to facilitate oversight of clinical trials as well as understand where gaps in the research portfolio may exist. In addition, some of the data collected here will ultimately be accessible to investigators to pre-populate certain

sections of forms when registering their trials with *ClinicalTrials.gov*.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,023,454.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS 398—Paper	4,247	1	35	148,645
PHS 398/424—Electronic	.....	.....	.....	.....
PHS Assignment Request Form	37,120	1	30/60	18,560
PHS 398 Cover Page Supplement	74,239	1	1	74,239
PHS 398 Modular Budget	56,693	1	1	56,693
PHS 398 Training Budget	1,122	1	2	2,244
PHS 398 Training Subaward Budget Attachment(s) Form	561	1	90/60	842
PHS 398 Research Plan	70,866	1	10	708,660
PHS 398 Research Training Program Plan	1,122	1	10	11,220
Data Tables	1,515	1	4	6,060
PHS 398 Career Development Award Supplemental Form	2,251	1	10	22,510
PHS Human Subjects and Clinical Trial Information	54,838	1	13	712,894
Biosketch (424 Electronic)	80,946	1	2	161,892
PHS Fellowship—Electronic	.....	.....	.....	.....
PHS Fellowship Supplemental Form (includes F reference letters)	6,707	1	12.5	83,838
Biosketch (Fellowship)	6,707	1	2	13,414
416–1	29	1	10	290
PHS 416–5	6,707	1	5/60	559
PHS 6031	6,217	1	5/60	518
VCOC Certification	6	1	5/60	1
SBIR/STTR Funding Agreement Certification	1,500	1	15/60	375
Total Annual Burden Hours	.....	421,777	.....	2,023,454

Dated: June 1, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–12278 Filed 6–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Single-Site and Pilot Clinical Trials Study Section.

Date: June 22–23, 2022.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 207–P, Bethesda, MD 20892–7924, 301–827–7942, *lismerin@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 3, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12338 Filed 6–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request: Request Human Embryonic Stem Cell Line To Be Approved for Use in NIH Funded Research (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) Office of the Director will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project,

contact: Dr. Ellen Gadbois, Office of the Director, NIH, building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free number (301) 496–9838 or Email your request, including your address to: *Ellen.gadbois@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Request for Human Embryonic Stem Cell Line to be approved for Use in NIH Funded Research. OMB No. 0925–0601, exp. date 10/31/2022—EXTENSION—Office of the Director, National Institutes of Health (NIH).

Need and Use of Information Collection: This form is used by applicants to request that human embryonic stem cell lines be approved for use in NIH funded research. Applicants may submit applications at any time.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 255 per respondent.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH grantees and others with hESC lines	5	3	17	255
Total		15		255

Dated: June 1, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–12280 Filed 6–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Study Section.

Date: June 2–3, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Michael Reilly Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, 301–827–7975, *reillymp@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 2, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–12298 Filed 6–7–22; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Advisory Council on Historic Preservation Quarterly Business Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will have its next quarterly meeting on Wednesday, June 29, 2022, from 1:30 p.m. to 4:30 p.m. Eastern Time. The meeting will be held through videoconferencing and a recording will be made available afterwards on *www.achp.gov.*

DATES: The quarterly meeting will take place on Wednesday, June 29, 2022 starting at 1:30 p.m.

ADDRESSES: The meeting will take place via videoconferencing. A recording will be made available on *www.achp.gov.*

FOR FURTHER INFORMATION CONTACT: Tanya DeVonish, 202–517–0205, *tdevonish@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the

only entity with the legal responsibility to encourage federal agencies to factor historic preservation into their decision making. For more information on the ACHP, please visit our website at *www.achp.gov.*

The agenda for the upcoming quarterly meeting of the ACHP is the following:

I. Vice Chairman's Welcome and Report
II. Acting Executive Director's Report
III. Climate Change and Historic Preservation Task Force
IV. Cultural Resources Workforce Development
V. Native American Affairs
  A. Establishing ACHP Policy Statement on Traditional Knowledge in Section 106 Reviews
  B. Updating ACHP Policy Statement on Burial Sites, Human Remains, and Funerary Objects
  C. Other Reports
VI. Section 106
  A. Electric Vehicle Supply Equipment Exemption
  B. Program Alternatives Update
  C. Other Reports
VII. Historic Preservation Policy and Programs
  A. Legislation
  B. Other Reports
VIII. Communications, Education, and Outreach
  A. Historic Preservation Core Competencies
  B. Other Reports
IX. New Business
X. Adjourn

Due to continuing COVID-related conditions, the meeting will take place using Zoom videoconferencing. There will be no in-person attendance and, due to technical limitations, only ACHP and ACHP member staff will be able to watch live. However, a recording of the meeting will be posted on *www.achp.gov* when the proceedings conclude.

Authority: 54 U.S.C. 304102.

Dated: June 2, 2022.

Javier E. Marques,

General Counsel.

[FR Doc. 2022–12273 Filed 6–7–22; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0017]

Protest (CBP Form 19)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension without change 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 June 8, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0017 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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 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: Protest.

OMB Number: 1651–0017.

Form Number: CBP Form 19.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: U.S. Customs and Border Protection (CBP) Form 19, *Protest,* is filed to seek the review of a CBP decision. This review may be conducted by CBP personnel who participated directly in the underlying decision. This form is also used to request ''Further Review,'' which means a request for review of the protest to be performed by CBP personnel who did not participate directly in the protested decision or by the Commissioner, or his designee, as provided in the CBP regulations.

The matters that may be protested include: the appraised value of merchandise; the classification and rate and amount of duties chargeable; all charges within the jurisdiction of the Secretary of Homeland Security or the Secretary of the Treasury; exclusion of merchandise from entry or delivery, or demand for redelivery; the liquidation or reliquidation of an entry or any modification of an entry; the refusal to pay a claim for drawback; refusal to reliquidate an entry made before December 18, 2004 under section 520(c) of the Tariff Act of 1930; or refusal to reliquidate an entry under section 520(d) of the Tariff Act of 1930.

The parties who may file a protest or application for further review include: the importer or consignee shown on the entry papers, or their sureties; any person paying any charge or exaction; any person seeking entry or delivery, with respect to a determination of origin

under 19 CFR 181 Subpart G any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certification of Origin covering the merchandise as provided for in 19 CR 181.11(a); of any person filing a claim for drawback; or any authorized agent of any of the persons described above.

CBP Form 19 collects information such as the name and address of the protesting party, information about the entry being protested, detailed reasons for the protest, and justification for applying for further review.

The information collected on CBP Form 19 is authorized by sections 514 and 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1514 (a)) and provided for by 19 CFR part 174 *et seq.* This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title_1=19.*

Type of Information Collection: Protest (Form 19).

Estimated Number of Respondents: 3,750.

Estimated Number of Annual Responses per Respondent: 12.

Estimated Number of Total Annual Responses: 45,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 45,000.

Dated: June 2, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–12272 Filed 6–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0124]

Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension without change 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 August 8, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0124 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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 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: Cargo Container and Road Vehicle Certification for Transport under Customs Seal.

OMB Number: 1651–0124.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The United States is a signatory to several international Customs conventions and is responsible for specifying the technical requirements that containers and road vehicles must meet to be acceptable for transport under Customs seal. U.S. Customs and Border Protection (CBP) has the responsibility of collecting information for the purpose of certifying containers and vehicles for international transport under Customs seal. A certification of compliance facilitates the movement of containers and road vehicles across international territories. The procedures for obtaining a certification of a container or vehicle are set forth in 19 CFR part 115.

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Cargo Container/Vehicle Certification.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 120.

Estimated Number of Total Annual Responses: 3,000.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

Dated: June 2, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–12267 Filed 6–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7055–N–01]

60-Day Notice of Proposed Information Collection: Ginnie Mae Mortgage-Backed Securities Programs; OMB Control No.: 2503–0033

AGENCY: Ginnie Mae, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: August 8, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. 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. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Ginnie Mae Mortgage-Backed Securities Programs Schedule of Subscribers and Ginnie Mae Guaranty Agreement.

OMB Approval Number: 2503–0033.

New/Renewal: Renewal.

Form Number: HUD–11705.

The information needed by Ginnie Mae for the participation of issuers/customers in its Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

Description of the need for the information and proposed use: This form must be used by the issuer to submit pool or loan packages in either an electronic format, a paper format, or manual import using Single Family Pool Delivery Module (SFPDM) or Ginnie*NET.* Ginnie Mae Issuers will deliver pool and loan data in Extensible Markup Language (XML) format based on MISMO Version 3.3. This new file format will replace the existing Ginnie*NET* Single Family Flat File Layout that is currently submitted to Ginnie Mae, to better align with industry standards. Each time the issuer issues a new security, it agrees that the applicable Guaranty Agreement is in effect on the issue date of the securities and that it will govern all of the issuer's outstanding pool and loan packages, pooled mortgages, and securities whether created under the Ginnie Mae I MBS program or the Ginnie Mae II MBS program. The pool will vary as to the amount of each certificate, certificate holder, and the number of certificates for each holder. The data provided on this form is the basis for the preparation of the securities issued under each Ginnie Mae MBS pool. Upon receipt of the form, Bank of New York Mellon reviews the information submitted in conjunction with other documentation required for the issuance of MBS securities. The approval of this form enables the actual preparation of the securities to be issued.

Title of Information Collection: Ginnie Mae Mortgage-Backed Securities Programs Schedule of Pooled Mortgages.

OMB Approval Number: 2503–0033.

New/Renewal: Renewal.

Form Number: HUD–11706.

The information needed by Ginnie Mae for the participation of issuers/customers in its Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

Description of the need for the information and proposed use: This form is used by the issuers when using an electronic format, a paper format or manual entry to submit pools to Ginnie Mae's pool processing agent, Single Family Pool Delivery Module (SFPDM). By utilizing SFPDM, Ginnie Mae Issuers will deliver pool and loan data in Extensible Markup Language (XML) format based on MISMO Version 3.3. This new file format will replace the existing Ginnie*NET* Single Family Flat File Layout that is currently submitted to Ginnie Mae, to be better aligned to industry standards. The purpose of the Form HUD 11706 is to provide a means of identifying and controlling the mortgages that collateralize the designated MBS pools or loan packages. It provides a certification from the document custodian that certain required mortgage documents are being held by the document custodian on behalf of Ginnie Mae.

Title of Information Collection: Ginnie Mae Mortgage-Backed Securities Programs Reporting and Feedback (RFS) Single Family Issuer Monthly Payment Default Status (PDS) Loan Level Reporting.

OMB Approval Number: 2503–0033.

New/Renewal: New.

Form Number: Appendix VI–22.

The information needed by Ginnie Mae for the participation of issuers/customers in its Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

Description of the need for the information and proposed use: Ginnie Mae issuers are required to submit loan level data through a separate Payment Default Status (PDS) record for all single-family loans that are: delinquent as defined in the MBS Guide Chapter 18; where the borrower is in bankruptcy whether or not the borrower is current on loan payments; where the borrower is in forbearance whether or not the borrower is current on loan payments; and/or the borrower is current in mortgage payments and for which the Issuer is pursuing an alternative to foreclosure (*e.g.,* borrower is in imminent default), other than bankruptcy or forbearance. The report, as outlined in the MBS Guide Chapter 17, contains all applicable loans as of the close of the month for which data is presented and must reconcile with the monthly accounting report in the Reporting and Feedback System (RFS).

This loan level data ensures that Ginnie Mae gains granular insight into the state of each Issuer's delinquent and defaulted loan portfolios, which is used to identify those issuers who represent the greatest risk of default, and thus future potential risk of financial loss to Ginnie Mae.

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours	Hourly cost per response	Estimated annual cost to respondents (issuers)
11705	III–6	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	366.00	12.00	4,392.00	0.017	74.66	46.00	3,434.54
11706	III–7	Schedule of Pooled Mortgages.	366.00	12.00	4,392.00	0.083	364.54	46.00	16,768.66
	Appendix VI–22.	Reporting and Feedback (RFS) Single Family Issuer Monthly Payment Default Status (PDS) Loan Level Reporting.	306.00	12.00	3,672.00	0.10	367.20	46.00	16,891.20
Total							806.40		37,094.40

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Sam I. Valverde,

Executive Vice President & Chief Operating Officer.

[FR Doc. 2022–12351 Filed 6–7–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R1–ES–2022–0068]; [FXES11140100000–223–FF01E00000]

Notice of Intent To Prepare an Environmental Impact Statement for the Kauai Island Utility Cooperative Habitat Conservation Plan, Kauai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; virtual public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide this notice to announce that the Kauai Island Utility Cooperative (KIUC) is preparing a habitat conservation plan (HCP) in support of its anticipated application for an incidental take permit (ITP) under the Endangered Species Act for activities it would undertake in managing existing and future powerlines and lighting. We intend to prepare an environmental impact statement to evaluate the effects on the human environment related to this request, and on any potential issuance of an ITP and implementation of the HCP. In accordance with the National Environmental Policy Act, we are opening a public scoping period and announcing a virtual public scoping meeting. In 2016, we published a notice of intent to prepare an EIS. Any comments submitted then do not need to be resubmitted, as they will be reconsidered.

DATES:

Submitting Comments: We will accept online or hardcopy comments. Comments submitted online at *https://www.regulations.gov/* must be received by 11:59 p.m. Eastern Time on July 8, 2022. Hardcopy comments must be received or postmarked on or before July 8, 2022 (see **ADDRESSES**).

Virtual Public Scoping Meeting: The Service will hold one public meeting during the scoping period. To help protect the public and limit the spread of the COVID–19 virus, the public meeting will be held on:

- June 28, 2022 from 5 p.m. to 7 p.m. Hawaii Standard Time.

ADDRESSES:

Submitting Comments: You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R1–ES–2022–0068.
- *U.S. Mail:* Public Comments Processing; Attn: Docket No. FWS–R1–ES–2022–0068; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For additional information about submitting comments, see **SUPPLEMENTARY INFORMATION**.

Virtual Public Scoping Meeting: A link and access instructions for the virtual scoping meeting will be posted to *https://www.fws.gov/pacificislands/* at least one week prior to the public meeting dates.

FOR FURTHER INFORMATION CONTACT: Koa Matsuoka, Pacific Islands Fish and Wildlife Office, by telephone at 808–792–9417 or by email at *KIUCLongTermhcp@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), provide this notice to announce that the Kauai Island Utility Cooperative (KIUC) is preparing a habitat conservation plan (HCP) in support of its anticipated application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), for activities it would propose to undertake in managing existing and future powerlines and lighting. We intend to prepare an environmental impact statement (EIS) to evaluate the effects on the human environment related to this request, and on any potential issuance of an ITP and implementation of the HCP. In accordance with the National Environmental Policy Act and its

implementing regulations (42 U.S.C. 4321 *et seq.*), we are opening a public scoping period and announcing a virtual public scoping meeting.

We previously published a notice of intent to prepare an EIS on July 7, 2016 (81 FR 44316) and opened a scoping period through September 6, 2016. KIUC used the public comments received during that period to revise and further develop an HCP. This new notice opens a new public scoping period based on the addition of new information, including adding six covered species to the HCP, and the anticipation of receiving an application from KIUC. Comments received in writing during the 2016 public comment period were retained, and do not need be provided again during this public comment period to be considered during this review.

Purpose and Need for the Proposed Action

In accordance with section 10(a)(2)(A) of the ESA, the KIUC intends to submit the draft Kauai Island Utility Cooperative Habitat Conservation Plan (KIUC HCP) to us in support of their incidental take permit (ITP) application for the following endangered species:

- Hawaiian petrel (ʻuaʻu in Hawaiian, *Pterodroma sandwichensis*)
- Hawaii Distinct Population Segment of band-rumped storm-petrel (ʻakēʻakē in Hawaiian, *Oceanodroma castro*)
- Hawaiian duck (koloa maoli in Hawaiian, *Anas wyvilliana*)
- Hawaiian stilt (aeʻo in Hawaiian, *Himantopus mexicanus knudseni*)
- Hawaiian coot (ʻalae keʻokeʻo in Hawaiian, *Fulica alai*)
- Hawaiian gallinule (ʻalae ʻula in Hawaiian, *Gallinula chloropus sandvicensis*).

The following threatened species are expected to be included in the HCP and application as well:

- Newell's shearwater (ʻaʻo in Hawaiian, *Puffinus auricularis newelli*)
- Hawaiian goose (nēnē in Hawaiian, *Branta sandvicensis*)
- Central North Pacific distinct population segment of green sea turtle (honu in Hawaiian, *Chelonia mydas*)

The requested ITP, if granted, would authorize incidental take of the covered species caused by KIUC's operation and maintenance of existing and future KIUC facilities, and the implementation of a conservation strategy to minimize and mitigate the impact of the taking to the covered species.

To meet our requirements under the National Environmental Policy Act (NEPA); 42 U.S.C. 4321 *et seq.*) and its implementing regulations, we intend to prepare a draft environmental impact statement (DEIS) and, later, a final environmental impact statement (FEIS), to evaluate the effects on the human environment of issuing the requested permit and KIUC's implementation of its HCP. The Service's purpose and need for the proposed action is to (1) process the applicant's request for an ITP and (2) either grant, grant with conditions, or deny the ITP request in compliance with the Service's authority under applicable law, including, without limitation, section 10(a)(1)(B) of the ESA and applicable ESA implementing regulations.

Preliminary Proposed Action and Alternatives

Consistent with 40 CFR 1501.9(d)(2), the preliminary description of the proposed action is issuance of an ITP authorizing incidental take of covered species in association with covered activities and HCP implementation. The DEIS will include a reasonable range of alternatives, including but not limited to variations in the level of permitted take, the length of the permit term, conservation minimization and mitigation measures, and implementation and effectiveness monitoring. Additionally, a No Action Alternative will be included, in which the Service would not issue an ITP. For analysis purposes, the Service would assume that KIUC would operate and maintain existing and future powerlines and lighting in accordance with current practice, which includes implementation of take avoidance and minimization measures, but no mitigation offset for any continued unauthorized take. Under this alternative, any incidental take of covered species would not be authorized, and KIUC would assume all legal liability for operating without an ITP. Unauthorized take would continue to occur, and the effects would not be mitigated.

Background

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered under section 4 (see 16 U.S.C. 1538 and 16 U.S.C. 1533). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term ''take'' means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). The term ''harm'' is defined by regulation as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits authorizing incidental take of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains criteria for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Kauai Island Utility Cooperative Habitat Conservation Plan

KIUC intends to implement the KIUC HCP to cover activities including continued operation, maintenance, and retrofit of existing structures and facilities; operation and maintenance of certain future KIUC structures and facilities; and the implementation of a conservation strategy within the full geographic extent of the island of Kauai (plan area). KIUC provides and ensures the availability of electrical service to 34,000 of its ratepayers on the Island of Kaua'i. The KIUC HCP would include a conservation strategy with measures to minimize and mitigate the impact of the taking to covered species. We expect KIUC to request an ITP for a 30-year permit term.

Covered Activities

The proposed covered activities will include:

- Continued operation, maintenance and retrofit of existing powerlines and lighting at certain facilities. Powerlines include transmission, distribution, and communication wires and supporting structures such as poles, towers, lattice structures, and H-frames. Lighting includes streetlights and exterior building lights at two KIUC facilities (Port Allen Generating Station and the Kapaia Generating Station).

• Operation and maintenance of future powerlines and lighting.

• Implementation of measures associated with KIUC's conservation strategy that may result in short-term effects to covered species (*e.g.,* installation and maintenance of predator-proof fences and implementation of predator removal activities).

Covered Species

The species proposed for coverage under the KIUC HCP include the following threatened and endangered seabirds, threatened and endangered waterbirds, and the threatened Central North Pacific distinct population segment (CNPDPS) of the green sea turtle. The species are listed below:

• Newell's shearwater, Hawaiian petrel, and band-rumped storm-petrel;

• Hawaiian duck, Hawaiian stilt, Hawaiian coot, Hawaiian gallinule, and Hawaiian goose; and

• CNPDPS of the green sea turtle.

The proposed HCP identifies take of covered seabirds associated with powerline collisions and fallout caused by artificial nighttime lighting from streetlights and buildings. Take of covered waterbirds is primarily associated with powerline collisions. Artificial nighttime lighting from streetlights also results in take of green sea turtle nestlings that become disoriented after hatching on natal beaches.

Summary of Expected Impacts

The DEIS will identify and describe the effects of the proposed Federal action on the human environment that are reasonably foreseeable, including direct, indirect, and cumulative effects. This includes effects that occur at the same time and place as the proposed action or alternatives and/or effects that are later in time or farther removed in distance from the proposed action or alternatives. Expected impacts may include, but are not limited to, positive and negative impacts to the covered species and other biological resources, health and safety, aesthetics, historical and cultural resources, public services and utilities, and socioeconomics. While all reasonably foreseeable potential impacts to the human environment will be considered for the proposed action and alternatives, we expect powerline and lighting operation and maintenance to primarily impact covered species and other biological resources, aesthetics, and public services and utilities. Similarly, implementation of KIUC's proposed conservation strategy may specifically impact soils and geology, land use, and aesthetics, in addition to covered species and other biological resources. The effects of these expected impacts will be analyzed in the EIS (see 40 CFR 1508.1(g) and 40 CFR 1502.16).

Anticipating impacts to cultural and historical resources from HCP implementation, KIUC initiated outreach for the cultural impact assessment process under Hawaii Revised Statutes, chapter 6E. Seventy-four individuals knowledgeable about cultural resources and practices on the Island of Kauai were contacted, and seven responded. Information from this outreach, together with other information available to the Service, will be used to assess potential impacts on cultural resources of implementing the KIUC HCP.

Anticipated Permits and Authorizations

Anticipated permits and authorizations include, but may not be limited to the following:

• ESA Section 7 consultation;

• Hawaii Environmental Policy Act;

• Hawaii Revised Statutes chapter 195D (State of Hawaii endangered species laws);

• Migratory Bird Treaty Act;

• National Historic Preservation Act; and

• Other State and local permits and authorizations.

Related Actions

KIUC Short-Term Habitat Conservation Plan

In 2011, the Service approved the KIUC Short-Term Habitat Conservation Plan (STHCP), and issued an ITP to authorize take for three seabird species (Newell's shearwater, Hawaiian petrel, and band-rumped storm-petrel). The ITP provided KIUC with take coverage for seabird collisions with KIUC-owned powerlines and utility infrastructure, and fallout from nighttime lighting attraction to KIUC-operated streetlights and facilities. Additionally, the STHCP established a comprehensive monitoring and research program designed to further evaluate the impact of the powerline system on seabird populations and to provide key biological data to more adequately inform the longer term HCP and take authorization. The ITP for the STHCP expired in May, 2016, but the monitoring and research program was successful in guiding measures that KIUC has since implemented to minimize and mitigate the effects of its existing facilities on the covered species; increasing knowledge related to the impact of KIUC's powerline system on seabird populations; providing key biological data concerning the covered species; and improving our understanding of the effectiveness of conservation measures to more adequately inform the longer term habitat conservation plan currently under development and potential take authorization.

Kauai Seabird HCP

In 2020, the Service authorized an ITP for the State of Hawaii sponsored Kauai Seabird HCP (KSHCP) to cover take of the Newell's shearwater, Hawaiian petrel, and the band-rumped storm-petrel from attraction to lighting on the Island of Kauai. We provided ITPs to eight separate entities participating in the HCP. KIUC did not participate because of their need to obtain additional take coverage for the operation and maintenance of powerlines.

Schedule for the Decision-Making Process

The Service will analyze the effects of the proposed permit action, along with other alternatives considered and the associated impacts of each alternative for the development of the DEIS. Following completion of this analysis, the Service will publish a notice of availability and request for public comments on the DEIS and the draft HCP submitted with the ITP application. The Service expects to make the DEIS and the applicant's draft HCP available for public review and comment in Winter 2022. After public review and comment, we will revise the DEIS as appropriate, and publish an FEIS. We will also assess the effects of Service ITP issuance through the ESA section 7 ESA consultation process. The Service expects to make the FEIS and final HCP available to the public in Fall 2023. In accordance with 40 CFR 1506.11, no sooner than 30 days after the FEIS is published, the record of decision (ROD) will be completed. If issued, a permit may include such terms and conditions deemed necessary or appropriate to carry out the purposes of the permit and the conservation plan.

Public Scoping Process

Virtual Public Meeting

This notice of intent initiates the public scoping process, which guides the development of the EIS.

To help protect the public and limit the spread of the COVID–19 virus, the public scoping meeting will be conducted online to accommodate best practices and local guidelines in place at the time this notice was prepared. See **DATES** and **ADDRESSES** for the date, time,

and connection information for the virtual public scoping meeting. The meeting will provide KIUC and the Service an opportunity to present to the public information pertinent to the KIUC HCP, and for the public to ask questions on the scope of issues and alternatives the Service should consider when preparing the EIS. No opportunity for oral comments will be provided. Written comments may be submitted by either one of the methods listed in **DATES** and **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the virtual public scoping meeting should contact the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) no later than 1 week before the scheduled meeting. Information regarding this proposed action is available in alternative formats upon request.

Request for Information

We request comments on the proposed action and alternatives, concerning the scope of the analysis and identification of relevant information, studies, and analyses from the public; other governmental agencies; the scientific community; Native Hawaiian organizations or entities; industry; or any other interested party. We will consider these comments in developing the DEIS. Specifically, we seek:

1. Biological information and relevant data concerning the covered species and other wildlife;
2. Additional information concerning the range, distribution, population size, and population trends of the covered species;
3. Potential effects that the proposed permit action could have on the covered species, and other endangered or threatened species, and their associated ecological communities or habitats;
4. Potential effects that the proposed permit action could have on other aspects of the human environment, including ecological, aesthetic, historic, cultural, economic, social, environmental justice, or health effects;
5. Other possible reasonable alternatives to the proposed permit action that the Service should consider, including additional or alternative avoidance, minimization, and mitigation measures;
6. The presence of historic and cultural properties—including archaeological sites, buildings, and structures; historic events; sacred and traditional areas; and other historic preservation concerns—in the proposed permit area, which are required to be considered in project planning by the National Historic Preservation Act;
7. Information on other current or planned activities in, or in the vicinity of, the Island of Kauai and their possible impacts on the covered species, including any connected actions that are closely related and should be discussed in the same DEIS; and
8. Other information relevant to the KIUC HCP and its impacts on the human environment.

Comments received in writing during the 2016 public comment period were retained, and do not need be provided again during this public comment period to be considered during this review.

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and materials we receive, as well as supporting documentation we use in preparing the DEIS, will be available for public inspection online in Docket No. FWS–R1–ES–2022–0068 at *https://www.regulations.gov/.*

Next Steps

Once the DEIS is prepared, there will be further opportunity for comment on this proposed permit action through an additional public comment period.

Decision Maker and Nature of Decision To Be Made

The decision maker is the Service's Regional Director of the Pacific Region. If, after publication of the record of decision, we determine that all requirements are met for ITP issuance, the Regional Director will issue a decision on the requested ITP.

Authority

We provide this notice in accordance with the NEPA regulations found at 40 CFR 1501.9(d).

Nanette Seto,

Acting Deputy Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–11746 Filed 6–7–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000 L14400000.ET0000, 22X; WYW–132601]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting for the Sweetwater River Recreational, Scenic, Riparian, Historic, and Wildlife Area Along the Sweetwater River, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to extend for an additional 20-year term and subject to valid existing rights Public Land Order (PLO) No. 7546. The PLO withdrew 4,943.13 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws, subject to valid existing rights, to protect and preserve significant recreational, scenic, riparian, historic, and wildlife resources along the Sweetwater River in Fremont County, Wyoming. This notice advises the public of an opportunity to comment on the proposed 20-year withdrawal extension and to request a public meeting.

DATES: Comments and requests for a public meeting regarding the withdrawal application must be received on or before September 6, 2022.

ADDRESSES: Comments and meeting requests should be sent to the Bureau of Land Management (BLM) Wyoming State Director, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Jackie Madson, BLM Wyoming State Office, at (307–775–6252). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make

international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The withdrawal established by PLO No. 7546 (67 FR 72970; December 9, 2002) is incorporated herein by reference and will expire on December 8, 2022, unless the withdrawal is extended. At the request of the BLM, the Secretary is proposing to extend PLO No. 7546 for an additional 20-year term. The withdrawal extension will allow the BLM to continue to protect and preserve the recreational, scenic, riparian, historic, and wildlife resources on 4,943.13 acres, covering about 9.7 miles around the Sweetwater River. Among other things, the Sweetwater River played a significant role in the Oregon, Mormon Pioneer, California, and Pony Express historic trails.

There are no suitable alternative sites available. There are no other Federal lands in the area containing or replicating these recreational and other values.

No water rights would be needed to fulfill the purpose of this withdrawal extension.

Comments, including name and street address of respondents, will be available for public review at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming, during regular business hours 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you may ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the State Director, BLM Wyoming State Office, at the address in the **ADDRESSES** section, within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the date, time, and place will be published in the **Federal Register** and local newspapers and on the BLM website at *www.blm.gov* at least 30 days before the scheduled date of the meeting.

This withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 U.S.C. 1714)

Andrew Archuleta,

State Director.

[FR Doc. 2022–12372 Filed 6–7–22; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Establishment of a New Parking Fee Area at Pearl Harbor National Memorial; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The National Park Service published a document in the **Federal Register** on June 1, 2022, announcing the Establishment of a New Parking Fee Area at Pearl Harbor National Memorial. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Tom Leatherman, (808) 490–8078.

Correction: In the **Federal Register** of June 1, 2022, in FR Volume 87, Number 105, Pages 33203–33206, Document Number 2022–11393, on page 1. In the **DATES** section, correct the date to read: January 15, 2023.

Dated: June 1, 2022.

Justin Unger,

Associate Director, Business Services.

[FR Doc. 2022–12269 Filed 6–7–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM 2022–0025]

Notice of Intent To Prepare an Environmental Impact Statement for US Wind's Proposed Wind Energy Facility Offshore Maryland

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA), BOEM announces its intent to prepare an EIS for the review of a construction and operations plan (COP) submitted by US Wind, Inc., (US Wind) for the construction and operation of a wind energy facility offshore Maryland with proposed interconnection locations in Sussex County, Delaware. This NOI announces the EIS scoping process for the US Wind COP. Additionally, this NOI seeks public comment and input under the National Historic Preservation Act (NHPA) and its implementing regulations. Detailed information about the proposed wind energy facility, including the COP, can be found on BOEM's website at: *www.boem.gov/US-Wind.*

DATES: Comments received by July 8, 2022, will be considered.

BOEM will hold three virtual public scoping meetings for the US Wind EIS at the following dates and times (eastern time):

- Tuesday, June 21, 5:00 p.m.;
- Thursday, June 23, 5:00 p.m.;
- Monday, June 27, 1:00 p.m.

Registration for the virtual public meetings may be completed here: *www.boem.gov/US-Wind-Scoping-Virtual-Meetings* or by calling (703) 787–1346. The virtual meetings are open to the public and free to attend.

ADDRESSES: Written comments can be submitted in any of the following ways:

- Delivered by mail or delivery service, enclosed in an envelope labeled ''US WIND COP EIS'' and addressed to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or
- Through the *regulations.gov* web portal: Navigate to *www.regulations.gov* and search for Docket No. BOEM–2022–0025. Select the document in the search results on which you want to comment, click on the ''Comment'' button, and follow the online instructions for submitting your comment. A commenter's checklist is available on the comment web page. Enter your information and comment, then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: Brian Krevor, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, telephone (703) 787–1346, or email *Brian.Krevor@boem.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of and Need for the Proposed Action

In Executive Order (E.O.) 14008, ''Tackling the Climate Crisis at Home and Abroad,'' issued January 27, 2021, President Biden stated that it is the policy of the United States:

[T]o organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that

reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 Code of Federal Regulations (CFR) 585.211, BOEM awarded US Wind with Commercial Lease OCS–A 0490 covering an area offshore Maryland (Lease Area) in 2014. During the same competitive lease sale, BOEM also awarded US Wind with Commercial Lease OCS–A 0489. By a lease amendment, made effective March 1, 2018, US Wind's Commercial Leases OCS–A 0489 and OCS–A 0490 were merged into a single lease, Lease OCS–A 0490. Lease OCS–A 0489 automatically terminated. US Wind has the exclusive right to submit a COP for activities within the Lease Area. US Wind has submitted a COP to BOEM proposing the construction, installation, operation, and conceptual decommissioning of an offshore wind energy facility in the Lease Area (the Project).

US Wind's goal is to develop a commercial-scale, offshore wind energy project in the Lease Area. The Project comprises as many as 121 wind turbine generators (WTG), up to 4 offshore substations (OSS), up to 4 offshore export cables, and 1 meteorological tower (Met Tower), with a total of up to 126 structures in a gridded array pattern distributed across the Lease Area. The offshore export cables are planned to make landfall in Sussex County, Delaware. The Project will be interconnected to the onshore electric grid by up to four new 230 kV export cables to new US Wind onshore substations, with an anticipated connection to the existing Indian River Substation near Millsboro, Delaware.

The Project would generate up to 2,000 megawatts (MW) of wind energy to the Delmarva Peninsula, including Maryland, in fulfillment of State and Federal clean energy standards and targets (see section 1.1.2 of the COP). The Project includes MarWin, a wind farm of approximately 300 MW for which US Wind was awarded offshore wind renewable energy credits (ORECs) in 2017 by the State of Maryland; Momentum Wind, consisting of approximately 808 MW for which the State of Maryland awarded additional ORECs in 2021; and build out of the remainder of the Lease Area to fulfill ongoing, government-sponsored demands for offshore wind energy.

Based on BOEM's authority under the Outer Continental Shelf Lands Act (OCSLA) to authorize renewable energy activities on the Outer Continental Shelf (OCS), E.O. 14008, the shared goals of the Federal agencies to deploy 30 gigawatts (GW) of offshore wind energy capacity in the United States by 2030, while protecting biodiversity and promoting ocean co-use,[1] and in consideration of the goals of the applicant, the purpose of BOEM's action is to determine whether to approve, approve with modifications, or disapprove US Wind's COP. BOEM will make this determination after weighing the factors in subsection 8(p)(4) of OCSLA that are applicable to plan decisions and in consideration of the above goals. BOEM's action is needed to fulfill its duties under the lease, which requires BOEM to make a decision on the lessee's plan to construct and operate a commercial-scale, offshore wind energy facility in the Lease Area.

In addition, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) anticipates one or more requests for authorization under the Marine Mammal Protection Act (MMPA) to take marine mammals incidental to construction activities related to the Project. NMFS's issuance of an MMPA incidental take authorization would be a major Federal action connected to BOEM's action (40 CFR 1501.9(e)(1)).[2] The purpose of the NMFS action—which is a direct outcome of US Wind's request for authorization to take marine mammals incidental to specified activities associated with the Project (*e.g.,* pile driving)—is to evaluate US Wind's request pursuant to specific requirements of the MMPA and its implementing regulations administered by NMFS, consider impacts of the applicant's activities on relevant resources, and, if appropriate, issue the permit or authorization. NMFS needs to render a decision regarding the request for authorization due to NMFS' responsibilities under the MMPA (16 U.S.C. 1371(a)(5)(A) & (D)) and its implementing regulations. If NMFS makes the findings necessary to issue the requested authorization, NMFS intends to adopt, after independent review, BOEM's EIS to support that decision and fulfill its NEPA requirements.

The U.S. Army Corps of Engineers (USACE) Baltimore District anticipates requests for authorization of a permit action to be undertaken through authority delegated to the district engineer by 33 CFR 325.8, under section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). In addition, it is anticipated that a section 408 permission will be required pursuant to section 14 of the RHA (33 U.S.C. 408) for any proposed alterations that have the potential to alter, occupy, or use any federally authorized civil works projects. The USACE considers issuance of permits/permissions under these three delegated authorities a major Federal action connected to BOEM's action (40 CFR 1501.9(e)(1)). The need for the Project as provided by the applicant in section 1.1.2 of the COP and reviewed by USACE for NEPA purposes is to provide a commercially viable offshore wind energy project within the Lease Area to help the State of Maryland achieve its renewable energy goals. The basic Project purpose, as determined by USACE for section 404(b)(1) guidelines evaluation, is offshore wind energy generation. The overall Project purpose for section 404(b)(1) guidelines evaluation, as determined by USACE, is the construction and operation of a commercial-scale, offshore wind energy project for renewable energy generation in Lease Area OCS–A 0490 offshore Maryland and transmission/distribution to the PJM energy grid.[3]

The purpose of USACE section 408 action as determined by EC 1165–2–220[4] is to evaluate the applicant's request and determine whether the proposed alterations are injurious to the public interest or impair the usefulness of the USACE project. USACE section 408 permission is needed to ensure that congressionally authorized projects continue to provide their intended benefits to the public. USACE intends to adopt BOEM's EIS to support its decision on any permits or permissions requested under sections 10 of the RHA, section 404 of the CWA, and section 408 of the RHA. The USACE would adopt

[1] [1] *FACT SHEET: Biden Administration Jump starts Offshore Wind Energy Projects to Create Jobs | The White House, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/.*

[2] Under the MMPA, a ''take'' means ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal'' (16 U.S.C. 1362).

[3] PJM is a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 States in the Mid-Atlantic and Midwest and the District of Columbia. For more information, see *https://www.pjm.com/.*

[4] USACE Engineer Circular titled ''Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408.''

the EIS per 40 CFR 1506.3 if, after its independent review of the document, it concludes that the EIS satisfies USACE's comments and recommendations. Based on its participation as a cooperating agency and its consideration of the final EIS, USACE would issue a record of decision (ROD) to formally document its decision on the proposed action.

Proposed Action and Preliminary Alternatives

As noted above, US Wind proposes to construct and operate the Project with 126 total foundation locations to be occupied by a combination of up to 121 WTGs, up to 4 OSSs, and 1 Met Tower. The Project would make landfall in Sussex County, Delaware. The Project would be interconnected to the onshore electric grid by up to 4 new 230 kV export cables to new US Wind onshore substations, with an anticipated connection to the existing Indian River Substation near Millsboro, Delaware.

The WTG foundations would be monopiles, while the OSS foundations may be monopiles, piled jackets, or suction-bucket foundations. The WTGs, OSSs, foundations, and inter-array cables would be located within the Lease Area on the U.S. OCS approximately 11.5 statute miles (mi) (18.5 kilometers [km]) off the coast of Maryland. The offshore export cables would be buried in the U.S. OCS and in the seabed under State waters of Maryland and Delaware.

US Wind's Project is the action BOEM will analyze in its EIS (Proposed Action). If any reasonable alternatives to the Proposed Action are identified during the scoping period, BOEM will evaluate those alternatives in the draft EIS, which will also include a no action alternative. Under the no action alternative, BOEM would disapprove the COP, and the proposed wind energy facility would not be built.

Once BOEM completes the EIS and associated consultations, BOEM will decide whether to approve, approve with modification, or disapprove the US Wind COP. If BOEM approves the COP, US Wind must comply with all conditions of its approval.

Summary of Potential Impacts

The draft EIS will identify, describe, and analyze the potential effects of the Proposed Action and the alternatives on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the Proposed Action and the identified alternatives. This includes effects that occur at the same time and place as the Proposed Action and alternatives and effects caused by the Project that are later in time or occur in a different place. Potential impacts to resources include, but are not limited to, impacts (whether beneficial or adverse) on air quality, water quality, bats, benthic habitat, essential fish habitat, invertebrates, finfish, birds, marine mammals, terrestrial and coastal habitats and fauna, sea turtles, wetlands and other waters of the United States, commercial fisheries and for-hire recreational fishing, cultural resources, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other marine uses, recreation and tourism, and visual resources.

Based on a preliminary evaluation of these resources, BOEM expects potential impacts on sea turtles and marine mammals from underwater noise caused by construction and from collision risks with Project-related vessel traffic. Structures installed by the Project could permanently change benthic and fish habitats (*e.g.,* creation of artificial reefs). Commercial fisheries and for-hire recreational fishing could be impacted. Project structures above the water could affect the visual character defining historic properties and recreational and tourism areas. Project structures also would pose an allision and height hazard to vessels passing close by, and vessels would, in turn, pose a hazard to the structures. Additionally, the Project could cause conflicts with military activities, air traffic, land-based radar services, cables and pipelines, and scientific surveys.

Beneficial impacts are also expected by facilitating achievement of State renewable energy goals, increasing job opportunities, improving air quality, and reducing carbon emissions. Specifically, regarding job opportunities, the Project is estimated to support up to an estimated 18,717 job-years, or about 2,679 jobs annually over 7 years, during the development and construction phases of the Project. During the operations and maintenance phase, the Project will support up to an estimated 803 jobs annually during its 25 years of operations and maintenance activities.

The EIS will analyze measures that would avoid, minimize, or mitigate identified adverse impacts.

Anticipated Permits and Authorizations

In addition to the requested COP approval, various other Federal, State, and local authorizations will be required for the Project. Applicable Federal laws include the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, MMPA, RHA, CWA, and the Coastal Zone Management Act. BOEM will also conduct government-to-government Tribal consultations. For a detailed listing of regulatory requirements applicable to the Project, please see the COP, volume I, available at *www.boem.gov/US-Wind.*

BOEM has chosen to use the NEPA process to fulfill its obligations under NHPA. While BOEM's obligations under NHPA and NEPA are independent, regulations implementing section 106 of NHPA, at 36 CFR 800.8(c), allow the NEPA process and documentation to substitute for various aspects of the NHPA review. This process is intended to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that a project could have on the human environment. During preparation of the EIS, BOEM will ensure that the NEPA process will fully meet all NHPA obligations.

Schedule for the Decision-Making Process

After the draft EIS is completed, BOEM will publish a notice of availability (NOA) and request public comments on the draft EIS. BOEM currently expects to issue the NOA in August 2023. After the public comment period ends, BOEM will review and respond to comments received and will develop the final EIS. BOEM currently expects to make the final EIS available to the public in April 2024. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

This Project is a ''covered project'' under title 41 of the Fixing America's Surface Transportation Act (FAST–41). FAST–41 provides increased transparency and predictability by requiring Federal agencies to publish comprehensive permitting timetables for all covered projects. FAST–41 also provides procedures for modifying permitting timetables to address the unpredictability inherent in the environmental review and permitting process for significant infrastructure projects. To view the FAST–41 Permitting Dashboard for the Project, visit: *https://www.permits.performance.gov/permitting-project/maryland-offshore-wind-project.*

Scoping Process

This NOI commences the public scoping process to identify issues and potential alternatives for consideration in the draft EIS. BOEM will hold public scoping meetings at the times and dates described above under the **DATES** caption. Throughout the scoping

process, Federal agencies, Tribal, State, and local governments, and the general public have the opportunity to help BOEM identify significant resources and issues, impact-producing factors, reasonable alternatives (*e.g.,* size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS, as well as to provide additional information.

As noted above, BOEM will use the NEPA process to comply with NHPA. BOEM will consider all written requests from individuals and organizations to participate as consulting parties under NHPA and, as discussed below, will determine who among those parties will be a consulting party in accordance with the NHPA regulations.

NEPA Cooperating Agencies

BOEM invites other Federal agencies and Tribal, State, and local governments to consider becoming cooperating agencies in the preparation of this EIS. The Council on Environmental Quality (CEQ) NEPA regulations specify that qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and detail of cooperating agencies' expected contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a memorandum of agreement between BOEM and any non-Department of the Interior cooperating agency. Agencies also should consider the factors for determining cooperating agency status in the CEQ memorandum entitled ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act,'' dated January 30, 2002. This document is available on the internet at: *www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.*

BOEM, as the lead agency, does not provide financial assistance to cooperating agencies. Governmental entities that are not cooperating agencies will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

NHPA Consulting Parties

Individuals and organizations with a demonstrated interest in the Project can request to participate as NHPA consulting parties under 36 CFR 800.2(c)(5) based on their legal or economic stake in historic properties affected by the Project.

Before issuing this NOI, BOEM compiled a list of potential consulting parties and invited them to become consulting parties. To become a consulting party, those invited must respond in writing by the requested response date.

Interested individuals and organizations that did not receive a written invitation can request to be consulting parties by writing to the staff NHPA contact at CSA Ocean Sciences, Inc., the third-party EIS contractor supporting BOEM in its administration of this review. CSA's NHPA contact for this review is Danna Allen at *US-Wind-Project-Section106@erm.com.* BOEM will determine which interested parties may be selected as consulting parties.

Comments

Federal agencies, Tribal, State, and local governments, and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the **ADDRESSES** section above.

BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes all comments, including the names, addresses, and other personally identifiable information included in the comment, available for public review online. Individuals can request that BOEM withhold their names, addresses, or other personally identifiable information included in their comment from the public record; however, BOEM cannot guarantee that it will be able to do so. To help BOEM determine whether to withhold from disclosure your personally identifiable information, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your privacy. You also must briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Additionally, under section 304 of NHPA, BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribal entities and other parties providing information on historic resources should designate information that they wish to be held as confidential and provide the reasons why BOEM should do so.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

BOEM requests data, comments, views, information, analysis, alternatives, or suggestions relevant to the Proposed Action from the public; affected Federal, Tribal, State, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. Specifically, BOEM requests information on the following topics:

1. Potential effects that the Proposed Action could have on biological resources, including bats, birds, coastal fauna, finfish, invertebrates, essential fish habitat, marine mammals, and sea turtles.

2. Potential effects that the Proposed Action could have on physical resources and conditions including air quality, water quality, wetlands, and other waters of the United States.

3. Potential effects that the Proposed Action could have on socioeconomic and cultural resources, including commercial fisheries and for-hire recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (*e.g.,* marine minerals, military use, aviation), recreation and tourism, and scenic and visual resources.

4. Other possible reasonable alternatives to the Proposed Action that BOEM should consider, including additional or alternative avoidance, minimization, and mitigation measures.

5. As part of its compliance with NHPA section 106 and its implementing regulations (36 CFR part 800), BOEM seeks comment and input from the public and consulting parties regarding

the identification of historic properties within the Proposed Action's area of potential effects, the potential effects on those historic properties from the activities proposed in the COP, and any information that supports identification of historic properties under NHPA. BOEM also solicits proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. BOEM will present available information regarding known historic properties during the public scoping period at *www.boem.gov/US-Wind.* BOEM's effects analysis for historic properties will be available for public and consulting party comment in the draft EIS.

6. Information on other current or planned activities in, or in the vicinity of, the Proposed Action, their possible impacts on the Project, and the Project's possible impacts on those activities.

7. Other information relevant to the Proposed Action and its impacts on the human environment.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and possible alternatives to the Proposed Action as well as to economic, employment, and other impacts affecting the quality of the human environment.

The draft EIS will include a summary of all alternatives, information, and analyses submitted during the scoping process for consideration by BOEM and the cooperating agencies.

Authority: 42 U.S.C. 4321 *et seq.,* and 40 CFR 1501.9.

William Yancey Brown,

Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2022–12308 Filed 6–7–22; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Grid Alliance, Inc.

Notice is hereby given that, on May 20, 2022, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Grid Alliance, Inc. (''OGA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accedian Networks, Inc., St-Laurent, CANADA; Arrcus Inc., San Jose, CA; Crown Castle Fiber LLC, Houston, TX; Ecole de technologie superieure (ETS), University of Quebec, CANADA; Highway9 Networks, Saratoga, CA; Macrometa Corporation, San Mateo, CA; Menya Solutions Inc., Quebec, CANADA; STARaCom Research Center, Montreal, CANADA; and Universite de Sherbrooke, Quebec City, CANADA, have been added as parties to this venture.

Also, ITRenew, Newark, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OGA intends to file additional written notifications disclosing all changes in membership.

On March 31, 2022, OGA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2022 (87 FR 29180).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2022–12346 Filed 6–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0002]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Appeal From a Decision of an Immigration Judge

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Executive Office for Immigration Review, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 8, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Renewal without change of an approved collection.

2. *The Title of the Form/Collection:* Notice of Appeal from a Decision of an Immigration Judge.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–26, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual noncitizens determined to be removable from the United States and the Department of Homeland Security, Immigration and Customs Enforcement (ICE). Other: None. Abstract: A party (either the noncitizen or ICE) affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction

pursuant to 8 CFR 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR–26 and submitting it to the Board.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 34,921 respondents will complete the form annually with an average of 30 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 17,460 hours.

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, 3E.405B, Washington, DC 20530.

Dated: June 3, 2022.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–12345 Filed 6–7–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0346]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2022 Census of State and Local Law Enforcement Agencies (CSLLEA)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until July 8, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* 2022 Census of State and Local Law Enforcement Agencies (CSLLEA)

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–38. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will include all publicly funded State, county, and local law enforcement agencies in the United States that employ the equivalent of at least one full-time sworn officer with general arrest powers. Both general purpose agencies (*i.e.,* any public agency with sworn officers whose patrol and enforcement responsibilities are primarily delimited by the boundaries of a municipal, county, or State Government) and special purpose agencies (*e.g.,* campus law enforcement, transportation, natural resources, etc.) meeting the above description will be asked to respond.

Abstract: BJS has conducted the CSLLEA regularly since 1992. The 2022 CSLLEA will be the eighth administration. Historically, the CSLLEA generates an enumeration of all publicly funded State, county, and local law enforcement agencies operating in the United States. The CSLLEA provides complete personnel counts and an overview of the functions performed for approximately 20,000 law enforcement agencies operating nationally. The survey asks about the level of government that operates the agency; oversight of any agency sub-components; total operating budget; full-time and part-time personnel counts for sworn, limited sworn, and non-sworn employees; sex of full-time sworn, limited sworn, and non-sworn personnel; race and Hispanic origin of full-time sworn officers; and the functions the agency performs on a regular or primary basis. Upon completion, the 2022 CSLLEA will serve as the sampling frame for future law enforcement surveys administered by BJS.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS estimates a maximum of 20,000 State, county, and local law enforcement agencies with a respondent burden of about 32 minutes per agency to complete the survey form and about 15 minutes per agency of follow-up time. A random sample of 1,000 agencies will be selected to receive a pre-notification letter to inform the agency head of the upcoming survey and provide an opportunity to update the agency's contact information, which is estimated to add 2 minutes per sampled agency.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 15,700 total burden hours associated with this information collection.

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, 3E.405A, Washington, DC 20530.

Dated: June 3, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–12347 Filed 6–7–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On June 3, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of North Carolina in the lawsuit entitled *United States* v. *Fred D. Godley, Jr.; 436 Cone Avenue, LLC, and F.D. Godley Number Three, LLC,* Civil Action No. 3:19–cv–00202–RJC–DSC. In the filed Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), alleges that the Defendants are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), for the response costs EPA incurred responding to the Pineville Mill Site, located at 436 Cone Ave., Pineville, North Carolina and for work EPA conducted at the Old Davis Site, located at 706 and 709 West End Avenue in Statesville, North Carolina, both of which one or more of the Defendants owned and/or operated. The Consent Decree requires the Defendants to pay $1,250,000.00 million in a lump sum to the United States for the settlement of the allegations in the filed Complaint. The Consent Decree also requires Defendant Fred D. Godley to provide EPA notice, information, and access and ensure proper asbestos inspections and abatement whenever he undertakes demolition activities in the future on properties that he owns or controls.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Fred D. Godley, Jr., 436 Cone Avenue, LLC, and F.D. Godley Number Three, LLC,* D.J. Ref. No. 90–11–3–11692. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.75 (25 cents per page reproduction cost), payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2022–12358 Filed 6–7–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Department of Labor Generic Solution for Funding Opportunity Announcements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of the Assistant Secretary for Administration and Management (OASAM)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before July 8, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Periodically the DOL solicits grant applications by issuing a Funding Opportunity Announcement. To ensure grants are awarded to the applicant(s) best suited to perform the functions of the grant, applicants are generally required to submit a two-part application. The first part of DOL grant applications consists of submitting Standard Form 424, Application for Federal Assistance. The second part of a grant application usually requires a technical proposal demonstrating the applicant's capabilities in accordance with a statement of work and/or selection criteria. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 20, 2022 (87 FR 3126).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OASAM.

Title of Collection: Department of Labor Generic Solution for Funding Opportunity Announcements.

OMB Control Number: 1225–0086.

Affected Public: State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Responses: 7,500.

Total Estimated Annual Time Burden: 375,000 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: June 1, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–12326 Filed 6–7–22; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–050]

State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC); Meeting

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: We are announcing an upcoming meeting of the State, Local, Tribal, and Private Sector Policy Advisory Committee (SLTPS–PAC) in accordance with the Federal Advisory Committee Act and implementing regulations.

DATES: The meeting will be on June 29, 2022, from 10:00 a.m. to 12:00 p.m. ET.

ADDRESSES: This meeting will be a virtual meeting. We will send instructions on how to access it to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Heather Harris Pagán, ISOO Senior Program Analyst, at *heather.harrispagan@nara.gov* or (202) 357–5351. Contact ISOO at *ISOO@nara.gov.*

SUPPLEMENTARY INFORMATION: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations at 41 CFR 102–3. The Committee will discuss matters relating to the classified national security information program for state, local, tribal, and private sector entities.

Procedures: Please submit the name, email address, and telephone number of people planning to attend to Heather Harris Pagán at ISOO (contact information above) no later than Wednesday, June 29, 2022. We will provide meeting access information to those who register.

Tasha Ford,

Committee Management Officer.

[FR Doc. 2022–12293 Filed 6–7–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–052]

Freedom of Information Act (FOIA) Advisory Committee; Solicitation for Committee Member Nominations

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: The National Archives and Records Administration (NARA) seeks member nominations for the fifth term of the Freedom of Information Act (FOIA) Advisory Committee (Committee) (2022–2024 term). The Committee serves as a deliberative body to study the FOIA landscape across the executive branch and advise the Archivist of the United States on improvements to the administration of FOIA.

DATES: We must receive nominations for Committee members no later than 5:00 p.m. EDT on Thursday June 30, 2022.

ADDRESSES: Email nominations to OGIS at *foia-advisory-committee@nara.gov.* If you are unable to submit by email, please contact Kirsten Mitchell at the contact information below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5775.

SUPPLEMENTARY INFORMATION:

I. Background

The National Archives and Records Administration (NARA) established the Freedom of Information Act (FOIA) Advisory Committee (Committee) in accordance with the United States Second Open Government National Action Plan, released on December 5, 2013. The Committee operates under the directive in FOIA, *5 U.S.C. 552(h)(2)(C),* that the Office of Government Information Services (OGIS) within NARA ''identify procedures and methods for improving compliance'' with FOIA. The Committee is governed by the provisions of the Federal Advisory Committee Act, as amended, *5 U.S.C. app.*

II. Charter and Membership Appointment Terms

NARA initially chartered the Committee on May 20, 2014. The Archivist of the United States renewed the Committee's charter for a fifth term on April 28, 2022, and certified that renewing the Committee is in the public interest. Member appointment terms run for two years, concurrent with the Committee charter.

III. Committee Membership

The 2022–2024 FOIA Advisory Committee will consist of no more than 20 individuals who will include a range of Government and non-Government representatives. Members are selected in accordance with the charter. Appointments to the Committee will consider factors such as geographic diversity; diversity in size of company or organization to be represented; and diversity in representations of business and industry, academic institutions, non-profit and non-governmental organizations, and other stakeholders in accordance with the charter. Government members will include, at a minimum: Three FOIA professionals from Cabinet-level Departments; three FOIA professionals from non-Cabinet agencies; the Director of the Department of Justice's Office of Information Policy or their designee; and the Director of OGIS or their designee.

Non-Governmental members will include, at a minimum: Two individuals representing the interests of non-Governmental organizations that advocate on FOIA matters; one individual representing the interests of FOIA requesters who qualify for the ''all other'' FOIA requester fee category; one individual representing the interests of requesters who qualify for the ''news media'' FOIA requester fee category; one individual representing the interests of requesters who qualify for the ''commercial'' FOIA requester fee category; one individual representing the interests of historians and history-related organizations; and one individual representing the interests of academia.

IV. Committee Members' Responsibilities

All Committee members are expected to attend a minimum of nine public meetings during the two-year Committee term. Meetings will be held in-person or virtually depending on COVID–19 community levels. All Committee members are expected to volunteer for one or more working subcommittees that will meet at various times during the two-year term. The first

meeting of the 2022–2024 Committee term is scheduled for Thursday, September 8, 2022. Meeting notices will be published in the **Federal Register**.

V. Nomination Information

All nominations for Committee membership must include the following information:

1. *If you are self-nominating:* Your name, title, relevant contact information (including telephone and email address); your résumé or curriculum vitae; and the representative role for which you wish to be considered.

2. *If you are nominating another individual:* The nominee's name, title, and relevant contact information; their résumé or curriculum vitae; and the representative role for which you wish your nominee to be considered.

3. *For both self-nominations and nominations by other individuals:* Your submission must include a statement (not to exceed one page) highlighting the contributions the nominee would make as a member of the Committee.

The Acting Archivist of the United States will review the nominations and make final appointments prior to the first Committee meeting in September. OGIS will notify the appointees in writing.

Tasha Ford,

Designated Committee Management Officer.

[FR Doc. 2022–12276 Filed 6–7–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Office of Small and Disadvantaged Business Utilization Vendor Outreach Form.

OMB Control No.: 3145–New.

Abstract: The purpose of the National Science Foundation's (NSF) Office of Small and Disadvantaged Business Utilization (OSDBU) Vendor Information form is to collect vendor contact information (company name, point of contact name, email address, phone number), along with identifiers such as NAICS codes, SAM ID, DUNS#, description of supplies/services, and Socio-economic indicator. This will assist the NSF OSDBU in maintaining a database of small businesses that can provide supplies and/or services for requirements listed on the NSF Acquisition Forecast. Collecting this information supports the mission of the OSDBU, as outlined in section 15k of the Small Business Act, and ensures that small businesses can participate in NSF acquisitions to the maximum extent practicable. In addition, the Biden Administration has made it a priority to ensure equity in federal contracting via Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities through the Federal Government,* and implemented in OMB M–22–03, *Advancing Equity in Federal Procurement.* The President directed federal agencies to make Federal contracting and procurement opportunities more readily available to all eligible vendors and charged every agency to assess available tools to increase opportunities for small businesses and underserved entrepreneurs to compete for Federal contracts. This form will allow us to reach vendors, to a greater extent, through our external website on *NSF.gov* and participation in various conferences and conventions, which ensures NSF complies with these mandates.

Respondents: Small and disadvantaged businesses.

Estimated Number of Annual Respondents: 275.

Burden on the Public: Estimated 15 minutes to fill out the form, including the collection of data to fill in the fields. This information should be readily available as most companies have capability statements that include this information. The estimated burden time is 69 hours.

Dated: June 2, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–12294 Filed 6–7–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners, LLC; WCS Consolidated Interim Storage Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment; issuance; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) reviewed an application by the Interim Storage Partners, LLC (ISP) for an amendment to Materials License No. SNM–2515, for the WCS Consolidated Interim Storage Facility (CISF), located in Andrews County, Texas. The amendment revises License Condition 17 to clarify the timing of mandatory license amendment requests relating to incorporation of Aging Management Programs (AMPs) for certain spent fuel storage casks with renewed Certificates of Compliance. Interested persons may request a hearing on whether this action should be rescinded or modified.

DATES: A request for a hearing or petition for leave to intervene must be filed by August 8, 2022.

ADDRESSES: Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0231. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated January 24, 2022, ISP submitted to the NRC an application to amend the Materials License No. SNM–2515 for the WCS CISF, located in Andrews County, Texas (ADAMS Accession No. ML22024A142). Materials License No. SNM–2515 authorizes ISP to construct and operate its facility as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel, including a small quantity of mixed-oxide fuel, and greater-than-Class-C radioactive waste at the WCS CISF. The proposed amendment clarifies the timing for ISP to satisfy License Condition 17 pertaining to when the incorporation of any technically relevant portions of AMPs in renewals of Certificate of Compliances (CoCs) Numbers 1015, 1025, and 1031 is required so that incorporation of AMPs and Time-Limited Aging Analyses can be combined with future amendments of SNM–2515.

In a letter to ISP dated February 23, 2022, the NRC notified ISP that the application was acceptable to begin a technical review (ADAMS Accession No. ML22054A243). In accordance with § 72.16 of title 10 of the *Code of Federal Regulations* (10 CFR), a notice of docketing was published in the **Federal Register** on March 8, 2022 (87 FR 13013).

The NRC prepared a safety evaluation report (SER) (ADAMS Accession No. ML22138A365) to document its review and evaluation of the amendment request. As further explained in the SER, the NRC has determined that the license amendment is administrative in nature, and therefore satisfies the 10 CFR 51.22(c)(11) criteria for a categorical exclusion from the requirement to prepare an environmental impact statement. Under 10 CFR 51.22(c)(11), this action is eligible for categorical exclusion, because it is an amendment to a materials license that is administrative, organizational, or procedural in nature, or which results in a change in process operations or equipment, provided that (i) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (ii) there is no significant increase in individual or cumulative occupational radiation exposure, (iii) there is no significant construction impact, and (iv) there is no significant increase in the potential for or consequences from radiological accidents. This administrative change would not result in any of the effects listed in 10 CFR 51.22(c)(11). Consequently, an environmental assessment and finding of no significant impact are not required.

Upon completing its review, the NRC staff determined the request complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), as well as the NRC's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. The NRC approved and issued Amendment No. 1 to Special Nuclear Materials License No. SNM–2515, held by ISP to construct and operate its facility as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel, including a small quantity of mixed-oxide fuel, and greater-than-Class-C radioactive waste at the WCS CISF. Amendment No. 1 was effective as of the date of issuance.

In accordance with 10 CFR 72.46(b)(2), the NRC has issued the amendment based on a determination that Amendment No. 1 does not present a genuine issue as to whether the health and safety of the public will be significantly affected because, as discussed above, it is administrative in nature and will affect no aspect of facility safety or operations. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency

thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html* by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For the Nuclear Regulatory Commission.

Dated: June 2, 2022.

Yoira K. Sanabria-Diaz,

Chief, Storage and Transportation, Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–12288 Filed 6–7–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: New Information Collection, Freedom of Information Act (FOIA)/Privacy Act (PA) Record Request and Public Access Link (PAL) Registration, OMB Control No. 3206–XXXX

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a new information collection request (ICR) 3206–XXXX, Freedom of Information Act (FOIA)/Privacy Act (PA) Record Request and Public Access Link (PAL) Registration.

DATES: Comments are encouraged and will be accepted until August 8, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Federal Rulemaking Portal: *http://www.regulations.gov.* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions

from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection request, with applicable supporting documentation, may be obtained by contacting the Office of Privacy and Information Management, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Camille C. Aponte-Rossini, or via electronic mail to *Camille.Aponte-Rossini@opm.gov*.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (Freedom of Information Act/Privacy Act Record Request and Public Access Link Registration). The Office of Privacy and Information Management (OPIM) is responsible for OPM's Freedom of Information Act (FOIA) and Privacy programs, among other functions. FOIA and Privacy Act (PA) record requests to OPM may be submitted by mail, electronic mail, and via the Public Access Link (PAL). PAL is a public facing web page that allows the public to register for an account and submit FOIA and PA requests online. The PAL registration provides for the creation of individual user accounts and collects the name and contact information of registrants. The Freedom of Information Act (FOIA)/Privacy Act (PA) Record Request paper form and the electronic PAL registration request the minimum critical elements necessary to submit a FOIA or PA record request to OPM, as well as optional elements to authorize release of information to a third party. We invite comments on this new information collection that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of Personnel Management.

Title: Freedom of Information Act (FOIA)/Privacy Act (PA) Record Request Form.

OMB Number: 3206–XXXX.

Frequency: Annually.

Affected Public: Individuals.

Number of Respondents: 690.

Estimated Time per Respondent:

- Freedom of Information Act (FOIA)/Privacy Act (PA) Record Request: 3 Minutes.
- Public Access Link (PAL) registration: 2 Minutes.

Total Burden Hours: 58.

- Freedom of Information Act (FOIA)/Privacy Act (PA) Record Request: 35.
- Public Access Link (PAL) registration: 23.

U.S. Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–12284 Filed 6–7–22; 8:45 am]

BILLING CODE 6325–67–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2019–111]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 10, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2019–111; *Filing Title:* USPS Notice of Amendment to Parcel Select & Parcel Return Service Contract 9, Filed Under Seal; *Filing Acceptance Date:* June 2, 2022; *Filing Authority:* 39 CFR 3035.105; *Public*

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Representative: Kenneth R. Moeller;
Comments Due: June 10, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–12328 Filed 6–7–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95026; File No. SR–NSCC–2022–005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Revise the Excess Capital Premium Charge

June 2, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. On June 1, 2022, NSCC filed Amendment No. 1 to the proposed rule change, to make a correction to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules & Procedures (''Rules'')[4] to revise the Excess Capital Premium (''ECP'') charge by enhancing the methodology for calculating the charge to (1) compare a Member's applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio (as defined below) that is used in calculating a Member's ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) removing NSCC's discretion to waive or reduce the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC is proposing to modify the ECP charge, which is a component of its Clearing Fund that NSCC may impose on a Member when a portion of that Member's Required Fund Deposit (defined in the Rules as the ''Calculated Amount'') exceeds its applicable capital amounts by 1.0 (defined in the Rules as the ''Excess Capital Ratio''), as described in greater detail below.[5] The proposed changes would revise the ECP charge by enhancing the methodology for calculating the charge to (1) compare a Member's applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for Members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other Members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio that is used in calculating a Member's ECP charge.

The proposed changes would also improve the transparency of the Rules regarding the ECP charge by (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) removing NSCC's discretion to waive or reduce the charge, and (3) providing that NSCC may calculate the charge based on updated capital information, as described in greater detail below.

(i) Overview of the Required Fund Deposit and NSCC's Clearing Fund

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[6] The Required Fund Deposit serves as each Member's margin.

The objective of a Member's Required Fund Deposit is to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a ''default'').[7] The aggregate of all Members' Required Fund Deposits constitutes the Clearing Fund of NSCC. NSCC would access its Clearing Fund should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio. Pursuant to the Rules, each Member's Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV of the Rules.[8]

While many components of the Clearing Fund are designed to measure risks presented by the net unsettled positions a Member submits to NSCC to be cleared and settled, some components measure and mitigate other risks that NSCC may face, such as credit risks. For example, a Member may be required to make an additional deposit to the Clearing Fund pursuant to Section I(B)(1) of Procedure XV of the Rules if it is placed on the Watch List, which is defined in Rule 1 (Definitions and Descriptions) of the Rules as a list of Members who NSCC deems to pose heightened risk to it and its other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made a correction to the Exhibit 5 of the filing, specifically, to insert an additional cross-reference into a proposed definition that had been omitted.

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] *See* Section I(B)(2) of Procedure XV, *id.*

[6] *See* Rule 4 and Procedure XV, *supra* note 3. NSCC's market risk management strategy is designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4).

[7] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. *See* Rule 46, *supra* note 3.

[8] *Supra* note 3.

Members based on consideration of relevant factors.[9]

Similarly, the ECP charge is a component of the Clearing Fund that is designed to mitigate the heightened default risk a Member could pose to NSCC if it operates with lower capital levels relative to its margin requirements. Each Business Day, NSCC determines if a Member may be subject to the ECP charge by first determining its Calculated Amount. The Calculated Amount is a portion of a Member's Required Fund Deposit designed to represent its margin requirements to NSCC. A Member's Calculated Amount is calculated as its Required Fund Deposit excluding any applicable special charge, margin requirement differential charge, coverage component charge or margin liquidity adjustment charge,[10] plus any additional amounts the Member is required to deposit to the Clearing Fund either due to being placed on the Watch List [11] or pursuant to Rule 15 (Assurances of Financial Responsibility and Operational Capability) of the Rules.[12]

NSCC then divides the Member's Calculated Amount by its current capital amount, which is the amount reported to NSCC pursuant to its ongoing membership standards, as set out in Rule 2B (Ongoing Membership Requirements and Monitoring) and Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History) of the Rules.[13] Pursuant to the current membership standards in Addendum B of the Rules, Members that are broker-dealers are required to maintain a certain level of excess net capital, and Members that are banks are required to maintain a certain level of equity capital as a requirement for continued membership with NSCC.[14] Pursuant to Section 2 of Rule 2B of the Rules, Members are required to provide NSCC with financial information, including information regarding Members' current capital amounts, on a regular basis and NSCC uses these reported capital amounts in the calculation of the ECP charge.[15]

Pursuant to Section I(B)(2) of Procedure XV, if a Member's Calculated Amount, when divided by its applicable capital amount, is greater than the Excess Capital Ratio of 1.0, NSCC may require that Member to deposit an ECP charge.[16] The applicable ECP charge may be equal to the product of (1) the amount by which a Member's Calculated Amount exceeds its applicable capital amount, multiplied by (2) the Member's Excess Capital Ratio. Members are able to access and view reports regarding their Clearing Fund and, through these reports, Members may be alerted when their Calculated Amount divided by the applicable capital amount is greater than 0.5, as an early warning regarding their capital levels.

Under Section I(B)(2) of Procedure XV, NSCC may collect a lower ECP charge than the amount calculated pursuant to the Rules, may determine not to collect the ECP charge from a Member at all, and may return all or a portion of a collected ECP charge if it believes the imposition or maintenance of the ECP charge is not necessary or appropriate.[17] Section I(B)(2) of Procedure XV describes some circumstances when NSCC may determine not to collect an ECP charge from a Member, which includes, for example, when an ECP charge results from trading activity for which the Member submits later offsetting activity that lowers its Required Fund Deposit.[18] The discretion to adjust, waive or return an ECP charge was designed to provide NSCC with the ability to determine when a calculated ECP charge may not be necessary or appropriate to mitigate the risks it was designed to address.[19]

Since the ECP charge was adopted, NSCC has calculated and assessed the ECP charge consistent with the Rules, and NSCC has exercised its discretion to both reduce and waive the ECP charge when NSCC has deemed it necessary or appropriate. NSCC recently reviewed the effectiveness of the ECP charge to identify ways NSCC could enhance both the calculation of the charge and the disclosures regarding the charge in the Rules. In connection with this review, NSCC discussed the ECP charge and its proposed enhancements with Members, NSCC management, and NSCC's supervisors at the Commission. As a result of this review, NSCC is proposing to make several enhancements to the ECP charge, as described in greater detail below.

These enhancements are designed to improve NSCC's ability to measure the increased default risks that are presented by Members who operate with lower capital. The proposed changes would simplify the calculation of the charge and the description of the charge in the Rules, making it more predictable to Members. The proposed changes are designed to improve the transparency of the ECP charge to Members by removing NSCC's discretion to waive or reduce the charge and providing that NSCC may calculate the charge based on updated capital information. The proposed improvements to the transparency of the ECP charge also include clarifying the descriptions of the capital amounts that would be used in the calculation of the charge through new defined terms. Collectively, the proposal would make the ECP charge more consistent, transparent, and predictable to Members, while maintaining the effectiveness of NSCC's risk-based margining methodology as it relates to the ECP charge.

(ii) Use Members' Volatility Component as the Calculated Amount

NSCC is proposing to replace the Calculated Amount with the amount collected as that Member's volatility component as determined pursuant to Sections I(A)(1)(a)(i)–(iii) and (2)(a)(i)–(iii) of Procedure XV of the Rules.[20]

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[9] *See* Section 4 of Rule 2B, which describes NSCC's ongoing monitoring and review of Members and the factors NSCC considers in assigning Members a credit rating that could result in a Member being placed on the Watch List, *supra* note 3.

[10] The special charge is described in Section I(A)(1)(c) and (2)(c) of Procedure XV, the MRD charge is described in Section I(A)(1)(e) and (2)(d) of Procedure XV, the coverage component charge is described in Section I(A)(1)(f) and (2)(e) of Procedure XV, and the MLA charge is described in Section I(A)(1)(g) and (2)(f) of Procedure XV, *supra* note 3.

[11] *Supra* note 8.

[12] Pursuant to Section 2(b)(iv) of Rule 15, NSCC may require a Member to provide NSCC with adequate assurances of that Member's financial responsibility in the form of increased Clearing Fund deposits. *Supra* note 3.

[13] *Supra* note 3.

[14] *See* Section 1. B.1. of Addendum B, *supra* note 3. NSCC has proposed changes to the membership standards set forth in Addendum B that would modify the capital requirements for Members. *See* Securities Exchange Act Release No. 94068 (January 26, 2022), 21 FR 5544 (February 1, 2022) (SR–NSCC–2021–016).

[15] *See* Section 2(A) of Rule 2B, *supra* note 3.

[16] *Supra* note 3.

[17] When NSCC determines to collect a lower amount than that amount calculated pursuant to the Rules, as provided for under Procedure XV, NSCC may, for example, calculate that lower amount by reducing the Excess Capital Ratio used in the calculation to 2.0. *Supra* note 3.

[18] *See* footnote 7 of Procedure XV, *supra* note 3.

[19] *See* Securities Exchange Act Release No. 54457 (September 15, 2006), 71 FR 55239 (September 21, 2006) (SR–FICC–2006–03 and SR–NSCC–2006–03).

[20] The volatility component is designed to capture the market price risk associated with each Member's portfolio at a 99th percentile level of confidence. NSCC has two methodologies for calculating the volatility component—a model-based volatility-at-risk, or VaR, charge and a haircut-based calculation, for certain positions that are excluded from the VaR charge calculation. The charge that is applied to a Member's Required Fund Deposit with respect to the volatility component is referred to as the volatility charge and is the sum of the applicable VaR charge and the haircut-based calculation. Amounts calculated pursuant to Sections I(A)(1)(a)(iv) and (2)(a)(iv) of Procedure XV with respect to long positions in Net Unsettled Positions in Family-Issued Securities are designed to address wrong-way risk presented by these

In both determining if an ECP charge is applicable and in calculating an ECP charge, NSCC currently compares a Member's Calculated Amount to its reported capital levels. As described above, the Calculated Amount is defined in Section I(B)(2) of Procedure XV as a Member's Required Fund Deposit, excluding certain components and including other additional deposits to the Clearing Fund.[21] Because a goal of the ECP charge is to identify and mitigate risks presented when a Member's capital levels may not be adequate to meet its margin requirements to NSCC, the Calculated Amount is designed to represent a material portion of those margin requirements.

As described above, because each component of the Clearing Fund is calculated to address specific risks faced by NSCC, some components are applied only to certain positions in a Member's portfolio. For example, the CNS fails charge, which is included in the Calculated Amount, is based on the market value of only a Member's CNS Fails Positions (as defined in the Rules) of the Member.[22] The volatility component of the Clearing Fund measures the market price volatility of all of a Member's Net Unsettled Positions and Net Balance Order Unsettled Positions (as defined in the Rules). Therefore, the volatility component is often considered a comprehensive measurement of the risks presented by a Member's clearing activity and usually comprises the largest portion of a Member's Required Fund Deposit.[23] NSCC believes that replacing the Calculated Amount with a Member's volatility charge would provide an appropriate measure for purposes of the ECP charge.

Currently, determining a Member's Calculated Amount requires a more complicated calculation, as it uses a Member's Required Fund Deposit, excludes certain components, and includes other deposits. The proposal would simplify this calculation significantly by using only the volatility component. One of the tools NSCC provides to its Members is a calculator that allows them to determine their potential volatility charge based on trading activity. Therefore, this proposed change would make the calculation of the ECP charge both clearer and more predictable for Members.

NSCC does not expect that any impact of this proposed change on the number of ECP charges or the size of the calculated ECP charges would materially impact NSCC's ability to manage the risks the ECP charge is designed to address. NSCC believes the benefits of using a simpler, clearer, and more predictable calculation that is based on the most comprehensive component of the Clearing Fund outweigh any risk related to the reduction in the ECP charges NSCC would collect.

(iii) Use Net Capital for Broker-Dealer Members and Equity Capital for All Other Members in the Calculation of the ECP Charge

In the calculation of the ECP charge, NSCC is proposing to use net capital rather than excess net capital for Members that are broker-dealers, and equity capital for all other Members. As described in greater detail below, in connection with these proposed changes, NSCC would also improve the transparency of the Rules by adopting definitions of ''Net Capital'' and ''Equity Capital.''

As described above, NSCC's ongoing membership requirements, set forth in Rule 2B of the Rules, require Members to provide NSCC with regular information regarding their financial positions, including capital levels.[24] This information is provided, in part, to confirm that Members continue to maintain the minimum financial requirements of membership set forth in Addendum B of the Rules.[25] Currently, NSCC also uses these reported capital amounts in the calculation of the ECP charge.

First, NSCC believes it would be appropriate to revise the capital measure used to calculate the ECP charge for broker-dealer Members to replace excess net capital with net capital. This revision would align the capital measures used for broker-dealer Members and other Members, which would result in more consistent calculations of the ECP charge across different types of Members.

In addition to creating consistency in the calculations for different Members, NSCC believes that using net capital rather than excess net capital would also provide NSCC with a better measure of the increased default risks presented when a Member operates at low net capital levels relative to its margin requirements. This approach would be consistent with the rationale for the Commission's amendments to Rule 15c3–1 under the Act (the ''Net Capital Rule''), which were designed to promote a broker-dealer's capital quality and require the maintenance of ''net capital'' (*i.e.,* capital in excess of liabilities) in specified amounts as determined by the type of business conducted.[26] The Net Capital Rule was designed to ensure the availability of funds and assets (including securities) in the event that a broker-dealer's liquidation becomes necessary. The Net Capital Rule represented a net worth perspective, which is adjusted by unrealized profit or loss, deferred tax provisions, and certain liabilities as detailed in the rule. It also included deductions and offsets and required that a broker-dealer demonstrate compliance with the Net Capital Rule, including maintaining sufficient net capital at all times (including intraday).

Similarly, NSCC believes that the Net Capital Rule is an effective process of separating liquid and illiquid assets and computing a broker-dealer's regulatory net capital that should replace NSCC's existing practice of using excess net capital in the calculation of the ECP charge.

Second, NSCC is proposing to revise the Rules to provide that, for all Members that are not broker-dealers, it would use equity capital in calculating the ECP charge. Currently, the Rules state that NSCC would use a Member's capital amount set forth in the membership standards in Addendum B of the Rules.[27] Section 1.B of Addendum B describes the membership standards of Members, and currently states that the applicable capital measure for Members that are banks is equity capital, for Members that are trust companies and not banks the applicable capital measure is consolidated capital, and for other legal entities that are Members the applicable capital measure is determined by NSCC. Currently, and historically, NSCC has had very few Members that are trusts and not banks. For all Members that are not banks, non-bank trusts or broker-dealers (which generally include, for example, exchanges and registered clearing agencies), NSCC uses those

positions, not volatility risks, and, as such, are not a part of a Member's volatility charge. *See* Sections I(A)(1)(a) and (2)(a) of Procedure XV, *supra* note 3.

[21] *See supra* note 9.

[22] *See* definition of ''CNS Fails Position'' in Rule 1, and *see also* Section I(A)(1)(e) of Procedure XV, *supra* note 3.

[23] *See* definitions of ''Net Unsettled Position'' and ''Net Unsettled Balance Order Position'' in Rule 1, *supra* note 3.

[24] *See* Section 2.A of Rule 2B, which requires Members to provide NSCC with a copy of their Form X–17–A–5 (Financial and Operational Combined Uniform Single (''FOCUS'') Report), Consolidated Report of Condition and Income (''Call Report''), or an equivalent, *supra* note 3.

[25] *Supra* note 3.

[26] 17 CFR 240.15c3–1. *See* Securities Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51823 (August 21, 2013) (File No. S7–08–07).

[27] *Supra* note 3.

Members' reported equity capital in the calculation of the ECP charge. Therefore, in practice, the ECP charge is calculated for the majority of Members that are not broker-dealers using their equity capital, and this proposed change is not expected to have a material impact on the collection of ECP charges. The proposal would simplify the calculation of the ECP charge for Members that are not broker-dealers by stating in Section I(B)(2) of Procedure XV that NSCC would use equity capital rather than use different measures that are based on other membership requirements. This proposed change would also create consistency in the calculations across Members.

(iv) Establish a Cap for the Excess Capital Ratio

NSCC is proposing to set a maximum amount of Excess Capital Ratio that is used in calculating Members' ECP charge to 2.0. NSCC believes capping the multiplier that is used in this calculation would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge. Historically, the Excess Capital Ratio has rarely exceeded 2.0 in the calculation of Members' ECP charges, and in cases when 2.0 was exceeded NSCC typically exercised the discretion provided to it in the Rules to reduce the applicable charge. NSCC's discretion was appropriate in these circumstances because NSCC believes it is able to mitigate the risks presented to it by a Member's lower capital levels by collecting an ECP charge calculated with an Excess Capital Ratio that is at or below 2.0.

Therefore, given that NSCC is now proposing to remove its discretion to waive the ECP charge, as described below, NSCC believes capping the Excess Capital Ratio at 2.0 would continue to provide NSCC with an appropriate measure of the risks presented to it relative to Members' capital levels. This proposed change would also provide Members with more clarity and transparency into the ECP charge, by allowing them to predict and estimate the maximum amount of their potential ECP charge.

(v) Improve Transparency Regarding the ECP Charge

NSCC is proposing changes to Section I(B)(2) of Procedure XV to improve transparency regarding the ECP charge by (a) clarifying the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, (b) removing NSCC's discretion to waive or reduce the charge, and (c) providing that NSCC may calculate the charge based on updated capital information.

First, NSCC is proposing to clarify the description of the capital amounts that it uses to calculate the ECP charge by introducing defined terms and specifying the reporting requirements that NSCC relies on to obtain that capital information for Members. As described above, for Members that are broker-dealers, NSCC is proposing to use a Member's net capital amount, and for all other Members, NSCC would use a Member's equity capital in the calculation of the ECP charge. In order to improve the clarity of the Rules, NSCC is proposing to introduce a defined term for ''Equity Capital'' in Rule 1 and to revise a proposed defined term for ''Net Capital'' in order to align the two defined terms. The proposal would also revise Section I(B)(2) of Procedure XV in describing the calculation of the ECP charge to use these defined terms where appropriate. Finally, the proposal would amend Addendum B to include the new defined term for Equity Capital.

The definition of Equity Capital would be, as of a particular date, the amount equal to the equity capital as reported on the Member's or Limited Member's most recent Call Report, or, if the Member or Limited Member is not required to file a Call Report, then as reported on its most recent financial statements or equivalent reporting. NSCC would also align a proposed definition of Net Capital to be, as of a particular date, the amount equal to the net capital as reported on the Member's or Limited Member's most recent FOCUS Report, or, if the Member or Limited Member is not required to file a FOCUS Report, then as reported on its most recent financial statements or equivalent reporting.

In addition to using these new defined terms, NSCC would also add a statement to Section I(B)(2) of Procedure XV to clarify to Members that the amounts used in the calculation of the ECP charge would be the amounts included in their regular reporting that is provided to NSCC pursuant to the ongoing membership reporting requirements, specifically in their FOCUS Report or Call Report, as applicable, or in an equivalent financial statement or report that is delivered to NSCC pursuant to the same requirement. Collectively, these proposed changes would provide Members with improved clarity and certainty regarding the amounts that would be used in calculating the ECP charge.

Second, the proposed changes would eliminate NSCC's discretion to waive or reduce the ECP charge. NSCC believes that the proposed changes to the ECP charge described in this filing would have the collective impact of eliminating most circumstances in which NSCC would have exercised this discretion. For example, the proposal to cap the Excess Capital Ratio at 2.0 and the proposal to specify that NSCC may calculate an ECP charge based on updated capital amounts, both address the most common circumstances when NSCC has either waived or reduced the ECP charge in the past. By eliminating this discretion, the proposal would provide Members with more certainty in predicting when an ECP charge may be applied and how any such charge would be calculated. Therefore, NSCC has determined that it is no longer necessary to retain discretion to waive or reduce the ECP charge under the proposed methodology.

Third, NSCC would provide that it may calculate the ECP charge based on updated capital information. As described above, NSCC would use the net capital or equity capital amounts that are reported on Members' most recent financial reporting or financial statements delivered to NSCC in connection with the ongoing membership reporting requirements. Under the proposal, if a Member's capital amounts change between the dates when it submits these financial reports, it may provide NSCC with updated capital information for purposes of calculating the ECP charge. Today, when NSCC exercises its discretion to waive or reduce the amount of an applicable ECP charge, NSCC occasionally does so by applying updated capital information in its calculation. Therefore, in connection with eliminating this discretion, NSCC would disclose in the Rules that it may use updated capital information in the calculation of an ECP charge rather than require Members to wait until the issuances of their next financial reporting or financial statements for changes in their capital positions to be reflected in an ECP charge calculation.

NSCC is proposing to retain some discretion in when it would accept updated capital information for this purpose. For example, NSCC may require a Member to provide documentation of the circumstances that caused a change in capital information, and if adequate evidence is not available or NSCC does not believe the evidence sufficiently verifies that the Member's capital position has changed, NSCC would continue to calculate the ECP charge for that Member based on the prior capital information available to NSCC until the

next financial reporting or financial statements are delivered. NSCC believes it is appropriate to retain some discretion to allow NSCC to determine if updated capital information is adequately verified before it agrees to rely on that information for this calculation. NSCC believes the proposal to disclose that Members would have the opportunity to provide updated capital information to NSCC to be used in an ECP charge calculation would improve the transparency of the Rules despite NSCC's proposal to retain a certain level of discretion.

(vi) Proposed Changes to Procedure XV of the Rules

The proposal would also amend Section I(B)(2) of Procedure XV of the Rules. This section would describe the calculation used to determine if an ECP charge may be applicable to a Member. The revised description of this calculation would (i) replace the definition of Calculated Amount with Members' volatility charge, (ii) replace references to the capital amounts used in the calculation with the new defined terms for Net Capital and Equity Capital, and (iii) state that the Excess Capital Ratio used in calculating an ECP charge is set at a maximum of 2.0. The proposed change also includes a statement that the applicable capital amounts used in the calculation would be the amounts most recently reported to NSCC on Members' FOCUS Reports or Call Reports, as applicable, or other equivalent financial reporting submitted to NSCC pursuant to Section 2 of Rule 2B. Finally, the proposal would state that NSCC may, in its sole discretion, accept updated capital amounts in calculating an ECP charge.

(vii) Impact Study Results

NSCC has provided the Commission with the results of an impact study that reviewed the potential impacts of the proposal during the period of June 1, 2020 through December 31, 2021. The study showed that the proposed enhancement would have reduced the number of ECP charges that would have been triggered by the calculation by 65 percent, from 327 ECP charges triggered for 17 Members to 114 ECP charges triggered for 14 Members. The total aggregate amount that would have been triggered by the proposed calculation if the proposal was effective during that time would have been reduced from $50.95 billion (the actual total amount of ECP charges triggered by the current calculation during that period) to approximately $17.22 billion (the total amount of ECP charges that would have been triggered during that time by the proposed calculation). The average amount that would have been calculated for each Member would have been reduced from $155.8 million to approximately $151.1 million. The study showed that the proposal would have had no impact to NSCC's overall, or Member-level, end-of-day Clearing Fund Requirement backtesting coverage.

Over the impact study period, NSCC waived and reduced calculated ECP charges by $38.46 billion. NSCC waived a total of 20 ECP charges, that totaled approximately $25.77 billion. If the proposal had been in place at that time, 15 of these charges would have been collected from Members (although the amount would have been reduced), totaling $6.43 billion, 2 charges would not have been triggered as the calculated ECP ratio was below 1.0, and NSCC would have waived 3 of the ECP charges following receipt of updated financial information. NSCC reduced the amount of 16 ECP charges by a total of approximately $12.69 billion. If the proposal had been in place at that time, 6 of these charges would have been still collected, totaling $6.35 billion, and 10 charges would not have been triggered as the calculated ECP ratio was below 1.0.

(viii) Implementation Timeframe

NSCC would implement the proposed changes no later than 30 Business Days after the approval of the proposed rule change by the Commission. NSCC would announce the effective date of the proposed changes by Important Notice posted to its website.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[28] and Rules 17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii), each promulgated under the Act,[29] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the rules of NSCC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[30]

NSCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes enhance the effectiveness of the ECP charge by (1) replacing the Calculated Amount with a Member's volatility component, (2) replacing excess net capital with net capital for broker-dealer Members and using equity capital for all other Members, and (3) establishing a cap for the Excess Capital Ratio. As described above, NSCC believes these proposed changes would create a simpler, clearer calculation of the ECP charge that is based on more consistent metrics, while allowing NSCC to continue to effectively address the heightened default risks presented by Members that operate at lower capital levels.

The Clearing Fund is a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. Each of the proposed enhancements described above are designed to collectively improve NSCC's ability to collect amounts that reflect the risks posed by its Members. The proposal to enhance the calculation of the ECP charge by replacing the Calculated Amounts with Members' volatility charges would make the calculation clearer and more predictable to Members. The proposal to use net capital for broker-dealer Members and equity capital for all other Members in the calculation of the ECP charge would result in a more consistent calculation across different types of Members. The proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge, and would allow NSCC to eliminate its discretion to waive or reduce the charge, resulting in a more transparent margining methodology.

Together, by improving the consistency and predictability of the ECP charge, the proposed enhancements would also improve NSCC's ability to collect amounts that reflect the risks posed by its Members such that, in the event of Member default, NSCC's operations would not be disrupted, and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[31]

The proposed changes are also designed to improve the transparency of

[28] 15 U.S.C. 78q–1(b)(3)(F).

[29] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii).

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] *Id.*

the Rules regarding the ECP charge, for example, by removing NSCC's discretion to recalculate, reduce or waive the charge, as described above, and by introducing new defined terms regarding the capital amounts used in the charge. By enhancing the clarity and transparency of the Rules, the proposed changes would allow Members to better anticipate their margin charges, which would allow them to more efficiently and effectively conduct their business in accordance with the Rules. In this way, NSCC believes the proposed changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[32]

Rule 17Ad–22(e)(4)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[33]

As described above, NSCC believes the proposed rule change would enable NSCC to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. Specifically, NSCC believes that the proposed enhancements to the calculation of the ECP charge to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, would collectively make the calculation clearer and more predictable to Members. The proposal to use net capital rather than excess net capital for broker-dealer Members, and equity capital for all other Members, would also result in a more consistent calculation across different types of Members. Finally, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge, and would allow NSCC to eliminate its discretion to waive or reduce the charge, resulting in a more transparent margining methodology.

Overall, NSCC believes the proposal would improve the clarity and predictability of the ECP charge and, in this way, would enhance NSCC's ability to effectively identify, measure and monitor its credit exposures, and would enhance NSCC's ability to maintain sufficient financial resources to cover NSCC's credit exposure to each participant fully with a high degree of confidence. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad–22(e)(4)(i) under the Act.[34]

Rule 17Ad–22(e)(6)(i) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[35]

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's exposures to Members. NSCC's proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge would collectively make the calculation clearer and more predictable to Members, while continuing to apply an appropriate risk-based charge designed to mitigate the risks presented to NSCC. Similarly, the proposal to cap the Excess Capital Ratio at 2.0 would allow NSCC to appropriately address the risks it faces without imposing an overly burdensome ECP charge, and would allow NSCC to eliminate its discretion to waive or reduce the charge, resulting in a more transparent margining methodology. Overall, these proposed changes would improve the effectiveness of the calculation of the ECP charge and, therefore, allow NSCC to more effectively address the increased default risks presented by Members that operate with lower capital levels relative to their margin requirements. In this way, the proposed changes enhance the ability of the ECP charge to produce margin levels commensurate with the risks NSCC faces related to its Members' operating capital levels. Therefore, NSCC believes the proposed rule change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[36]

Rule 17Ad–22(e)(23)(ii) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in NSCC.[37] NSCC is proposing to improve the clarity and transparency of the Rules related to its calculation of the ECP charge in a number of ways described in this filing. The proposed changes would clarify the description of the capital amounts that NSCC uses in the calculation of the ECP charge by adopting new defined terms, remove NSCC's discretion to waive or reduce the charge, and provide that NSCC may calculate the charge based on updated capital information. Additionally, as described above, the proposed changes to use the volatility charge rather than the Calculated Amount, and to use net capital and equity capital, as appropriate, in the calculation of the ECP charge, would collectively make the calculation clearer and more predictable to Members. Through these proposed amendments to the Rules, the proposal would assist NSCC in providing its Members with sufficient information to identify and evaluate the risks and costs, in the form of Required Fund Deposits to the Clearing Fund, that they incur by participating in NSCC. In this way, NSCC believes the proposed changes are consistent with Rule 17Ad–22(e)(23)(ii) under the Act.[38]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposed rule change to enhance the calculation of the ECP charge would impact competition because the proposed changes are designed to create a clearer and simpler calculation that is based on more consistent metrics, and is likely to result in lower and less frequent ECP charges than are applied under the current methodology. More specifically, the replacement of the Calculated Amount with the volatility charge, which is currently a portion of the Calculated Amount, when used in the calculation to determine if an ECP charge is applicable, is likely to result in fewer triggered ECP charges, as evidenced by the impact study referenced above. Additionally, the replacement of excess net capital with net capital for broker-dealer Members, and using equity capital for all other Members, would create more consistent calculations of the ECP charge across types of Members, reducing any burden on competition that the existing

[32] *Id.*

[33] 17 CFR 240.17Ad–22(e)(4)(i).

[34] *Id.*

[35] 17 CFR 240.17Ad–22(e)(6)(i).

[36] *Id.*

[37] 17 CFR 240.17Ad–22(e)(23)(ii).

[38] *Id.*

calculation could have presented. Finally, the proposal to cap the Excess Capital Ratio to 2.0 in the calculation of the ECP charge would limit the total amount a Member could be charged, and would provide all Members with more certainty and transparency into their potential margin requirements.

Therefore, by creating a simpler and clearer calculation that uses more consistent metrics, the proposals would improve NSCC's ability to apply the ECP charge more consistently across its Members, and reduce the impact this charge could have on competition. As noted above, in the impact study results, the proposed changes are also expected to result in fewer and lower ECP charges.

Further, NSCC does not believe the proposed rule change to improve the clarity and predictability of the calculation of the ECP charge would impact competition because this proposed change would not impact the calculation of Members' Required Fund Deposits. Therefore, this proposed change would not affect NSCC's operations or the rights and obligations of membership. As such, NSCC believes the proposed rule change to improve the transparency of the Rules would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2022–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2022–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2022–005 and should be submitted on or before June 29, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12289 Filed 6–7–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34606; File No. 812–15298]

BlackRock Capital Investment Advisors, LLC and BlackRock Private Credit Fund

June 2, 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 18(a)(2), 18(c) and 18(i) and section 61(a) of the Act.

Summary of Application: Applicants request an order to permit certain closed-end management investment companies that have elected to be regulated as business development companies (''BDCs'') to issue multiple classes of shares with varying sales loads and asset-based service and/or distribution fees.

Applicants: BlackRock Capital Investment Advisors, LLC and BlackRock Private Credit Fund.

Filing Dates: The application was filed on January 21, 2022 and amended on May 2, 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 the Applicants with a copy of the

[39] 17 CFR 200.30–3(a)(12).

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 June 27, 2022, and should be accompanied by proof of service on the 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: Laurence D. Paredes, BlackRock Capital Investment Advisors, LLC, 40 East 52nd Street, New York, New York 10022; Michael K. Hoffman, Esq. Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, NY 10001; Kevin T. Hardy, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Terri G. Jordan, 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' first amended and restated application, dated May 2, 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.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12286 Filed 6–7–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95028; File No. SR–CboeEDGA–2021–025]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report

June 2, 2022.

On November 17, 2021, Cboe EDGA Exchange, Inc. (''EDGA'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 28, 2022.[8]

Section 19(b)(2) of the Act [9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[10] The 180th day after publication of the proposed rule change is June 5, 2022. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates August 4, 2022, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeEDGA–2021–025), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12291 Filed 6–7–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93694 (December 1, 2021), 86 FR 69299 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboeedga-2021-025/srcboeedga2021025.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94007, 87 FR 4072 (January 26, 2022). The Commission designated March 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94367, 87 FR 14058 (March 11, 2022).

[8] *See* Securities Exchange Act Release No. 94782 (April 22, 2022), 87 FR 25320.

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Notice, *supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95027; File No. SR–MEMX–2022–03]

Self-Regulatory Organizations; MEMX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Market Data Fees

June 2, 2022.

On March 24, 2022, MEMX LLC (''MEMX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and

[1] 15 U.S.C. 78s(b)(1).

Rule 19b–4 thereunder,[2] a proposed rule change to amend its Fee Schedule to adopt fees for its market data products. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The Exchange implemented the fees on April 1, 2022. The proposed rule change was published for comment in the **Federal Register** on April 11, 2022.[4] On May 23, 2022, MEMX withdrew the proposed rule change (SR–MEMX–2022–03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12290 Filed 6–7–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95029; File No. SR–CboeEDGX–2021–049]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report

June 2, 2022.

On November 17, 2021, Cboe EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[3] On January 20, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 28, 2022.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.[10] The 180th day after publication of the proposed rule change is June 5, 2022. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[11] designates August 4, 2022, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–CboeEDGX–2021–049), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12292 Filed 6–7–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Docket No. SBA–2021–0012]

Small Business Size Standards: Termination of Nonmanufacturer Rule Class Waiver

AGENCY: U.S. Small Business Administration.

ACTION: Notice of termination of class waiver to the Nonmanufacturer Rule.

SUMMARY: The U.S. Small Business Administration (SBA) is terminating a class waiver of the Nonmanufacturer Rule (NMR) for Furniture Frames and Parts, Metal, Manufacturing under North American Industry Classification System (NAICS) code 337215 and Product Service Code (PSC) 7195; Furniture Frames, Wood, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Parts, Finished Plastics, Manufacturing under NAICS code 337215 and PSC 7195; Furniture, Factory-type (*e.g.,* cabinets, stools, tool stands, work benches), Manufacturing under NAICS code 337127 and PSC 7110; Furniture, Hospital (*e.g.,* hospital beds, operating room furniture) Manufacturing under NAICS code 339113 and PSC 7195; and Furniture, Laboratory-type (*e.g.,* benches, cabinets, stools, tables) Manufacturing under NAICS code 337127 and PSC 7195. As the above-identified class waiver is terminated, small businesses will no longer be authorized to provide the product of any manufacturer regardless of size on the identified items, unless a Federal Contracting Officer obtains an individual waiver to the NMR.

DATES: The termination of the class waiver takes effect immediately.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Program Analyst, by telephone at 202–205–6347; or by email at *Carol-Ann.Hulme@sba.gov.*

SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (the Act), 15 U.S.C. 637(a)(17) and 657, and SBA's implementing regulations found at 13 CFR 121.406(b) require that recipients of Federal supply

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 94614 (April 5, 2022), 87 FR 21232.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93696 (December 1, 2021), 86 FR 69306 (''Notice''). The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboeedgx-2021-049/srcboeedgx2021049.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94008, 87 FR 4069 (January 26, 2022). The Commission designated March 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 94369, 87 FR 14056 (March 11, 2022).

[8] *See* Securities Exchange Act Release No. 94783 (April 22, 2022), 87 FR 25313.

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Notice, *supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(57).

contracts issued as a small business set-aside (except as stated below), service-disabled veteran-owned small business set-aside or sole source contract, Historically Underutilized Business Zone set-aside or sole source contract, women-owned small business or economically disadvantaged women-owned small business set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order against a multiple award contract provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). Note that the NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold but continues to apply to socioeconomic set-aside and sole source acquisitions over the micro-purchase threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market. SBA identifies a ''class of products'' based on a combination of the six-digit NAICS code and a description of the class of products. As implemented in SBA's regulations at 13 CFR 121.1202(c), to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

In accordance with the SBA's regulations at 13 CFR 121.1204(a)(7), SBA will periodically review existing class waivers to the NMR to determine whether small business manufacturers or processors have become available to participate in the Federal market. Upon receipt of information that such a small business manufacturer or processor exists, SBA will announce its intent to terminate the NMR waiver for a class of products. 13 CFR 121.1204(a)(7)(ii). Unless public comment reveals no small business exists for the class of products in question, SBA will publish a Final Notice of Termination in the **Federal Register**.

On February 24, 2006, SBA issued in the **Federal Register** a notice of intent to waive the NMR for Furniture Frames and Parts, Metal, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Frames, Wood, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Parts, Finished Plastics, Manufacturing under NAICS code 337215 and PSC 7195; Furniture, Factory-type (*e.g.,* cabinets, stools, tool stands, work benches), Manufacturing under NAICS code 337127 and PSC 7110; Furniture, Hospital (*e.g.,* hospital beds, operating room furniture) Manufacturing under NAICS code 339113 and PSC 7195; and Furniture, Laboratory-type (*e.g.,* benches, cabinets, stools, tables) Manufacturing under NAICS code 337127 and PSC 7195. The notice can be found at 71 FR 9631. After the comment and notice period passed, SBA issued a class waiver for those products on June 27, 2006 (71 FR 36599).

On October 6, 2019, SBA received a request to terminate the previously issued waiver. The requester provided information that established the existence of small business manufacturers of the identified products. These small businesses have submitted bids on Federal solicitations within the past 24 months. Based on this information, SBA published a notice in the **Federal Register** on February 15, 2022, seeking comments on the termination of the class waiver for Furniture Frames and Parts, Metal, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Frames, Wood, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Parts, Finished Plastics, Manufacturing under NAICS code 337215 and PSC 7195; Furniture, Factory-type (*e.g.,* cabinets, stools, tool stands, work benches), Manufacturing under NAICS code 337127 and PSC 7110; Furniture, Hospital (*e.g.,* hospital beds, operating room furniture) Manufacturing under NAICS code 339113 and PSC 7195; [1] and Furniture, Laboratory-type (*e.g.,* benches, cabinets, stools, tables) Manufacturing under NAICS code 337127 and PSC 7195.[2] That notice can be found at 87 FR 8628. There was one public comment submitted by a small business manufacturer of products listed under the identified NAICS codes. That comment was in support of termination of the class waiver.

Thus, SBA is terminating the class waiver for Furniture Frames and Parts, Metal, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Frames, Wood, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Parts, Finished Plastics, Manufacturing under NAICS code 337215 and PSC 7195; Furniture, Factory-type (*e.g.,* cabinets, stools, tool stands, work benches), Manufacturing under NAICS code 337127 and PSC 7110; Furniture, Hospital (*e.g.,* hospital beds, operating room furniture) Manufacturing under NAICS code 339113 and PSC 7195; and Furniture, Laboratory-type (*e.g.,* benches, cabinets, stools, tables) Manufacturing under NAICS code 337127 and PSC 7195. As the above-identified class waiver is terminated, small businesses will no longer be authorized to provide the product of any manufacturer regardless of size on the identified items, unless a Federal Contracting Officer obtains an individual waiver to the NMR.

More information on the NMR and class waivers can be found at *https://www.sba.gov/partners/contracting-officials/small-business-procurement/nonmanufacturer-rule.*

Wallace D. Sermons II,

Acting Director, Office of Government Contracting.

[FR Doc. 2022–12317 Filed 6–7–22; 8:45 am]

BILLING CODE 8026–03–P

[1] At the time the initial waiver was issued in 2006, the applicable NAICS code was 339111. That code changed to 339113 in 2007.

[2] At the time the initial waiver was issued in 2006, the applicable NAICS code was 339111. That code changed to –337127 in 2007. The Notice of Intent to terminate the class waiver published on February 15, 2022, inadvertently classified it under 339113.

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2022–0026]

Agency Information Collection Activities: Proposed 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 a revision 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–2022–0026].

(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–2022–0026].

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 8, 2022. Individuals can obtain copies of the collection instrument by writing to the above email address.

Electronic Protective Filing Tool—20 CFR 404.630, and 20 CFR 416.340—416.345—0960–0825

The COVID–19 pandemic limited the public's access to Social Security Administration (SSA) Field Offices (FOs), requiring SSA to rapidly modernize and improve online services available to the public. During the time when SSA stopped accepting walk-in visitors, the agency noticed a sharp decrease in Supplemental Security Income (SSI) claims from underserved populations who have historically relied on in-office appointments and service. SSA uses the term ''People facing barriers'' to refer to these vulnerable populations, which include low-income individuals (especially those over age 65), the homeless, people with limited English proficiency, and disabled children.

Background

Historically, individuals contact SSA by phone, in person, or by mail to express interest in filing for benefits. Because same-day service to file an application is not always possible, and because some individuals prefer to make an appointment, SSA technicians use eLAS (OMB No. 0960–0822) to set up appointments and record the protective filing date for potential claimants. This process ensures that potential claimants do not miss out on possible benefits due to the lack of same-day service.

Protective filing is the precursor to filing an application for benefits. Protective filing refers to the date by which SSA receives an individual's intent to file for SSI payments, which SSA then uses as the application date provided the individual files an application within a specific amount of time after that date. Therefore, it is as if the application was filed on the day the individual contacted SSA to express interest in filing, which may result in additional payments to that individual.

SSA developed an online tool to allow internet users to request an appointment to file an application for benefits and to establish a protective filing date with SSA. The electronic protective filing tool allows individuals to submit information for the appointment request using a computing device, such as a personal computer or handheld (mobile) device instead of calling SSA by phone or visiting an FO. The tool is available on SSA's website to potential claimants, as well as those individuals assisting them.

Information the Electronic Protective Filing Tool Collects

After entering the ePFT from SSA's website, individuals begin on a welcome screen that displays a link to the Terms of Service. Next, a user sees the Privacy Act statement page. The user then provides a response about whether they are answering these questions about themselves or about another person. To do so, the system presents several options for individual to select from the categories of individuals who, under current regulations, can establish a protective filing date. The next screens ask for basic information about the individual who will be claiming benefits, or requesting SSI payments. Additionally, the tool collects the name, phone number, and email address (optional) of the person submitting the information, if that person is different than the person who will be claiming benefits or SSI payments.

Once the ePFT collects the data, it gives the individual the opportunity to review the information provided and electronically sign and submit the form. The ePFT then transmits the information into eLAS, documenting it as an ePFT submission, and establishes a protective filing date. If the individual provided an email address(es), the tool generates an email confirmation and sends it to the individual who will be filing for benefits, and, if applicable, to the individual submitting the appointment request on the claimant's behalf.

Subsequently, eLAS notifies SSA of the pending request, and an SSA technician uses the information submitted to schedule an appointment and send a notification of the date, time, and type of appointment to the individual who will be filing for benefits.

Members of the public who prefer not to use the online version of this IC, or who do not have access to the internet, may continue to visit an FO, call SSA's 800 Number (or an FO), or write to SSA to establish a protective filing date for an application for benefits.

The respondents are individuals with an intent to file for SSI (or third parties helping these individuals) and who want to request an appointment to do so.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
Respondent Type 1 (ex: Potential Applicants)	17,000	1	6	1,700	* $28.01	** $47,617
Respondent Type 2 (ex: Professional Assistors)	2,125	10	7	2,479	* 25.94	** 64,305
Respondent Type 3 (ex: Attorney Representatives)	2,125	2	7	496	* 72.18	** 35,801
Totals	21,250			4,675		** 147,723

* We based this figure on the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*), on average wages for Community and Social Service Organizations as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes210000.htm*), and on average lawyer's hourly salary as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes231011.htm*).

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

Dated: June 2, 2022.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2022–12275 Filed 6–7–22; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11756]

Notice of Determinations; Additional Culturally Significant Object Being Imported for Exhibition—Determinations: ''Raphael—The Power of Renaissance Images: The Dresden Tapestries and Their Impact'' Exhibition

SUMMARY: On May 24, 2022, notice was published on page 31603 of the **Federal Register** (volume 87, number 100) of determinations pertaining to certain objects to be included in an exhibition entitled ''Raphael—The Power of Renaissance Images: The Dresden Tapestries and Their Impact.'' Notice is hereby given of the following determinations: I hereby determine that a certain additional object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the aforesaid exhibition at the Columbus Museum of Art, Columbus, Ohio, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–12324 Filed 6–7–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advanced Aviation Advisory Committee (AAAC); Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Advanced Aviation Advisory Committee (AAAC) meeting.

SUMMARY: This notice announces a meeting of the AAAC.

DATES: The meeting will be held on June 30, 2022, between the hours of 10:00 a.m. to 2:30 p.m. Eastern Time. Requests for accommodations for a disability must be received by June 23, 2022. Requests to submit written materials to be reviewed during the meeting must be received no later than June 23, 2022.

ADDRESSES: The meeting will be held at the William F. Bolger Center, Potomac, MD. In-person attendance is limited to Advanced Aviation Advisory Committee members and selected FAA support staff. Members of the public who wish to observe the meeting through virtual means can access the livestream on the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* For copies of meeting minutes along with all other information please visit the AAAC internet website at *https://www.faa.gov/uas/programs_partnerships/advanced_aviation_advisory_committee/.*

FOR FURTHER INFORMATION CONTACT: Gary Kolb, Advanced Aviation Advisory Committee Manager, Federal Aviation Administration, U.S. Department of Transportation, at *gary.kolb@faa.gov* or 202–267–4441. Any committee related request or reasonable accommodation request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The AAAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide the FAA with advice on key drone and advanced air mobility (AAM) integration issues by helping to identify challenges and prioritize improvements.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Official Statement of the Designated Federal Officer
- Approval of the Agenda and Minutes
- Opening Remarks
- FAA Update
- Industry-Led Technical Topics
- New Business/Agenda Topics
- Closing Remarks
- Adjourn

Additional details will be posted on the AAAC internet website address listed in the **ADDRESSES** section at least 5 days in advance of the meeting.

III. Public Participation

The meeting will be open to the public via a livestream. Members of the public who wish to observe the virtual meeting can access the livestream on the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* 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. Written statements submitted by the deadline will be provided to the AAAC members before the meeting. Any member of the public may submit a written statement to the committee at any time.

Issued in Washington, DC.

Jessica A. Orquina,

Acting Manager, Executive Office, AUS–10, Federal Aviation Administration.

[FR Doc. 2022–12342 Filed 6–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before July 8, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 2, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the Special Permits thereof
21371–N	Korean Air Lines Co., Ltd	172.101(j), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of explosives by cargo aircraft which is forbidden in the regulations. (mode 4)
21372–N	Solid Power, Inc	173.35(e)	To authorize the transportation of residue contained in IBCs where the closure nearest to the hazardous materials cannot be secured. (mode 1)
21373–N	Sigma-Aldrich Co. LLC	172.704	To authorize the transportation in commerce of hazardous materials packaged in UN 4G boxes that have been partially prepared by persons that are not trained in accordance with Part 172 Subpart H. (modes 1, 2, 3, 4, 5)
21377–N	Proterra Operating Company, Inc.	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
21378–N	Rawhide Leasing Company LLC.		To authorize the requalification of 3A, 3AA, 3AX, 3AAx and 3T cylinders by proof pressure testing in accordance with CGA Pamphlet C–1 in lieu of hydrostatic or direct expansion testing. (modes 1, 2, 3, 4, 5)
21379–N	Trane U.S. Inc	172.500, 178.1	To authorize the transportation in commerce of refrigerating machines containing up to 2,400 lbs of A2L refrigerant gases without requiring placards. (modes 1, 2)
21380–N	Tesla, Inc	173.21(c), 173.185(b)(1), 173.185(b)(2)(iii), 173.185(b)(4)(ii).	To authorize the transportation in commerce of lithium ion batteries with a sparker system. (mode 1)
21381–N	Jungbunzlauer Inc	173.241	To authorize the transportation in commerce of lactic acid in non-DOT specification intermediate bulk containers. (mode 1)

[FR Doc. 2022–12304 Filed 6–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before June 23, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below

as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 2, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the Special Permits thereof
11194–M	Mission Systems Orchard Park Inc.	172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1), 180.205.	To modify the special permit to authorize the cylinders to be used for underwater breathing purposes. (modes 1, 2, 3, 4, 5)
13027–M	Hernco Fabrication & Services, Inc.	173.241, 173.242, 173.243, 173.202, 173.203.	To modify the special permit to authorize additional hazardous materials. (mode 1)
14546–M	Linde Gas & Equipment Inc ..	172.203(a), 180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to extend the initial periodic requalification period of DOT 3AL and DOT–SP 12440 cylinders from 5 years to 10 years. (modes 1, 2, 3, 4, 5)
15097–M	Consumer Product Safety Commission, United States.	172.320, 173.56	To modify the special permit to authorize an additional destination. (mode 1)
15146–M	Tech Spray L P	172.200, 172.400, 172.500, 173.304(a).	To modify the permit to include additional hazardous materials. (modes 1, 2, 3, 4)
20599–M	County of Orange	172.320, 173.56(b)	To modify the special permit to authorize contractors under the direct control of the county to package and prepare shipments under the special permit. (mode 1)
21015–M	Amazon.com, Inc	172.203(a), 172.315(a)(2), 172.200(b)(3), 176.11(e).	To modify the special permit to waive shipping papers aboard vessel, to authorize international ground shipments, to remove the requirement that the special permit accompany vessel shipments, and to authorize alternative limited quantity mark placement. (modes 1, 2, 3)
21240–M	Volkswagen Group of America Chattanooga Operations, LLC.	172.101(j)	To modify the special permit to authorize additional lithium ion batteries. (mode 4)

[FR Doc. 2022–12306 Filed 6–7–22; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before July 8, 2022.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 2, 2022.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the Special Permits thereof
		Granted	
8757–M	Milton Roy, LLC	173.201(c), 173.202(c), 173.203(c), 173.302a(a)(1), 173.304a(a)(1), 180.205.	To modify the special permit by updating the drawing revision numbers.
13220–M	Entegris, Inc	173.302, 173.302c, 180.205(d).	To modify the special permit to authorize disposal of cylinders.

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the Special Permits thereof
21125–M	CTS Cylinder Sales LLC	180.209(a), 180.209(b)(1)	To modify the special permit to authorize FBH flaw size for cylinders over 6'' in diameter to be larger and commensurate with the size of the cylinder.
21297–N	Luxfer Canada Limited	178.75(d)(3), 180.205(g)(1)	To authorize the manufacture, marking, sale and use of UN/ISO composite cylinders per CFR 178.71, and specification ISO 11119–2 for use in MEGCs in accordance with CFR 178.75.
21320–N	Amazon.com, Inc	173.220(d), 173.156(a), 173.159a(c), 173.185(c).	To authorize the transportation in commerce of small lithium batteries, non-spillable batteries, and battery powered vehicles in alternative packaging (shrink-wrapped overpacks).
21330–N	Polysource LLC	176.907(a), 176.907(b), 176.907(c)(1).	To authorize the transportation in commerce of polymeric beads in alternative packaging.
21346–N	Porsche Motorsport	172.101(j), 173.185(a)(1)	To authorize the transportation in commerce of prototype lithium batteries which exceed the allowable weight limit (35 kg) and vehicles containing those batteries aboard cargo-only aircraft.
21349–N	Veolia Es Technical Solutions LLC.	173.301(f)(1)	To authorize the one-time, one-way transportation in commerce of DOT 39 cylinders that are not equipped with pressure relief devices for the purpose disposal.
21357–N	Gateway Pyrotechnic Productions, LLC.	173.56	To authorize the transportation in commerce of unapproved explosives seized by Customs and Border Patrol in the Port of Oakland California.
21362–N	Environmental Protection Agency.	173.185(f)	To authorize the transportation in commerce of damaged/defective waste lithium batteries and cells for disposal or recycling.
21363–N	Environmental Protection Agency.	172.102(c)(1), 173.185(f)(1), 173.185(f)(3).	To authorize the transportation in commerce of damaged/defective waste lithium cells or batteries from the Morris Lithium Battery Site for disposal or recycling.
21370–N	Australian Federal Police	172.200, 172.300, 172.400, 175.75(b).	To authorize the transportation in commerce of a Division 6.1 hazardous material in the cabin of a passenger-carrying aircraft.
Denied			
21356–N	Rawhide Leasing Company LLC.		To authorize the requalification of 3A, 3AA, 3AX, 3AAx and 3T cylinders by proof pressure testing in accordance with CGA Pamphlet C–1 in lieu of hydrostatic or direct expansion testing.

[FR Doc. 2022–12305 Filed 6–7–22; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Revision; Comment Request; Bank Secrecy Act/Money Laundering Risk Assessment

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a revised information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection entitled, ''Bank Secrecy Act/Money Laundering Risk Assessment,'' also known as the Money Laundering Risk (MLR) System.

DATES: Comments must be submitted by August 8, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0231, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0231'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the

next bullet. Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

• Viewing Comments Electronically: Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' drop down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0231'' or ''Bank Secrecy Act/Money Laundering Risk Assessment.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 874–5090, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA, federal agencies must obtain approval from the 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) to include questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes, that is, if the results are to be used for statistical compilations of general public interest, including compilations showing the status or implementation of federal activities and programs. Section 3506(c)(2)(A) of the PRA requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or revision of an existing collection of information, before submitting the collection to OMB for approval. In compliance with the PRA, the OCC is publishing notice of the proposed extension with revision of the collection of information set forth in this document.

Title: Bank Secrecy Act/Money Laundering Risk Assessment.

OMB Control No: 1557–0231.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Description: The MLR System enhances the ability of examiners and bank management to identify and evaluate Bank Secrecy Act/Money Laundering and Office of Foreign Asset Control (OFAC) sanctions risks associated with banks' products, services, customers, and locations. As new products and services are introduced, existing products and services change, and banks expand through mergers and acquisitions, banks' evaluation of money laundering and terrorist financing risks should evolve as well. Consequently, the MLR risk assessment is an important tool for the OCC's Bank Secrecy Act/Anti-Money Laundering and OFAC supervision activities because it allows the agency to better identify those institutions, and areas within institutions, that may pose heightened risk and allocate examination resources accordingly. This risk assessment is critical for protecting U.S. financial institutions of all sizes from potential abuse from money laundering and terrorist financing. The MLR also provides the OCC with information regarding products or customers that may be experiencing difficulties or challenges maintaining banking services. Banks will benefit from the reporting of MLR data as it will assist in the managing of the bank's BSA/AML programs and provide a starting point for banks to develop their risk assessments. An appropriate risk assessment allows controls to be effectively implemented for the lines of business, products, or entities that would elevate Bank Secrecy Act/Money Laundering and OFAC compliance risks.

The OCC will collect MLR information for community and trust banks supervised by the OCC.

The format of OCC's annual Risk Summary Form (RSF) is fully automated making data entry quick and efficient and providing an electronic record for all parties. The RSF collects data about different products, services, customers, and geographies (PSCs). For 2022, the RSF will include three significant changes:

1. The addition of six new PSCs: cash transactions, marijuana-related businesses, ATM Operators, crypto assets—custody, stablecoin issuance, and stablecoin payments.

2. The addition of three new customer types under the money transmitters category: customers that accept or transmit crypto currency; crypto ATM operators; and crypto asset exchanges.

3. The deletion of four existing PSCs: boat/airplane, bulk cash/currency repatriation customers, bulk cash/currency repatriation, and international branches.

The addition of these six new PSCs increases the number of data collection points from 69 to 71 as shown in the table below:

No.	Existing PSCs	No.	New PSCs
1	Convenience Stores	1	**Cash Transactions**
2	Liquor Stores	2	**Marijuana Related Businesses**
3	Domestic Charitable Organizations	3	**ATM Operators**
4	Jewelry, Gem and Precious Metals Dealers	4	**Crypto-Assets Custody**
5	Casinos	5	**Stablecoin Issuance**
6	Car Dealers	6	**Stablecoin Payments**
7	**Boat/Airplane**	7	Convenience Stores
8	Domestic Private Banking	8	Liquor Stores
9	Domestic Commercial Letters of Credit	9	Domestic Charitable Organizations
10	Stand-by Letters of Credit	10	Jewelry, Gem and Precious Metals Dealers
11	Customers/Accounts opened through the Internet, Mail, Wire or Phone (non-branch)	11	Casinos
12	Domestic Deposit Brokers	12	Car Dealers
13	Travel Agencies	13	Domestic Private Banking
14	Broker Dealers	14	Domestic Commercial Letters of Credit
15	Telemarketers	15	Stand-by Letters of Credit
16	Remotely Created Check Customers	16	Customers/Accounts opened through the Internet, Mail, Wire or Phone (non-branch)
17	Domestic Remote Deposit Capture Customers	17	Domestic Deposit Brokers

No.	Existing PSCs	No.	New PSCs
18	Third Party Senders	18	Travel Agencies
19	Issuance of Traveler's Checks, Official Bank Checks & Money Orders	19	Broker Dealers
20	Domestic Wire Transfers	20	Telemarketers
21	Domestic PUPID Wire Transfers	21	Remotely Created Check Customers
22	ACH	22	Domestic Remote Deposit Capture Customers
23	Remotely Created Checks	23	Third Party Senders
24	Domestic Remote Deposit Capture	24	Issuance of Traveler's Checks, Official Bank Checks & Money Orders
25	Non-Resident Alien Accounts	25	Domestic Wire Transfers
26	Politically Exposed Persons	26	Domestic PUPID Wire Transfers
27	Foreign Off-Shore Corporations	27	ACH
28	Foreign Deposit Brokers	28	Remotely Created Checks
29	Foreign Charitable Organizations	29	Domestic Remote Deposit Capture
30	Import/Export	30	Non-Resident Alien Accounts
31	Foreign Remote Deposit Capture Customers	31	Politically Exposed Persons
32	**Bulk Cash/Currency Repatriation Customers**	32	Foreign Off-Shore Corporations
33	**International Branches**	33	Foreign Deposit Brokers
34	Foreign Correspondent Accounts	34	Foreign Charitable Organizations
35	Payable Through Accounts	35	Import/Export
36	Pouch Services	36	Foreign Remote Deposit Capture Customers
37	Foreign Bank Affiliate	37	Foreign Correspondent Accounts
38	International Department	38	Payable Through Accounts
39	International Private Banking	39	Pouch Services
40	Embassy & Consulate Banking	40	Foreign Bank Affiliate
41	International Commercial Letters of Credit	41	International Department
42	International Bank Drafts	42	International Private Banking
43	International Wire Transfers	43	Embassy & Consulate Banking
44	International PUPID Wire Transfers	44	International Commercial Letters of Credit
45	Remittance Products	45	International Bank Drafts
46	Cross-Border ACH	46	International Wire Transfers
47	International Remote Deposit Capture	47	International PUPID Wire Transfers
48	**Bulk Cash/Currency Repatriation**	48	Remittance Products
49	Domestic Casas de Cambio/Currency Exchange	49	Cross-Border ACH
50	Foreign Casas de Cambio/Currency Exchange	50	International Remote Deposit Capture
51	Money Transmitters	51	Domestic Casas de Cambio/Currency Exchange
52	Check Cashers	52	Foreign Casas de Cambio/Currency Exchange
53	Issuers or Sellers of Traveler Checks or Money Orders	53	Money Transmitters
54	Providers of Prepaid Access	54	Check Cashers
55	Sellers of Prepaid Access	55	Issuers or Sellers of Traveler Checks or Money Orders
56	Prepaid Cards	56	Providers of Prepaid Access
57	Prepaid Card Programs—Third Party Sponsored	57	Sellers of Prepaid Access
58	Prepaid Card Programs—Bank Sponsored	58	Prepaid Cards
59	Prepaid Cardholders	59	Prepaid Card Programs—Third Party Sponsored
60	Prepaid Card Program Managers	60	Prepaid Card Programs—Bank Sponsored
61	Domestic Charitable Trusts & Foundations	61	Prepaid Cardholders
62	Foreign Charitable Trusts & Foundations	62	Prepaid Card Program Managers
63	Custodial Accounts	63	Domestic Charitable Trusts & Foundations
64	Investment Advisory Accounts	64	Foreign Charitable Trusts & Foundations
65	Revocable Trusts	65	Custodial Accounts
66	Foreign Grantor or Beneficiaries	66	Investment Advisory Accounts
67	Loans to Closely Held Corporations	67	Revocable Trusts
68	Brokerage Department/Operations	68	Foreign Grantor or Beneficiaries
69	Investment Advisory/Management	69	Loans to Closely Held Corporations
		70	Brokerage Department/Operations
		71	Investment Advisory/Management

* PSC changes are denoted in **bold**.

The OCC estimates the burden of this collection of information as follows:

Burden Estimates:

Community and trust bank population:

Estimated Number of Respondents: 970.

Estimated Number of Responses: 970.

Frequency of Response: Annually.

Estimated Annual Burden: 7,760 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–12320 Filed 6–7–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: 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 (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On June 2, 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 authorities listed below.

Individuals:

1. FLORES MENDOZA, Severo (a.k.a. ''REY MAGO''), Ameca, Jalisco, Mexico; DOB 09 Nov 1976; POB Tequila, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. FOMS761109HJCLNV04 (Mexico) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' (the ''Order''), for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, CARTEL DE JALISCO NUEVA GENERACION (CJNG), a sanctioned person. Also sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a sanctioned person.

2. GODOY ARELLANO, Esther, Mexico; DOB 26 Jul 1968; POB Jerez, Zacatecas, Mexico; nationality Mexico; Gender Female; C.U.R.P. GOAE680726MZSDRS02 (Mexico) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(i) of the Order, for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, CJNG, a sanctioned person. Also sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a sanctioned person.

3. GONZALEZ ANGUIANO, Moises, Mexico; DOB 01 Apr 1992; POB Culiacan, Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. GOAM920401HSLNNS03 (Mexico) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(i) of the Order, for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, CJNG, a sanctioned person. Also sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a sanctioned person.

4. MONTERO PINZON, Julio Cesar (a.k.a. ''EL TARJETAS''), Puerto Vallarta, Jalisco, Mexico; DOB 02 Jun 1982; POB Puerto Vallarta, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOPJ820602HJCNNL05 (Mexico) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(i) of the Order, for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, CJNG, a sanctioned person. Also sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a sanctioned person.

5. RINCON GODOY, Angelberto, Mexico; DOB 02 Jun 1991; POB Autlan de Navarro, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. RIGA910602HJCNDN04 (Mexico) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(i) of the Order, for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, CJNG, a sanctioned person. Also sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a sanctioned person.

6. RINCON GODOY, Julio Efrain, Mexico; DOB 19 Sep 1995; POB Autlan de Navarro, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. RIGJ950919HJCNDL07 (Mexico) (individual) [ILLICIT–DRUGS–E.O.]. Sanctioned pursuant to section 1(b)(i) of the Order, for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, CJNG, a sanctioned person. Also sanctioned pursuant to section 1(b)(iii) of the Order for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a sanctioned person.

Dated: June 2, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–12295 Filed 6–7–22; 8:45 am]

BILLING CODE 4810–AL–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Meetings

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public meetings.

SUMMARY: Notice is hereby given of the following meetings of the U.S.-China Economic and Security Review Commission. Notice is hereby given of meetings of the U.S.-China Economic and Security Review Commission to review and edit drafts of the 2022 Annual Report to Congress. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on the ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold public meetings to review and edit drafts of the 2022 Annual Report to Congress.

DATES: These meetings of the Commission for review and edit of draft reports are called to order or adjourned by the Chairman as needed between the initial opening session on June 23, 2022 and the planned final session to be completed by October 7, 2022. The current schedule for review and edit sessions are planned for Thursday, June 23, 2022, from 9:00 a.m. to 5:00 p.m.; Friday, August 5, 2022, from 9:00 a.m. to 5:00 p.m. (as needed); Thursday, September 8, 2022, from 9:00 a.m. to 5:00 p.m.; Friday, September 9, 2022, from 9:00 a.m. to 5:00 p.m. (as needed); Thursday, October 6, 2022, from 9:00 a.m. to 5:00 p.m.; and Friday, October 7, 2022, from 9:00 a.m. to 5:00 p.m. (as needed). Reach out to the below contact for any updates to this schedule.

ADDRESSES: 444 North Capitol Street NW, Room 231, Washington, DC 20001. Public seating is limited and will be available on a ''first-come, first-served'' basis. *Reservations are not required to attend the meetings.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the meetings should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the meetings.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham at 202–624–1496, or via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: Pursuant to the Commission's mandate, members of the Commission will meet to review and edit drafts of the 2022 Annual Report to Congress. The Commission is subject to the Federal Advisory Committee Act (FACA) with the enactment of the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 that was signed into law on November 22, 2005 (Pub. L. 109–108). In accordance with FACA, the Commission's meetings to make decisions concerning the substance and recommendations of its 2022 Annual Report to Congress are open to the public.

Topics to Be Discussed: Editing and review sessions will cover material prepared for the 2022 Annual Report, including: a review of economics, trade, security and foreign affairs developments in 2022; Chinese Communist Party decision-making; U.S. policies to address China's nonmarket economy practices; China's energy plans and practices; supply chain vulnerabilities and resilience; China's cyber capabilities; China's activities and influence in South and Central Asia; Taiwan; Hong Kong; and other matters within the Commission's mandate as the Commission chooses to take up in deliberation of the Annual Report.

Required Accessibility Statement: These meetings will be open to the public. The Commission may recess the meetings to address administrative issues in closed session. The Commission will also recess the meetings around noon for a lunch break. At the beginning of the lunch break, the Chairman will announce what time the meetings will reconvene.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: June 2, 2022.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2022–12270 Filed 6–7–22; 8:45 am]

BILLING CODE 1137–00–P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedure for Portable Air Conditioners; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2020–BT–TP–0029]

RIN 1904–AF03

Energy Conservation Program: Test Procedure for Portable Air Conditioners

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 procedure for portable air conditioners (''portable ACs'') to incorporate a measure of variable-speed portable AC performance and make minor clarifying edits. DOE also proposes a new test procedure to improve representativeness for all configurations of portable ACs, which relies on a substantively different measure of cooling capacity and energy consumption compared to the current portable AC test procedure. DOE is seeking comment from interested parties on the proposal.

DATES:

Comments: DOE will accept comments, data, and information regarding this proposal no later than August 8, 2022. See section V, ''Public Participation,'' for details.

Meeting: DOE will hold a webinar on Wednesday, July 13, 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.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–TP–0029, by any of the following methods:

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

2. *Email: PortableAC2020TP0029@ee.doe.gov.* Include the docket number EERE–2020–BT–TP–0029 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC, 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

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-2020-BT-TP-0029.* 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. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5904. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@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, 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 draft industry standard into part 430:

Association of Home Appliance Manufacturers (''AHAM'') PAC–1–2022 Draft, (''AHAM PAC–1–2022 Draft''), ''Portable Air Conditioners''. AHAM PAC–1–2022 Draft is in draft form and its text was provided to the Department for the purposes of review only during the drafting of this NOPR. DOE intends to update the reference to the final published version of AHAM PAC–1–2022 Draft in the Final Rule, unless there are substantive changes between the draft and published versions, in which case DOE may adopt the substance of the AHAM PAC–1–2022 Draft or provide additional opportunity for comment on the changes to the industry consensus test procedure.

A copy of AHAM PAC–1–2022 Draft is attached in this docket for review.

DOE proposes to maintain and update the previously approved incorporations by reference for the following industry standards in part 430:

ANSI/ASHRAE Standard 37–2009, (''ASHRAE 37–2009''), Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009.

IEC 62301 (''IEC 62301''), Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01).

DOE proposes to incorporate by reference the following industry standards into part 430:

ANSI/ASHRAE 51–1999/ANSI/AMCA 210–99 (''ANSI/ASHRAE 51''), Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, ANSI approved December 2, 1999; ASHRAE approved June 23, 1999.

ANSI/ASHRAE 41.1–1986 (Reaffirmed 2006), Standard Method for Temperature Measurement, approved February 18, 1987.

ANSI/ASHRAE Standard 41.6–1994 (RA 2006), (''ASHRAE 41.6–1994''), Standard Method for Measurement of Moist Air Properties, ANSI reaffirmed on January 27, 2006.

Copies of ANSI/ASHRAE Standard 51–1999, ANSI/ASHRAE Standard 41.1–1986, and ANSI/ASHRAE Standard 41.6–1994 can be obtained from the American National Standards Institute at *https://webstore.ansi.org/.*

For a further discussion of these standards see section IV.M of this document.

Table of Contents

I. Authority and Background

DOE's test procedures for portable ACs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430, subpart B appendix CC (''appendix CC''). The DOE test procedure measures portable AC efficiency in terms of a combined energy efficiency ratio (''CEER''), which is the ratio of the amount of cooling provided by the portable AC to the amount of power it consumes to provide that cooling. The current portable AC test procedure calculates this using a weighted average of performance at two different test conditions. The following sections discuss DOE's authority to establish test procedures for portable ACs 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. In addition to specifying a list of covered products, EPCA enables the Secretary of Energy to classify additional types of consumer products as covered products under EPCA. (42 U.S.C. 6292(a)(20)) In a final determination of coverage published in the **Federal Register** on April 18, 2016, DOE classified portable ACs as covered products under EPCA. 81 FR 22514.

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 portable ACs, 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

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

[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).

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

As stated, DOE's existing test procedures for portable ACs appear at appendix CC. DOE established the test procedure for portable ACs on June 1, 2016 (''June 2016 Final Rule''), to ensure it is representative of typical use and to improve accuracy and repeatability without undue test burden. 81 FR 35241. The June 2016 Final Rule established provisions for measuring the energy consumption of single-duct and dual-duct portable ACs in active, standby, and off modes. The June 2016 Final Rule also established provisions for certification, compliance, and enforcement for portable ACs in 10 CFR part 429.

On June 2, 2020, DOE published a Decision and Order granting a waiver to LG Electronics USA, Inc. (''LG'') for basic models of single-duct variable-speed portable ACs to account for variable-speed portable AC performance under multiple outdoor temperature operating conditions, thus yielding more representative results. 85 FR 33643 (Case No. 2018–004, ''LG Waiver'').

On November 5, 2020, DOE published in the **Federal Register** an early assessment review request for information (''RFI'') (''November 2020 RFI'') in which it sought data and information pertinent to whether amended test procedures would (1) more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle or period of use for the product without being unduly burdensome to conduct, or (2) reduce testing burden. 85 FR 70508.

On April 6, 2021, DOE published a notice of interim waiver for GD Midea Air Conditioning Equipment Co. LTD. (''Midea''), which issued a similar alternate test procedure to that from the LG Waiver with additional specifications to accommodate the combined-duct configurations of the specified Midea basic models. 86 FR 17803 (Case No. 2020–006, ''Midea Interim Waiver'').

On April 16, 2021, DOE published in the **Federal Register** an RFI (''April 2021 RFI'') seeking data and information regarding issues pertinent to whether amended test procedures would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle or period of use for the product without being unduly burdensome to conduct, or reduce testing burden. In the April 2021 RFI, DOE requested comments, information, and data about a number of issues, including (1) updates to industry test standards, (2) test harmonization, (3) energy use measurements, (4) representative average period of use, (5) test burden, 6) heat transfer measurements and calculations, (7) heating mode, fan-only mode, and dehumidification mode, (8) network connectivity, (9) part-load performance and load-based testing, (10) spot coolers, and (11) test procedure waivers. 86 FR 20044.

DOE received comments in response to the April 2021 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO APRIL 2021 RFI

Commenter(s)	Reference in this NOPR	Commenter type
Association of Home Appliance Manufacturers	AHAM	Trade Association.
Keith Rice	Rice	Individual.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Appliance Standards Awareness Project, Consumer Federation of America, Natural Resources Defense Council.	Joint Commenters	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).	California IOUs	Utility.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

A list of additional abbreviations and acronyms for terms defined in this document are provided in Table I.2.

TABLE I.1—LIST OF ABBREVIATIONS AND ACRONYMS

Abbreviation/acronym	Term in this NOPR
AC	Air conditioner.
ACC	Adjusted cooling capacity.
AEC	Annual energy consumption.
AEER	Annualized energy efficiency ratio.
AHRI	Air-Conditioning, Heating, and Refrigeration Institute.
ANSI	American National Standard Institute.
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers.
Btu/h	British thermal units per hour.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for portable ACs. (Docket No. EERE–2020–BT–TP0029, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE I.1—LIST OF ABBREVIATIONS AND ACRONYMS—Continued

Abbreviation/acronym	Term in this NOPR
Btu/h-ft^2-°F	British thermal units per hour-square foot-degree Fahrenheit.
Btu/Wh	British thermal units per watt-hour.
CBI	Confidential business information.
Cd	Cooling degradation coefficient.
CEER	Combined energy efficiency ratio.
CF	Cycling factor.
CFR	Code of Federal Regulations.
COVID–19	Coronavirus 2019.
DOE	U.S. Department of Energy.
°F	Degrees Fahrenheit.
E.O.	Executive order.
EPCA	Energy Policy and Conservation Act.
FEAA	Federal Energy Administration Authorization Act of 1977.
FTC	Federal Trade Commission.
IEC	International Electrotechnical Commission.
IRFA	Initial regulatory flexibility analysis.
ISO	International Organization for Standardization.
kWh	Kilowatt-hours.
LBNL	Lawrence Berkeley National Laboratory.
MAEDbS	Modernized Appliance Efficiency Database System.
NAFTA	North American Free Trade Agreement.
NAICS	North American Industry Classification System.
NOPR	Notice of proposed rulemaking.
OEM	Original equipment manufacturer.
OIRA	Office of Information and Regulatory Affairs.
OMB	Office of Management and Budget.
PAF	Performance adjustment factor.
RECS	Residential Energy Consumption Survey.
RFI	Request for information.
SACC	Seasonally adjusted cooling capacity.
SBA	Small Business Administration.
UMRA	Unfunded Mandates Reform Act of 1995.
USMCA	Agreement between the United States of America, the United Mexican States, and Canada

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to (1) amend 10 CFR 429.4 ''Materials incorporated by reference'' and 10 CFR 429.62, ''Portable air conditioners;'' (2) update 10 CFR 430.2, ''Definitions'' and 10 CFR 430.23, ''Test procedures for the measurement of energy and water consumption'' to address combined-duct portable ACs; (3) amend appendix CC, ''10 CFR Appendix CC to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners;'' and (4) adopt a new appendix CC1, ''appendix CC1 to subpart B of part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners,'' as summarized in Tables II.1 through II.4 of this document, respectively.

In this NOPR, DOE proposes to amend 10 CFR 429.4 ''Materials incorporated by reference'' and 10 CFR 429.62, ''Portable air conditioners'' as follows:

(1) Incorporate by reference AHAM PAC–1–2022 Draft, ''Portable Air Conditioners'' (''AHAM PAC–1–2022 Draft'') which includes an industry-accepted method for testing variable-speed portable ACs, in 10 CFR 429.4; and

(2) Add rounding instructions for the seasonally adjusted cooling capacity (''SACC'') and annualized energy efficiency ratio (''AEER'') in 10 CFR 429.62;

DOE's proposed actions in 10 CFR 429.4 and 429.62 are summarized in Table II.1 compared to the current 10 CFR 429.4 and 429.62, as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED 10 CFR 429.4 AND 429.62 RELATIVE TO CURRENT 10 CFR 429.4 AND 429.62

Current 10 CFR 429.4 and 429.62	Proposed 10 CFR 429.4 and 429.62	Attribution
10 CFR 429.4 incorporates by reference American National Standard Institute (''ANSI'')/ AHAM PAC–1–2015.	Adds incorporation by reference in 10 CFR 429.4 of AHAM PAC–1–2022 Draft.	Updated industry test procedure.
10 CFR 429.62 requires rounding based on AHAM PAC–1–2015.	Adds to 10 CFR 429.62 rounding instructions for SACC and AEER when using appendix CC1.	To increase the reproducibility of the test procedure.

In this NOPR, DOE also proposes to update 10 CFR 430.2, ''Definitions'' and 10 CFR 430.23, ''Test procedures for the measurement of energy and water consumption'' as follows:

(1) Add a definition for the term ''combined-duct'' to 10 CFR 430.2; and

(2) Add requirements to determine estimated annual operating cost for single-duct and dual-duct variable-speed portable ACs in 10 CFR 430.23.

DOE's proposed actions in 10 CFR 430.2 and 430.23 are summarized in Table II.2 compared to the current 10 CFR 430.2 and 430.23, as well as the reason for the proposed change.

TABLE II.2—SUMMARY OF CHANGES IN PROPOSED 10 CFR 430.2 AND 430.23 RELATIVE TO CURRENT 10 CFR 430.2 AND 430.23

Current 10 CFR 430.2 and 430.23	Proposed 10 CFR 430.2 and 430.23	Attribution
10 CFR 430.2 does not define combined-duct portable ACs.	Adds a definition to 10 CFR 430.2 for combined-duct pertaining to portable ACs.	Test procedure waiver.
10 CFR 430.23 does not have a method to estimate annual operating cost for single-duct and dual-duct variable-speed portable ACs.	Adds a method to 10 CFR 430.23 to estimate annual operating cost for single-duct and dual-duct variable-speed portable ACs.	Test procedure waiver.

In this NOPR, DOE also proposes to amend appendix CC to subpart B of part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners'' as follows:

(1) Add definitions in section 2 for ''combined-duct,'' ''single-speed,'' ''variable-speed,'' ''full compressor speed (full),'' ''low compressor speed (low),'' and ''theoretical comparable single-speed;''

(2) Divide section 4.1 into two sections, 4.1.1 and 4.1.2, for single-speed and variable-speed portable ACs, respectively, and detail configuration-specific cooling mode testing requirements for variable-speed portable ACs;

(3) Add a requirement in section 4.1.2 that, for variable-speed portable ACs, the full compressor speed at the 95 degree Fahrenheit (''°F'') test condition be achieved with user controls, and the low compressor speed at the 83 °F test condition be achieved with manufacturer-provided settings or controls;

(4) Add a cycling factor (''CF'') in section 5.5.1;

(5) Add a requirement to calculate SACC with full compressor speed at the 95 °F test condition and low compressor speed at the 83 °F test condition in sections 5.1 and 5.2, consistent with the LG waiver and Midea interim waiver, with an additional requirement for variable-speed portable ACs to represent SACC with full compressor speed for both test conditions (''SACCFull''), and;

(6) Add a requirement in section 3.1.2 that, if a portable AC has network functions, all network functions must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. If the network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network settings, test the unit with the network settings in the factory default configuration for the duration of the test.

DOE's proposed actions in appendix CC are summarized in Table II.3 compared to the current appendix CC, as well as the reason for the proposed change.

TABLE II.3—SUMMARY OF CHANGES IN PROPOSED APPENDIX CC TO CURRENT APPENDIX CC

Current appendix CC	Proposed appendix CC	Attribution
Does not specify compressor type or include variable-speed portable ACs.	Adds definitions for single-speed and variable-speed pertaining to portable ACs and additional compressor speed definitions.	Test procedure waiver.
Specifies cooling mode requirements and subsequent calculations for single-speed portable ACs.	Adds cooling mode requirements and subsequent calculations for variable-speed portable ACs.	Test procedure waiver.
Does not specify requirements to achieve compressor speeds.	Adds a requirement that the full compressor speed at the 95 °F test condition be achieved with user controls and the low compressor speed at the 83 °F test condition be achieved with manufacturer settings.	Test procedure waiver.
Does not include a CF	Adds a CF to determine a theoretical single-speed portable AC cooling capacity.	Test procedure waiver.
Calculates SACC for single-speed portable ACs	Adds equations to calculate SACC for variable-speed portable ACs. Requires that the full compressor speed be used to determine capacity at the 95 °F test and the low compressor speed be used to determine capacity at the 83 °F test condition. Requires additional representation of new metric, $SACC_{Full}$, using the full compressor speed at the 83 °F test condition.	Test procedure waiver and ensure comparability between single-speed and variable-speed capacity ratings.
Does not specify address portable ACs with network functions.	Adds a requirement that, if a portable AC has network functions, all network functions must be disabled throughout testing.	To ensure reproducibility of the test procedure.

In this NOPR, DOE additionally proposes to adopt a new ''appendix CC1 to subpart B of part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners'' which would:

(1) Incorporate by reference parts of AHAM PAC–1–2022 Draft, which includes an industry-accepted method for testing variable-speed portable ACs;

(2) Adopt a new efficiency metric, AEER, to calculate more representatively the efficiency of both

variable-speed and single-speed portable ACs;

(3) Amend the annual operating hours;

(4) Update the SACC and CEER equations for both single-speed and variable-speed portable ACs;

(5) Apply a CF to single-speed portable AC efficiency; and

(6) Add a requirement that, if a portable AC has network functions, all network functions must be disabled throughout testing. If the network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network settings, then test the unit with the network function settings in the factory default configuration for the duration of the test.

Key aspects of DOE's proposed new appendix CC1 are described in Table II.4 compared to the current appendix CC, as well as the reason for the proposed new appendix CC1.

TABLE II.4—SUMMARY OF PROPOSED NEW APPENDIX CC1 TO CURRENT APPENDIX CC

Current appendix CC	Proposed new appendix CC1	Attribution
Incorporates by reference ANSI/AHAM PAC–1–2015	Incorporates by reference AHAM PAC–1–2022 Draft	Updated industry test procedure.
Specifies cooling mode requirements and subsequent calculations for single-speed portable ACs.	Adds cooling mode requirements, operating hours, and a new efficiency metric.	To improve representativeness of the test procedure.
Calculates SACC and CEER for single-speed portable ACs.	Adds equations to calculate SACC and CEER for variable-speed portable ACs and updates the SACC and CEER equations for single-speed portable ACs.	To improve representativeness of the test procedure.
Does not include a CF	Applies a CF to single-speed portable AC efficiency	To improve representativeness of the test procedure.
Does not specify address portable ACs with network functions.	Adds a requirement that, if a portable AC has network functions, all network functions must be disabled throughout testing.	To ensure reproducibility of the test procedure.

Under 42 U.S.C. 6293(e)(1), DOE is required to determine whether an amended test procedure will alter the measured energy use of any covered product. If an amended test procedure does alter measured energy use, DOE is required to make a corresponding adjustment to the applicable energy conservation standard to ensure that minimally compliant covered products remain compliant. (42 U.S.C. 6293(e)(2)) DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of single-speed portable ACs that are rated using the test procedure that is currently required for testing, *i.e.,* appendix CC. DOE has also tentatively determined that the proposed amendments to appendix CC described in section III and Table II.2 of this NOPR, if made final, could alter the measured efficiency and capacity of variable-speed portable ACs that are currently subject to waivers. Appendix CC does not currently have separate provisions for variable-speed portable ACs. DOE is proposing to establish a test method for such units that would address the ability of variable-speed compressors to adjust their operating speed based on the demand load of the conditioned space. Although the measured efficiency could change for variable-speed portable ACs that are currently subject to waivers, DOE has tentatively determined that this proposal would not require an adjustment to the energy conservation standard for portable ACs to ensure that minimally compliant portable ACs would remain compliant. DOE reached this conclusion because variable-speed portable ACs currently on the market are not representative of minimally compliant units.

DOE also has tentatively determined that the proposed adoption of a new appendix CC1 described in section III and Table II.3 of this NOPR would alter the measured efficiency of portable ACs. DOE proposes that testing according to the proposed new appendix CC1, if made final, would not be required until compliance is required with amended energy conservation standards that are based on the proposed new appendix CC1, should such standards be established. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

A. Scope of Applicability

DOE defines a ''portable air conditioner'' as a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. 10 CFR 430.2. The definition also states that a portable AC includes a source of refrigeration and may include additional means for air circulation and heating. *Id.*

DOE has established definitions for two portable AC configurations: ''single-duct portable air conditioner'' and ''dual-duct portable air conditioner.'' A ''single-duct portable air conditioner'' is a portable AC that draws all of the condenser inlet air from the conditioned space without the means of a duct, and discharges the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket. 10 CFR 430.2. A ''dual-duct portable air conditioner'' is a portable AC that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, may draw additional condenser inlet air from the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket. *Id.*

In the April 2021 RFI, DOE sought comment on whether the current definitions of ''portable air conditioner,'' ''single-duct portable air conditioner,'' and ''dual-duct portable air conditioner'' require amendment, and if so, how the terms should be defined. 86 FR 20044, 20046 (Apr. 17, 2021). DOE specifically requested comment on whether the existing definitions specified in 10 CFR 430.2 for portable ACs require amendments to distinguish further between single-duct and dual-duct units, or to address any unique configurations that are not clearly addressed in the existing definitions; if amendments were recommended, DOE sought information on what identifying characteristics may be included in potential amended or new definitions.

DOE received no comments related to the definitions in response to the April 2021 RFI. In the Midea Interim Waiver, DOE specified a definition for ''combined-duct portable air conditioner'' as part of the alternate test procedure. 86 FR 17803, 17808. Since this duct configuration was not previously defined, DOE proposes to define ''combined-duct'' in 10 CFR 430.2 specifically as ''for a portable air conditioner, the condenser inlet and outlet air streams flow through separate ducts housed in a single duct structure.''

DOE is not proposing amendments to the definitions for ''portable air conditioner,'' ''single-duct portable air conditioner,'' and ''dual-duct portable air conditioner'' as codified in 10 CFR 430.2, at this time. DOE requests comment on the proposed definition of ''combined duct.''

In the April 2021 RFI, DOE also discussed a comment received in which NEEA stated that ''spot coolers'' are not currently covered by the portable AC test procedure, and that these products do not provide net cooling, but rather move heat from one area to another in a space (*i.e.,* they reject condenser air to the cooled space). 86 FR 20044, 20051. NEEA stated that some portable AC products may meet this description of a spot cooler, and recommended that DOE continue to monitor the market to ensure that market characterization of a product as a ''spot cooler'' is not utilized as a means to circumvent portable AC standards. *Id.* In response, DOE sought information regarding the availability of any portable ACs that provide cooling in a similar manner to single-duct and dual-duct portable ACs but that do not meet either of the definitions for a single-duct or dual-duct portable AC at 10 CFR 430.2. *Id.*

DOE received no comments providing additional information regarding spot coolers. In the 2016 Final Rule, DOE identified the presence of an adjustable window mounting bracket as a primary feature of single-duct and dual-duct portable ACs. 81 FR 35245 (Jun. 1, 2016). In that final rule and in subsequent market reviews, DOE found no spot coolers with an adjustable window mounting bracket. These flexible mounting brackets for condenser inlet and exhaust ducts are required for the portable AC configurations addressed by the portable AC test procedure. Therefore, in this NOPR, DOE is not proposing any amendments to the scope or definitions related to spot coolers.

B. Test Procedure

Portable ACs are currently tested in accordance with appendix CC, which incorporates by reference American National Standard Institute (''ANSI'')/AHAM PAC–1–2015 ''Portable Air Conditioners'' (''ANSI/AHAM PAC–1–2015''), ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 37–2009 ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ANSI/ASHRAE Standard 37–2009''), and IEC Standard 62301 ''Household electrical appliances—Measurement of standby power'' (Edition 2.0 2011–01) (''IEC Standard 62301''), with modifications. Regarding dual-duct portable ACs, the DOE test procedure specifies provisions in addition to ANSI/AHAM PAC–1–2015. Specifically, the DOE test procedure specifies an additional test condition for dual-duct portable ACs (83 °F dry-bulb and 67.5 °F wet-bulb outdoor temperature) and additionally accounts for duct heat transfer, infiltration air heat transfer, and off-cycle mode energy use. *See* Sections 4.1, 4.1.1, 4.1.2, and 4.2 of appendix CC. Appendix CC also includes instructions regarding tested configurations, duct setup, inlet test conditions, condensate removal, unit placement, duct temperature measurements, and control settings. *See* Sections 3.1.1, 3.1.1.1, 3.1.1.2, 3.1.1.3, 3.1.1.4, 3.1.1.6, and 3.1.2 of appendix CC.

Under the current test procedure, a unit's SACC, in British thermal units per hour (''Btu/h''), is calculated as a weighted average of the adjusted cooling capacity measured at two representative operating conditions. The adjusted cooling capacity is the measured indoor room cooling capacity while operating in cooling mode under the specified test conditions, adjusted based on the measured and calculated duct and infiltration air heat transfer. *See* Sections 4.1, 4.1.1, 4.1.2, 5.1, and 5.2 of appendix CC. The CEER represents the efficiency of the unit, in Btu per watt-hours (''Btu/Wh''), based on the adjusted cooling capacity at the two operating conditions; the annual energy consumption in cooling mode, off-cycle mode, and inactive or off mode; and the number of cooling mode hours per year; with weighting factors applied for the two operating conditions. *See* Sections 4.2, 4.3, 5.3, and 5.4 of appendix CC.

In response to the April 2021 RFI, DOE received a comment from AHAM stating that there is no immediate need to amend the portable AC test procedure, given the backlog of other overdue rules and the fact that the applicable energy conservation standards compliance date is not until 2025. In addition, AHAM stated that it does not believe the existing test procedure needs to be revised other than to make updates to incorporate the existing waivers. AHAM recommended collaborating with AHAM and other stakeholders on this test procedure through the consensus process so that the rulemaking process can be streamlined. (AHAM, No. 8 at p. 2) DOE notes that, at the time of the comment, AHAM and its working group were still working on an update to AHAM PAC–1–2015.

As stated, DOE is conducting this rulemaking in accordance with the periodic review provision in EPCA that requires ''at least once every 7 years, the Secretary shall review test procedures for all covered products including portable ACs and (i) amend test procedures with respect to any covered product, if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3); or (ii) publish notice in the **Federal Register** of any determination not to amend a test procedure.'' (42 U.S.C. 6293, (b)(1)(A)) In addition, DOE's regulations at 10 CFR 430.27(l) require that as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a NOPR to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l).

AHAM further commented that, as DOE evaluates potential changes, it should be mindful that it will take time before many new features, designs, and technologies lend themselves to a ''representative average'' consumer use. AHAM therefore stated that DOE should ensure that the portable AC test procedure does not prematurely address new designs which may not yet have an average use or be in common use by measuring their energy use, asserting that doing so could stifle innovation. (AHAM, No. 8 at p. 4)

DOE notes an important distinction between the requirements of EPCA and AHAM's comment regarding ''representative average'' consumer use as measured by the test procedure. AHAM's comment suggests that testing new features, designs, or technologies is not necessary because, according to AHAM, such features may not yet be in common use on the market. However, under EPCA, DOE is not required to develop a test procedure for the ''average'' portable AC on the market. Instead, DOE is required to develop a test procedure that measures energy use or efficiency for all models of portable ACs during a representative average use

cycle or period of use (among other considerations). (42 U.S.C. 6293(b)(3))

1. Updates to Industry Standards

In the November 2020 RFI, DOE sought comment on the availability of industry-accepted consensus-based test procedures for measuring the energy use of portable ACs that could be adopted without modification and more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle for the product, and not be unduly burdensome to conduct. 85 FR 70508, 70511.

AHAM stated that the existing test procedure need not be significantly revised, and that the primary changes necessary are those that incorporate the LG Waiver and Midea Interim Waiver. AHAM commented that its PAC–1 task force is discussing broader issues for potential consideration and will add the issues raised in the April 2021 RFI to that discussion. AHAM stated that the PAC–1 task force is actively pursuing an update to ANSI/AHAM PAC–1–2015 that would account for variable-speed products and is discussing some of the issues DOE raised in the April 2021 RFI, such as definitions, usage data, repeatability and reproducibility, test burden, infiltration air and duct heat transfer, variable-speed product testing, and spot coolers. AHAM further stated that this test procedure development is on a fast track and urged DOE to allow the process to complete before taking additional rulemaking steps and, so long as the test procedure is consistent with the EPCA requirements, as they expect it will be, to adopt the resulting procedure per the Process Rule, section 8(c).[6] AHAM stated it will update the docket when the procedure is complete. (AHAM, No. 8 at pp. 1–2)

A new draft version of ANSI/AHAM PAC–1 has begun development since the publication of the current DOE test procedure; *i.e.,* AHAM PAC–1–2022 Draft. DOE assessed this draft version to determine if any updates to the DOE test procedure were warranted. As discussed in later sections in this NOPR, DOE is proposing to adopt AHAM PAC–1–2022 Draft in a new appendix CC1, including a new efficiency metric, AEER, and a capacity metric, SACC, that is comparable for both single-speed and variable-speed models. If AHAM publishes a final version of PAC–1–2022 Draft prior to DOE publishing a final rule, DOE intends to update the referenced industry test standard in the DOE test procedure to reference the latest version of AHAM PAC–1. If a finalized version of AHAM PAC–1–2022 Draft is not published before the final rule or if there are substantive changes between the draft and published versions of AHAM PAC–1–2022, DOE may adopt the substance of the AHAM PAC–1–2022 Draft or provide additional opportunity for comment on the final version of that industry consensus standard. Due to the substantive difference in measures of capacity and energy efficiency, DOE proposes to continue referencing ANSI/AHAM PAC–1–2015 in appendix CC, with amendments to include the variable-speed waiver approaches as discussed below. Until appendix CC1 takes effect, DOE proposes to add to appendix CC a capacity metric for variable-speed models, $SACC_{Full,}$ that is comparable to SACC for single-speed models.

Both ANSI/AHAM PAC–1–2015 and AHAM PAC–1–2022 Draft reference ANSI/ASHRAE Standard 37–2009, which references certain industry test standards in specifying test conditions, measurements, and setup. DOE is also proposing to incorporate those industry standards specified in the relevant sections of ANSI/ASHRAE Standard 37–2009. Specifically, DOE is proposing to incorporate by reference ANSI/ASHRAE Standard 51–1999 (also referred to as ANSI/AMCA 210–1999), as referenced in section 6.2, ''Nozzle Airflow Measuring Apparatus,'' of ANSI/AHAM PAC–1–2015 and AHAM PAC–1–2022 Draft, for static pressure tap placement. DOE is also proposing to incorporate by reference ANSI/ASHRAE Standard 41.1–1986 and ANSI/ASRHAE Standard 41.6–1994 (RA 2006), as referenced in section 5.1, ''Temperature Measuring Instruments,'' of AHAM PAC–1–2022 Draft, for measuring dry-bulb temperature and humidity, respectively. Incorporating these standards will clarify which versions of the standards are required to conduct tests according to the procedure in appendices CC and CC1.

Appendix CC Proposal: DOE is not proposing any amendments to revise the ANSI/AHAM PAC–1–2015 reference in appendix CC. DOE proposes to amend appendix CC to account for the difference in efficiency resulting from the ability of variable-speed models to adjust their compressor operating speed based on the demand load of the conditioned space, as addressed in the LG waiver and Midea interim waiver. DOE is also proposing to incorporate by reference ANSI/ASHRAE Standard 51–1999. This proposal would otherwise generally maintain the existing test procedure approach, which is the basis for the energy conservation standards for which compliance is required beginning in 2025, established in the energy conservation standards final rule published by DOE on January 10, 2020 (''January 2020 Final Rule''). 85 FR 1378.

DOE requests comment on the proposal to incorporate by reference ANSI/ASHRAE Standard 51–1999 in appendix CC, with modifications to address comparability and representativeness.

Appendix CC1 Proposal: DOE proposes to adopt a new appendix CC1 that would incorporate by reference AHAM PAC–1–2022 Draft, with some modifications as discussed in section III.B.5 of this document. DOE is also proposing to incorporate those industry standards specified in the relevant sections of ANSI/ASHRAE Standard 37–2009. Specifically, DOE is proposing to incorporate by reference: ANSI/ASHRAE Standard 41.1–1986, ANSI/ASRHAE Standard 41.6–1994 (RA 2006), ANSI/ASHRAE Standard 51–1999. The newly proposed appendix CC1 would simplify the portable AC test procedure for variable-speed portable ACs and improve representativeness and comparability among different portable AC configurations.

DOE requests comment on the proposal to incorporate by reference AHAM PAC–1–2022 Draft in a new appendix CC1, with modifications to address comparability and representativeness and to incorporate ANSI/ASHRAE Standard 41.1–1986, ANSI/ASRHAE Standard 41.6–1994 (RA 2006), ANSI/ASHRAE Standard 51–1999 in appendix CC1.

2. Harmonization With Other AC Product Test Procedures

In the April 2021 RFI, DOE requested further information and usage data regarding setpoints, operating conditions, seasonal use, and installation time for portable ACs to inform the issue of harmonization of the test procedures for room ACs, portable ACs, and central ACs. 86 FR 20044, 20047.

NEEA stated that portable ACs and room ACs are potential substitutes for

[6] Section 8(c) of appendix A of 10 CFR part 430 subpart C, The Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment (''appendix A'') provides guidelines on the adoption of industry test methods as DOE test procedures for covered products and equipment. DOE updated appendix A in a final rule published in the **Federal Register** on December 13, 2021. 86 FR 70892. The updates included allowance for the adoption of industry test methods with modifications or the use of test methods crafted by DOE as necessary to ensure compatibility with the relevant statutory requirements, as well as DOE's compliance, certification, and enforcement requirements.

one another and may be evaluated side-by-side by consumers, but that more data are needed to fully understand the usage characteristics and applications of each product category. NEEA expressed particular concern that, under the current test procedures for each product, portable ACs may appear more efficient in comparison to room ACs, whereas, as asserted by NEEA, the opposite is generally the case. NEEA recommended that DOE further evaluate the typical applications and operational hours for both portable ACs and room ACs and update the test procedures as necessary to ensure that consumers are provided with accurate information. (NEEA, No. 12 at p. 2)

The California IOUs commented that DOE should align the portable AC test procedure with that of room ACs and central ACs to provide consumers with a direct energy performance comparison between products that provide similar utility. The California IOUs noted that the International Organization for Standardization (''ISO'') states that ''the operational mode and features of such appliances [single duct portable ACs and heat pumps] are quite different from those of the well-known non-ducted ACs and heat pumps largely diffused worldwide and covered by ISO 5151.'' [7] The California IOUs stated that considering how portable, room, and central AC test procedures have evolved over time and how they have been evaluated globally, they understand why DOE is unable to harmonize these test procedures. They noted, however, that the DOE room AC and portable AC energy conservation standards are both based on a metric named CEER. They encouraged DOE to consider changing the name of the reported energy efficiency metric for portable ACs to clarify to consumers that the portable AC and room AC metrics are not comparable. (California IOUs, No. 10 at pp. 2–4)

DOE recognizes that consumers may consider portable ACs and room ACs for the same applications, and that it would be helpful to consumers for the portable AC and room AC ratings to be comparable. However, as discussed in a NOPR published on February 25, 2015, DOE also expects that portable ACs and room ACs have different operating hours and are likely utilized differently by consumers. 80 FR 10211, 10235. Accordingly, the portable AC and room AC test procedures have different operating hours and test conditions, and the resulting CEER metric for each test procedure measures the efficiency of the tested product during its representative period of use. In this NOPR, DOE is not proposing specific amendments to appendix CC or the proposed new appendix CC1 for the purpose of achieving harmonization with the test procedures for other AC products. Rather, DOE is proposing amendments in this rulemaking to address and improve the representativeness of the test procedure for portable ACs, as required by EPCA. (*See* 42 U.S.C. 6293(b)(3)) In the future, DOE will continue to consider EPCA requirements and consumer usage data when amending both the portable AC and room AC test procedures. With respect to changing the name of the metric, DOE is proposing a new metric name for portable ACs, as discussed in section III.B.5.f of this document.

3. Variable-Speed Technology

Portable ACs with variable-speed compressors have been introduced to the market since the last portable AC test procedure rulemaking. As compared to a portable AC with a single-speed compressor, a variable-speed portable AC can use an inverter-driven variable-speed compressor to maintain the desired temperature without cycling the compressor motor and fans on and off. The unit responds to surrounding conditions by adjusting the compressor rotational speed based on the cooling demand. At reduced speeds, variable-speed compressors typically operate more efficiently than a single-speed compressor would under the same conditions. The current portable AC test procedure does not account for improved efficiency from the ability of variable-speed portable ACs to automatically adjust their compressor operating speed and overall performance based on the cooling load of the conditioned space.

DOE has issued a test procedure waiver and an interim waiver that specify alternate test procedures for certain basic models of variable-speed portable ACs. 85 FR 33643; 86 FR 17803.

As discussed, DOE granted LG a test procedure waiver from specified portions of the DOE test procedure for determining the energy efficiency of listed portable AC basic models, under which LG is required to test and rate the listed basic models of its portable ACs in accordance with the alternate test procedure specified in the Decision and Order. 85 FR 33643, 33647 (June 2, 2020). LG asserted that the current DOE test procedure for single-duct portable ACs does not take into account the specific performance and efficiency benefits associated with the specified basic models, which are single-duct variable-speed portable ACs, under part-load conditions. *Id.* In granting the LG Waiver, DOE determined that the alternate test procedure in the Decision and Order produces efficiency results for variable-speed portable ACs which are comparable with the results for single-speed units. *Id.* The alternate test procedure accomplishes this by adjusting the efficiency rating of the variable-speed portable AC by the amount the variable-speed unit would outperform a theoretical comparable single-speed unit in a representative period of use. *Id.*

On July 16, 2020, DOE received a petition for waiver and application for interim waiver from Midea, consistent with the approach used for variable-speed compressors in the LG Waiver, with modifications to account for dual-duct models incorporating Midea's combined-duct technology.[8] Midea stated the current test procedure prevents the testing of its combined-duct technology because the condenser inlet and outlet air streams are incorporated into the same structure. (Midea Petition, EERE–2020–BT–WAV–0023 No. 2 at pp. 4–5) Midea further stated that, since the airflow both into and out of the condenser must be measured simultaneously, modifications are needed to adapt Midea's combined-duct technology to DOE's test procedure and standard airflow measurement apparatuses. (Midea Petition, EERE–2020–BT–WAV–0023 No. 2 at p. 5) Midea stated the DOE test procedure does not take into account a specially designed adapter that is needed for measuring the airflows. *Id.* DOE granted the Midea Interim Waiver on April 6, 2021, under which Midea is required to test and rate the listed basic models of its portable ACs in accordance with the alternate test procedure specified in the interim waiver. This alternate test procedure adjusts the efficiency rating of Midea's variable-speed portable ACs in a manner similar to that of the alternate test procedure in the LG Waiver, with provisions to allow testing of the combined-duct technology. 86 FR 17803.

Upon the compliance date of the test procedure provisions proposed in this NOPR to appendix CC, should they be adopted, the LG Waiver and Midea Interim Waiver would be terminated, as the proposed amendments to appendix

[7] ISO 5151: 2017 specifies performance testing, the standard conditions, and the test methods for determining the capacity and efficiency ratings of air-cooling air conditioners and air-to-air heat pumps.

[8] The Midea Petition for Waiver from Portable Air Conditioners Test Procedures (EERE–2020–BT–WAV–0023) is available at *www.regulations.gov/docket/EERE–2020–BT–WAV–0023.*

CC address the issues addressed by the waiver and interim waiver. 10 CFR 430.27(h)(3).

In the April 2021 RFI, DOE requested comment on potential amendments to the test procedure to address variable-speed portable ACs. 86 FR 20044.

NEEA, the California IOUs, and the Joint Commenters noted that variable-speed portable ACs have become available on the market since the January 2020 Final Rule, pointing to the LG Waiver and Midea Interim Waiver as evidence of variable-speed portable AC market prevalence. (NEEA, No. 12 at p. 2; California IOUs, No. 10 at pp. 1–2; Joint Commenters, No. 9 at p. 2) The California IOUs further stated that these models are growing in popularity, citing prevalence on retail websites of one of the portable ACs that is subject to a waiver. (California IOUs, No. 10 at pp. 1–2) The California IOUs recommended that DOE update the portable AC test procedure to establish a uniform approach for accurately representing the energy performance benefits of variable-speed technology to provide consumers with the best information so they can make informed purchasing decisions. (California IOUs, No. 10 at pp. 1–2) NEEA recommended that DOE modify the portable AC test procedure to include variable-speed products in a way that accurately reflects their energy use and that testing be conducted at user-selected speeds to the maximum extent possible, as compared to proprietary manufacturer settings, to better reflect field performance. NEEA further stated that, given the potential for variable-speed products to save energy through increased efficiency at low loads and reduced cycling, it is important to capture this energy use accurately in the test procedure so that it can be evaluated in future standards rulemakings. (NEEA, No. 12 at p. 2) The California IOUs noted that amending the test procedure to account for variable-speed technology would allow DOE to remove the existing test procedure waivers, stating that amending the test procedure would make the waivers no longer necessary for an accurate representation of the products in question. (California IOUs, No. 10 at pp. 1–2) In incorporating the current test procedure waivers for variable-speed portable ACs into the DOE test procedure, the Joint Commenters and the California IOUs encouraged DOE to require that the ''full speed'' test be conducted using user controls to achieve the maximum cooling capacity to improve representativeness. (Joint Commenters, No. 9 at p. 2; California IOUs, No. 10 at pp. 1–2)

As noted, DOE has issued a waiver and an interim waiver addressing the ability of variable-speed portable ACs to automatically adjust their compressor operating speed based on the cooling load of the conditioned space. Pursuant to DOE's waiver regulations, as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a NOPR to amend its regulations to eliminate any need for the continuation of such waiver. 10 CFR 430.27(l). As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. *Id.*

In accordance with the requirements of 10 CFR 430.27(l), DOE is proposing to amend appendix CC to adopt test methods and SACC and CEER calculations for variable-speed units, consistent with those in the LG and Midea Waivers. These test methods involve testing variable-speed portable ACs at three conditions: the two test conditions used for single-speed units and one additional low-compressor-speed test condition conducted at 83 °F. The low compressor speed would be achieved and maintained using instructions provided by the manufacturer as supplemental test information.

Additionally, DOE is proposing changes to ensure comparability of metrics. Under the current appendix CC, SACC captures the reduced capacity at low outdoor temperature (83 °F) for variable-speed units but not for single-speed units, because the procedure does not allow single-speed units to cycle, as they would in normal operation. Under the proposed appendix CC, the represented value of both variable-speed and single-speed unit capacities at the low temperature would be based on full speed, with a new $SACC_{Full}$ metric for variable-speed units. Although it does not reflect normal operation, this approach creates a fair comparison and does not affect the current metric for single-speed units. Under appendix CC1, SACC would reflect the reduced capacity at low outdoor temperature for both types.

DOE proposes to require variable-speed portable AC manufacturers to make capacity representations with a new capacity metric, $SACC_{Full}$, while appendix CC is used. As described in the following detail, the $SACC_{Full}$ metric would allow consumers to compare single-speed portable AC and variable-speed portable AC capacities on a like-for-like basis, when a manufacturer certifies in accordance with appendix CC. Upon the effective date and universal use of appendix CC1, this $SACC_{Full}$ metric would no longer be necessary, as the SACC metric in appendix CC1 would take into account the reduced cooling capacity provided by both single-speed and variable-speed basic models. DOE would consider reporting requirements necessary for certifying compliance with energy conservation standards of covered appliances in a separate rulemaking, and would address reporting requirements for $SACC_{Full}$ at that time.

In the LG Waiver, DOE required that the ''full speed'' 95 °F outdoor temperature test be conducted using a maximum compressor speed achieved using instructions provided by the portable AC manufacturer. 85 FR 33643, 33651. In the Midea Interim Waiver, DOE altered this requirement to require that the maximum compressor speed be reached by adjusting user controls such that the compressor runs continuously under a full cooling load. 86 FR 17803, 17809. DOE made this change based on its own test data and the advice of commenters. Achieving full compressor speed with user controls (*i.e.,* native controls) rather than manufacturer-specified codes ensures that the maximum speed tested is representative of real-world performance. Accordingly, DOE proposes to amend appendix CC to adopt the test procedure provisions specified in the Midea Interim Waiver. DOE is also proposing to include such provisions in the proposed new appendix CC1.

DOE is also proposing to amend the SACC calculations in appendix CC and in the proposed new appendix CC1. In the LG Waiver and Midea Interim Waiver, the alternate test procedures require the use of the low compressor speed at the 83 °F test condition as the basis for the SACC calculation. 85 FR 33643, 33650 (June 2, 2020); 86 FR 17803, 17811 (Apr. 6, 2021). The alternate test procedures require the use of the low compressor speed, as it would be the best representation of typical performance and cooling provided at the 83 °F test condition. Therefore, as discussed in section III.B.5.c of this document, DOE proposes to adopt the waiver and interim waiver alternate test procedure approach and use the low compressor speed when determining variable-speed portable AC capacity at the 83 °F test condition. However, DOE recognizes that cooling capacity is one of the primary metrics that manufacturers advertise to consumers, and that, when using appendix CC, the comparatively lower SACC values for variable-speed models resulting from using the low compressor speed at the 83 °F test condition relative to comparable single-speed units (which do not operate continuously at a reduced speed but typically cycle at that

low temperature condition), may create an unwarranted competitive disadvantage for single-speed models in the market and confusion for consumers. Therefore, DOE is proposing to require manufacturers, when testing a variable-speed portable AC using appendix CC, to represent capacity using a new metric, $SACC_{Full}$, using the full compressor speed at the 83 °F test condition. DOE does not propose to define $SACC_{Full}$ in appendix CC1, nor require the use of such a metric for representations until the compliance date of any amended standards for portable ACs, when the use of appendix CC1 would be required. The proposed new appendix CC1 addresses single-speed portable AC performance at part-load under the low temperature condition (see the discussion of cycling losses and part-load operation in section III.5.e of this document), such that when using the proposed new appendix CC1, no such comparability issues would arise between the SACC values for single-speed and variable-speed AC units.

The reduced cooling load typically observed at the 83 °F test condition is not currently accounted for in appendix CC for either single-duct or dual-duct portable ACs. In the proposed new appendix CC1, DOE is proposing to adopt the most representative SACC calculation for all portable ACs. For a variable-speed portable AC, this value would be the measured cooling capacity for the unit operating with a low compressor speed at the 83 °F test condition. For a single-speed unit, this value would be the unit's cooling capacity measured at the 83 °F test condition multiplied by a load factor—0.6 for single-duct units and 0.5363 for dual-duct units. This change would provide the most representative cooling capacity for both single-speed and variable-speed units, as would reflect the expected average rate of cooling when operating at the 83 °F test condition, as indicated by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 210/240, ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment'' (''AHRI 210/240'') Building Load Calculation, found in section 11.2.1.2 of that standard. Both adjustments are discussed in section III.B.5.c of this document.

In this NOPR, DOE proposes to amend appendix CC to adopt the CEER calculation from the LG Waiver and Midea Interim Waiver alternate test procedures for variable-speed portable ACs, with an updated cycling factor based on new test data (as discussed in section III.B.5.e of this document) to address the efficiency benefits associated with a variable-speed portable AC relative to a single-speed portable AC when operating at reduced test conditions. To maintain compatibility with the existing portable AC standards, DOE is not proposing to amend the CEER calculation in appendix CC for single-speed portable ACs.

However, DOE is proposing to change the CEER calculation for both single-speed and variable-speed portable ACs in the proposed new appendix CC1 to account for cyclic behavior of single-speed portable ACs and to improve representativeness. This proposed approach entails changing the operating hours for all portable ACs, namely how off-cycle mode hours are allocated (see section III.4 of this document) and to include a cycling factor in the CEER equation for single-speed portable ACs to account for cycling efficiency losses outside of off-cycle mode. For detailed discussion of these changes, see section III.5.f of this document.

4. Representative Average Period of Use

a. Operational Modes

The measured energy performance of a portable AC includes energy use associated with cooling mode and off-cycle mode during the cooling season, and inactive mode and off mode energy use for the entire year. In the April 2021 RFI, DOE sought comment regarding whether any of the currently considered modes in the DOE test procedure should no longer be addressed, or whether any representative modes that are not currently considered should be addressed in future test procedure amendments. DOE also sought comment regarding whether the performance and energy use for these operational modes are appropriately addressed and captured in the DOE test procedure. 86 FR 20044, 20047–20048.

DOE received comments on air circulation mode, dehumidification mode, and heating mode, which are discussed below in sections III.B.6, III.B.7, and III.B.8 of this document, respectively.

b. Hours of Operation

As discussed in this section, DOE is proposing a revised set of annual operating hours for portable ACs, shown in Table III.2 of this document.

To determine the energy use during a representative period of use, the current DOE test procedure assigns the following hours of operation for each mode: 750 hours for cooling mode, 880 hours for off-cycle mode, and 1,355 hours for inactive or off mode. Section 5.3 of appendix CC. These operating hours were established in the June 2016 Final Rule. Because as at that time there was insufficient data for portable AC use, DOE derived these values from the existing operating hours for room ACs. DOE adjusted the room AC usage data to reflect portable ACs usage; for example, inactive mode and off mode estimates outside of the cooling season were decreased because portable ACs are more likely to be unplugged outside of the cooling season as compared to room ACs, which are less portable.[9] 81 FR 35241, 35258–35259. In the April 2021 RFI, DOE stated it was unaware of any portable AC usage data sufficient to characterize representative consumer usage in a manner more representative than considered in the previous test procedure rulemaking, noted that no such data or data sources had been provided by commenters to date, and requested data regarding annual operating hours for all representative modes of operation for portable ACs. 86 FR 20044, 20048.

AHAM urged DOE not to rely on room AC data to determine annual operating hours for portable ACs, stating that portable and room ACs may be similar in some ways, but that usage of the products differs, as DOE recognized in the April 2021 RFI. AHAM stated that DOE should refrain from using room AC data to support rulemaking activity for portable ACs unless there is evidence that the data are a sufficient surrogate. (AHAM, No. 8 at p. 3) AHAM also asserted that, to establish or amend representative average use cycles or periods of use, DOE must have national, statistically significant, field use data (not surveys) on consumer use. Without such data, AHAM claimed that it is impossible and inappropriate for DOE to determine or change the average use cycle in a test procedure. AHAM asserted that EPCA does not contemplate test procedures that measure every possible cycle, combination of options, or use pattern; and that EPCA instead requires test procedures measure only a ''representative average use cycle or period of use.'' AHAM further stated that test procedures will inevitably become unduly burdensome to conduct if, to measure every possible kilowatt-hour, test procedures are amended to account for every possible cycle or pattern. AHAM urged DOE to focus on

[9] Further information regarding the development of the operating hours is provided in the February 25, 2015 NOPR and November 27, 2015 supplemental NOPR, available at *www.regulations.gov/docket/EERE-2014-BT-TP-0014-0009* and *www.regulations.gov/docket/EERE-2014-BT-TP-0014-0021,* respectively.

representative, average use cycles. (AHAM, No. 8 at p. 3) AHAM did not provide data or identify data sources for portable AC use.

DOE has been unable to identify nationally representative data and information regarding annual operating hours specifically for portable ACs independent from estimates based on room AC operating hours. DOE also considered whether operating hours for other air conditioning equipment could be relevant but found no evidence that changing the current portable AC operating hours that are based on room AC usage would be more representative. Therefore, DOE is not proposing to amend the operating hours in appendix CC.

As discussed, DOE is proposing to address cycling behavior of single-speed portable ACs in the proposed new appendix CC1. When a single-speed portable AC setpoint is reached, the compressor automatically turns off and the unit enters off-cycle mode until the compressor reactivates according to the thermostat or temperature sensor signal. Whereas when a variable-speed portable AC setpoint is reached, the compressor continues to run, but at a lower speed to match the load, avoiding cycling and off-cycle mode operation entirely. As part of the proposal to address cycling behavior, DOE has assessed the annual operating hours for portable ACs in the proposed new appendix CC1 to more representatively account for cooling mode and off-cycle mode operation. For single-duct portable ACs, the current appendix CC specifies 750 annual operating hours for cooling mode. For dual-duct portable ACs, the current appendix CC specifies a total of 750 cooling mode hours apportioned between the two specified test conditions (95 °F and 83 °F), with weighting factors of 0.2 and 0.8 applied to the 95 °F and 83 °F tests, respectively. In assigning these hours to cooling mode, the current portable AC test procedure does not account for the relationship between cyclic behavior and off-cycle mode as it relates to single-speed portable ACs in typical operation.

To better represent and measure the effects of cyclic behavior in the proposed new appendix CC1, DOE reassessed and reallocated the existing 750 cooling mode operating hours to the 95 °F and 83 °F test conditions, taking in to account the expected off-cycle mode hours that correspond to the cooling mode hours at the 83 °F test condition. To do so, DOE divided the 750 ''compressor on'' cooling mode hours between the two test conditions based on the Temperature Bin Hours from Table 16, titled ''Fractional Bin Hours to Be Used in Calculation of SEER'' in AHRI 210/240. DOE considered the AHRI 210/240 fractional bin hours allocation because it is widely accepted by industry as applicable for air conditioning equipment and because it is the source of the building load calculation that DOE proposes to use to calculate the expected cooling load for portable ACs. DOE summed the fractional hours for the closest temperature bins to each cooling mode test condition—bins 6, 7, and 8 for the 95 °F test condition, and bins 4 and 5 for the 83 °F cooling mode test condition—and then normalized the weighting factors by dividing those fractional hours by the total number of fractional hours used from the table. This resulted in weighting factors of 14 percent and 86 percent (see section III.5.c of this document) for the 95 °F and 83 °F cooling mode test conditions, respectively. DOE excluded bins 1–3 because these bins fall below the indoor test condition temperature of 80 °F, indicating that they are outside of the most representative use period for portable ACs. Multiplying these weighting factors by 750 hours yielded a split of those cooling mode hours into 164 hours and 586 hours for the 95 °F and 83 °F cooling mode test conditions, respectively, for single-speed units.

TABLE III.1—CALCULATION OF WEIGHTING FACTORS FROM AHRI 210/240 FRACTIONAL BIN HOURS

Bin No.	Bin temperature	Fractional bin hours	Sum of fractional hours	Percent of total used fractional hours (weighting factors)
1	67	0.214	Not Used	N/A
2	72	0.231		
3	77	0.216		
4	82	0.161	0.265	78
5	87	0.104		
6	92	0.052	0.074	22
7	97	0.018		
8	102	0.004		

DOE estimated off-cycle mode hours for single-speed units as follows: Based on the AHRI 210/240 Building Load Calculation found in section 11.2.1.2 of that standard, single-speed units operate under a reduced load equal to 60 percent of the full cooling load. Therefore, at the reduced load, a single-speed unit would be expected to operate in cooling mode (*i.e.,* compressor on) for 60 percent of that time and off-cycle mode (*i.e.,* compressor off) for the remaining 40 percent of that time. Accordingly, because the 586 cooling mode (compressor on) hours assigned to the 83 °F cooling mode test condition represent 60 percent of the total operating hours in reduced load conditions, DOE estimates that there are 977 total operating hours at the 83 °F cooling mode test condition (*i.e.,* including both cooling mode and off-cycle mode). This is the sum of the 586 cooling mode hours at the 83 °F cooling mode test condition, calculated above, and 391 hours, representing the off-cycle mode hours (calculated as 977 hours × 0.40). Because variable-speed portable ACs are not expected to enter off-cycle mode at the 83 °F test condition, the proposed cooling mode hours at the 83 °F test condition represent the total variable-speed operating hours at the 83 °F test condition (*i.e.,* 977 hours).

Appendix CC currently allocates 1,355 hours to off and inactive modes. To account for cyclic behavior, or the avoidance of it, DOE proposes to increase this to reflect hours currently considered as part of off-cycle mode. DOE estimated updated off/inactive mode hours for the proposed new appendix CC1 as follows: appendix CC currently allocates 880 hours to off-cycle mode. As described previously, under the proposed new appendix CC1, DOE proposes to allocate 391 hours to off-cycle mode for single-speed units based on estimates derived from the AHRI 210/240 Building Load

Calculation.[10] In the May 2015 NOPR, DOE determined that portable ACs spend 2,985 hours per year plugged in. Because the total number of hours spent plugged in would not change with the revised number of off-cycle mode hours, DOE proposes to re-allocate the difference between the current and proposed off-cycle mode hours—489 hours—to off/inactive mode in the proposed new appendix CC1, yielding a total of 1,844 hours for off/inactive mode (*i.e.,* the sum of 1,355 and 489). DOE maintains that the analysis used for the appendix CC was based on the best available data for portable AC operation, although it does not take into account cyclic behavior. DOE is proposing these changes to the operating hours in the new appendix CC1 to account for cyclic behavior (or the avoidance of it) in all units, which would improve test procedure representativeness overall.

Table III.2 summarizes the annual operating hours for portable ACs under current appendix CC and the proposed new appendix CC1.

TABLE III.2—ANNUAL OPERATING HOURS FOR PORTABLE ACS

Operating mode	Appendix CC	Proposed new appendix CC1
Cooling Mode, 95 °F	[1] 750	164.
Cooling Mode, 83 °F	[1] 750	586 (Single-Speed). 977 (Variable-Speed).
Off-Cycle Mode	880	391 (Single-Speed). 0 (Variable-Speed).
Off/Inactive Mode	1,355	1,844.

[1] These operating mode hours are for the purposes of calculating annual energy consumption under different ambient conditions and are not a division of the total cooling mode operating hours. The total dual-duct cooling mode operating hours are 750 hours.

Appendix CC

As discussed previously, DOE is not proposing to change the annual operating hours in appendix CC.

Appendix CC1

DOE proposes to adopt in the new appendix CC1 the operating hours shown in Table III.2 of this document.

DOE requests comment on the proposal to amend the operating hours in the proposed new appendix CC1 as shown in Table III.2 of this document.

c. Configurations

The current portable AC test procedure in appendix CC addresses two configurations of portable ACs: dual-duct and single-duct. Appendix CC currently requires that portable ACs able to operate as both a single-duct and dual-duct portable AC, as distributed in commerce by the manufacturer, must be tested and rated for both duct configurations. Section 3.1.1 of appendix CC.

In the April 2021 RFI, DOE requested feedback regarding single-duct and dual-duct portable AC test requirements and any other relevant considerations to ensure that the test procedures produce representative results for both configurations, including products that operate in both configurations, as distributed in commerce by the manufacturer. 86 FR 20044, 20048–20049.

NEEA recommended that DOE maintain the requirement for products that can operate as both dual-duct and single-duct portable ACs to be tested in both configurations. NEEA stated that, given the difference in performance between single-duct and dual-duct products, if a product can be configured as single duct, it should be tested in this configuration. (NEEA, No. 12 at p. 3)

In this NOPR, DOE is not proposing any amendments to the configurations addressed by the test procedure in appendix CC and proposes to adopt the same requirements in the new appendix CC1.

DOE requests comment on the proposal to adopt in the new appendix CC1 the requirement that portable ACs able to operate as both a single-duct and dual-duct portable AC, as distributed in commerce by the manufacturer, must be tested and rated for both duct configurations.

5. Cooling Mode

a. Test Conditions

Section 4 of appendix CC measures cooling capacity and overall power input in cooling mode using one test condition for single-duct units and two test conditions for dual-duct units. For single-duct units, the test procedure specifies an 80 °F dry-bulb/67 °F wet-bulb condenser (''outdoor'') inlet air test condition. For dual-duct units, configuration A specifies a 95 °F dry-bulb/75 °F wet-bulb outdoor test condition and configuration B specifies an 83 °F dry-bulb/67.5 °F wet-bulb outdoor test condition. *See* Section 4.1 of appendix CC.

The California IOUs commented that the portable AC test procedure is the only test procedure that uses a low-load, outdoor test condition of 83 °F dry-bulb/67.5 °F wet-bulb; all other residential AC test procedures use a low-load condition of 82 °F dry-bulb/65 °F wet-bulb. The California IOUs suggested that DOE change the low-load condition for the portable AC test procedure to 82 °F dry-bulb/65 °F wet-bulb. (California IOUs, No. 10 at p. 4)

Rice suggested that DOE consider dry-bulb temperature conditions of 82, 87, and 95 °F, instead of the current 83 and 95 °F conditions, to represent temperature bins of 80 to 85 °F, 85 to 90 °F, and 90 to 100 °F, respectively, along with suitable AHRI 210/240 fractional hours and cooling loads at these three temperatures. According to Rice, this would provide more comparability with the room AC test procedure conditions and would better represent the performance non-linearity with ambient conditions for variable-speed products. To avoid the need to retest single-speed portable AC units to these new conditions, Rice asserted that performance at 82 and 87 °F could be extrapolated and interpolated from existing 83 and 95 °F single-speed portable AC test data. (Rice, No. 11 at pp. 2–3)

As described in the supplemental NOPR published November 27, 2015, and confirmed in the June 2016 Final Rule, the low-load test condition of 83 °F dry-bulb/67.5 °F wet-bulb reflects the national weighted-average temperature and humidity observed during the hottest 750 hours (the hours during which DOE expects portable ACs to operate in cooling mode). DOE

[10] As discussed, for variable-speed units, these 391 hours are allocated to cooling mode hours at the 83 °F test condition.

determined these values based on its analysis of hourly ambient temperature data from the National Climatic Data Center of the National Oceanic and Atmospheric Administration collected at weather stations in 44 representative states, combined with its analysis of the 2009 Residential Energy Consumption Survey (''RECS'') to identify room AC ownership [11] in the different geographic regions. Based on the RECS ownership data and weather data, DOE used a weighted-average approach to combine the average temperature and humidity for each individual state into sub-regional, regional, and finally, the representative national average temperature and humidity for the hottest 750 hours in each state. DOE found that the national average dry-bulb temperature and relative humidity associated with the hottest 750 hours are 83 °F and 45 percent, respectively (corresponding to a wet-bulb temperature of 67.5 °F). 80 FR 74020, 74026; 81 FR 35241, 35250. DOE maintains that this analysis yields the most representative operating periods for portable ACs.

In response to Rice's suggestions, the addition of a third test condition would increase test burden by 50 percent for all models. This increase in test burden would not be justifiable, as the additional test condition between the two current test conditions would not provide significantly more information on the performance of portable ACs. Based on past modeling that explored the impact of adjusted outdoor test conditions on air conditioner performance, DOE expects that performance at intermediate temperatures is relatively linear between the two temperature data points, resulting in minimal difference in weighted-average performance if an intermediate temperature data point is included. Furthermore, an additional test condition would not provide full comparability with the room AC test procedure, which, as previously discussed, has four test conditions for variable-speed units and one test condition for single-speed units. Extrapolating/interpolating performance at three test conditions based on the existing test conditions increases the complexity of the test procedure without benefit, as the extrapolated/interpolated data points would be based on the same data currently being used in the portable AC test procedure.

AHAM PAC–1–2022 Draft specifies the same test conditions for single-speed units as the current appendix CC and, for variable-speed units, AHAM PAC–1–2022 Draft specifies the same test conditions as the test procedure waivers and as proposed in this NOPR.

DOE proposes to adopt AHAM PAC–1–2022 Draft in the new appendix CC1, and, by extension, the test conditions contained therein. In revisions to the appendix CC, DOE is not proposing to change the test conditions for single-speed portable ACs. Consistent with the LG Waiver and Midea Interim Waiver, DOE is proposing to adopt multiple test conditions for variable-speed portable ACs: two for single-duct models and three for dual-duct models.

DOE requests comment on the proposal to add variable-speed test conditions in appendix CC consistent with the LG Waiver and Midea Interim Waiver while otherwise retaining the current test conditions, and to adopt the AHAM PAC–1–2022 Draft test conditions in the proposed new appendix CC1.

b. Achieving Compressor Speeds

The alternate test procedure specified in the LG Waiver requires both the full and low compressor speeds to be achieved using special instructions and settings provided by the manufacturer to DOE and laboratories. 85 FR 33643, 33651. The alternate test procedure specified in the Midea Interim Waiver requires the full compressor speed to be achieved by using user controls (''native controls'') with the thermostat setpoint set at 75 °F, and the low compressor speed to be achieved using manufacturer settings. 86 FR 17803, 17808–17809. Consistent with that approach, AHAM PAC–1–2022 Draft specifies using native controls to achieve the full compressor speed, and using instruction and settings provided by the manufacturer to laboratories to achieve the low compressor speed.

Using native controls to achieve the full compressor speed would ensure that the measured full speed is representative of real-world operation but is impractical. The only way to reach reduced compressor speeds using native controls during testing would be with load-based tests, which DOE has tentatively concluded are impractical for portable ACs at this time, as discussed in section III.5.g of this document. Therefore, to improve representativeness, DOE is proposing that for variable-speed portable ACs, in both appendix CC and the proposed new appendix CC1, the full compressor speed be achieved by using native controls with the thermostat setpoint set at 75 °F and the low compressor speed to be achieved using instructions and settings provided by the manufacturer to DOE and laboratories. This proposal is consistent with the alternate test procedure specified in the Midea Interim Waiver and with AHAM PAC–1–2022 Draft. This is a change from the procedure specified in the LG Waiver and would require retesting of the models listed in that waiver.

DOE proposes to adopt AHAM PAC–1–2022 Draft in the new appendix CC1, and, by extension, the compressor speed requirements contained therein. In revisions to the appendix CC, DOE is proposing to adopt the native control and manufacturer setting approach set forth in the Midea Interim Waiver.

DOE requests comment on the proposal to add compressor speed requirements in appendix CC consistent with the Midea Interim Waiver, and to adopt the AHAM PAC–1–2022 Draft compressor speed requirements in the proposed new appendix CC1.

c. Seasonal Adjusted Cooling Capacity

Under the current test procedure, a unit's SACC, in Btu/h, is calculated as a weighted average of the adjusted cooling capacity measured at the two specified operating conditions (*i.e.,* 95 °F and 83 °F). Under appendix CC, full-load operation is used to measure each test condition,[12] such that the SACC reflects full-load operation at both test conditions. The LG Waiver and Midea Interim Waiver change the operating condition at the 83 °F condition to use the ''low'' compressor speed (*i.e.,* part-load performance) instead. Accordingly, the SACC for the models subject to the LG Waiver and Midea Interim Waiver reflects full-load operation at the 95 °F condition and part-load operation at the 83 °F condition. DOE required this approach in the test procedure waivers because it yields a more representative measure of capacity. However, DOE proposes in this NOPR to test variable-speed portable ACs at full-load operation at

[11] DOE uses room AC data because RECS has no portable AC data. DOE has previously stated that room ACs and portable ACs differ from each other in that they have different installation means, and that they induce different amounts of outdoor air infiltration heat and other unwanted heat transfer to the conditioned space. 86 FR 20044, 20047. However, room ACs and portable ACs have similar use cases (*i.e.,* both products provide seasonal cooling) such that in the absence of data for portable ACs, the ownership data and weather data for room ACs is sufficiently applicable to analysis of portable AC cooling mode.

[12] Appendix CC is a constant temperature test, in which the portable AC begins cooling the ''indoor'' chamber of a psychrometric chamber with the thermostat setpoint set to the lowest possible value. Reconditioning equipment maintains the indoor chamber temperature at 80 °F, such that the portable AC is never able to cool the room to the thermostat set temperature. In this test setup, the portable AC will run at full compressor speed indefinitely, it will not reduce compressor speed or cycle the compressor off.

each test condition for the purpose of measuring SACC, which would differ from the alternate test procedure required under the LG Waiver and the Midea Interim Waiver, for the reasons that follow.

In response to the Midea Interim Waiver, Midea reiterated its recommendation to determine Adjusted Cooling Capacity (''ACC'') at the 83 °F test condition with the compressor operating at full speed, which Midea asserted should be used to calculate SACC in accordance with Section 5.2 of appendix CC. Midea suggested that if the ACC at the 83 °F test condition with the compressor operating at low speed is used in calculating SACC, the SACC would be underreported compared to single-speed units that would be used in the same applications. Midea requested that the full compressor speed be specified for both test conditions for the purposes of calculating SACC. (Midea, Midea Petition for Waiver, No. 9 at pp. 1–4) [13]

Currently, SACC for single-speed portable ACs is based in appendix CC on full-load operation at the low (83 °F) test condition, while the LG Waiver and Midea Interim Waiver require SACC for the specified basic models of variable-speed portable ACs to be based on part-load operation (*i.e.,* low compressor speed) at the low test condition. As a result, DOE agrees with Midea that the SACC values for the variable-speed models tested using the waiver test procedure are not directly comparable to the SACC values of single-speed units tested pursuant to appendix CC. Generally, operating at part-load yields a lower measured capacity; therefore, the SACC values for the subject variable-speed models are lower than the SACC values for otherwise identical single-speed models. DOE understands that cooling capacity is one of the primary metrics that manufacturers advertise to consumers. The approaches required under the existing waivers, by resulting in comparatively lower SACC values for the subject variable-speed models, may limit the comparability of the performance between single-speed models and the variable-speed models subject to the LG Waiver and Midea Interim Waiver.

Although DOE proposes to change how to measure SACC in appendix CC1, in appendix CC, DOE is proposing to maintain the Midea Interim Waiver approach of determining SACC using the low compressor speed to represent part-load operation at the 83 °F outdoor temperature test condition but adding another metric, $SACC_{Full}$, to facilitate consumer comparisons. DOE expects that portable ACs will typically encounter reduced cooling loads when the outdoor temperature is 83 °F, based on the building load calculation found in Section 11.2.1.2 of AHRI 210/240. Therefore, the cooling capacity more representative of the average period of use includes reduced compressor speed operation at the 83 °F outdoor temperature condition. However, DOE understands variable-speed portable AC manufacturers have an interest in the ability to make representations of cooling capacity based on full-compressor speed at the 83 °F outdoor temperature test condition, comparable to how single-speed units are tested in appendix CC. Therefore, DOE proposes to require in appendix CC that manufacturers of variable-speed portable ACs base representations of cooling capacity on an additional new metric, $SACC_{Full}$, using full compressor speed performance to calculate $SACC_{Full}$ at the low test condition. This additional metric would provide consumers with comparable capacity ratings for variable-speed and single-speed portable ACs while appendix CC is in use.

For the proposed new appendix CC1, DOE proposes to account for cyclic behavior in both single-speed and variable-speed units by modifying the SACC calculation to factor in reduced capacity from part-load operation at the low (83 °F) test condition. This change would align all models with the waiver approach to variable-speed SACC. For single-speed units, the test at the low test condition would still be performed at full load, but the resulting cooling capacity would be multiplied by a load factor defined as 0.6 for single-duct units and 0.5363 for dual-duct units.[14] These adjustments would account for cooling capacity lost due to compressor cycling under reduced cooling loads, which DOE expects portable ACs will typically encounter when the outdoor temperature is 83 °F, as discussed previously. This approach would result in reduced SACC values for single-speed portable ACs relative to those calculated by the current test procedure at appendix CC. This would also result in comparable SACC values between single-speed and variable-speed portable ACs, eliminating any need in appendix CC1 for the adjusted $SACC_{Full}$ proposed for appendix CC.

Appendix CC

DOE is proposing to maintain the current SACC calculation for single-speed units in the revised appendix CC. DOE also proposes that the SACC for variable-speed units be calculated using the low compressor speed at the 83 °F test condition in appendix CC consistent with the previously granted LG Waiver and Midea Interim Waiver. DOE also proposes to require manufacturers to represent cooling capacity with a new metric, $SACC_{Full}$, for variable-speed portable ACs, using the full compressor speed at the 83 °F test condition.

Appendix CC1

DOE is proposing to adopt an updated approach in calculating SACC, for variable-speed units, using the measured cooling capacity at the 83 °F test condition using the low compressor speed, aligning with the waiver approach, and for single-speed units, multiplying the measured cooling capacity at the 83 °F test condition by a load factor of 0.6 for single-duct units and 0.5363 for dual-duct units.

DOE requests comment on the proposal to maintain in the revised appendix CC the current SACC calculation for single-speed units and to adopt a SACC calculation consistent with the test procedure waivers for variable-speed units for the purposes of determining CEER. DOE also requests comment on the proposal to require manufacturers of variable-speed units to represent cooling capacity using a new metric, $SACC_{Full}$, based on full load performance at the low temperature condition. DOE further requests comment on the proposal to adopt an updated SACC calculation for single-speed units and variable-speed units that accounts for reduced cooling load

[13] A notation in the form ''Midea, Midea Petition for Waiver, No. 9 at pp. 1–2'' identifies a written comment: (1) Made by Midea; (2) recorded in document number 9 that is filed in the docket of the Midea Petition for Waiver from Portable Air Conditioners Test Procedure (Docket No. EERE–2020–BT–WAV–0023) and available for review at *www.regulations.gov;* and (3) which appears on pages 1 and 2 of document number 9.

[14] While dual-duct and single-duct portable ACs experience the same load at 83 °F, dual-duct units experience an increase in cooling capacity as outdoor process air temperatures decrease due to the cooler outdoor air being more effective at removing heat from the condenser. Single-duct units do not experience this increase because the air entering the condenser is always the same indoor air temperature of 80 °F. This cooling capacity increase allows dual-duct portable ACs to remove heat from rooms more quickly at the 83 °F outdoor temperature condition, thus leading to less time with the compressor on. DOE used thermodynamic modeling to measure the expected capacity change for dual-duct portable ACs between the 95 °F and 83 °F test conditions and used this to confirm the AHAM PAC–1–2022 Draft adjustment of the cooling load factor for dual-duct portable ACs from 60 percent of full load operation at a 95 °F outdoor temperature to 53.63 percent of full load operation at an 83 °F outdoor temperature.

at the 83 °F test condition in the proposed new appendix CC1.

d. Weighting Factors

The current portable AC test procedure calculates SACC and CEER as weighted averages of the results of various calculations, based on the measured capacity and power values at the two portable AC test conditions, representing outdoor temperatures of 95 °F and 83 °F. Both equations use weighting factors of 0.2 and 0.8 for the two test conditions, respectively. *See* Section 5.4 of appendix CC.

Rice and the Joint Commenters stated that these current weighting factors potentially underweight performance at 95 °F and overweight performance at 83 °F by not taking into account that the cooling provided during operation at 95 °F is significantly greater than during operation at 83 °F. They encouraged DOE to reevaluate the weighting factors used in the portable AC test procedure. (Rice, No. 11 at pp. 2–3; Joint Commenters, No. 9 at p. 3) Rice suggested deriving cycling loss factors using a building load calculation starting with full load at 95 °F and decreasing to zero load at 65 °F. This is similar to what is done in AHRI 210/240, except for the assumption of full load at 95 °F as opposed to altering the calculated full-load temperature based on test unit capacity. According to Rice, this would result in weighting factors of 0.27 and 0.73 for the 95 °F and 83 °F conditions, respectively. Rice suggested that the 0.8 and 0.2 fractional hours in Section 5.2 of appendix CC were originally derived by considering the hottest 750 hours in relevant regions around the country, combined with related RECS data. Rice stated that while the conditions and weighting appear to be based on the hottest 750 hours during the cooling season, the total seasonal cooling amount will be delivered over a wider range of ambient temperatures by matching the lower cooling loads, either by cycling or by variable-speed matching. As such, Rice argued that the assumption that portable ACs operate during the hottest 750 hours in each region seems inappropriate. Rice stated that if DOE decides to move away from assumption of the hottest 750 hours, DOE should consider for those fractional hours the 95, 87, and 82 °F test condition approach described above, with weighting factors of 0.28, 0.33, and 0.39, respectively, per AHRI 210/240 binned data sets. (Rice, No. 11 at pp. 2–3)

The CEER weighting factors are used to calculate the fractional contribution of CEER at each test condition relative to the average representative period of portable AC use, based on cooling provided and estimated cooling mode operating hours at each test condition. As discussed in section III.B.5.a of this document, DOE derived the weighting factors in the current appendix CC from a geographically weighted average of operating hours best represented by each test condition, based on the 2009 RECS data. The test conditions for which the weightings were determined represent peak performance (*i.e.,* the 95 °F test condition) and the weighted-average temperature and humidity observed during the hottest 750 hours, the hours during which DOE expects portable ACs are most likely to operate in cooling mode (*i.e.,* the 83 °F test condition). 81 FR 35242, 35252 (Jun. 1, 2016). Because DOE is proposing in the new appendix CC1 to change the portable AC operating hours estimate from a RECS-based estimate to an estimate based on the bin operating hours and building load calculation from AHRI 210/240, DOE is proposing similar changes to the weighting factors in the proposed new appendix CC1 to maintain internal consistency.

In determining the proposed new appendix CC1 weighting factors, DOE considered the portion of the proposed appendix CC1 total cooling mode and off-cycle mode hours spent at each temperature condition (see Table III.2 in section III.4.b of this document)—14.4 percent of the total cooling mode hours are allocated to the 95 °F test condition and 85.6 percent to the 83 °F test condition. DOE is proposing to adopt these weighting factors for SACC only in the new appendix CC1. To avoid changing the SACC relative to the current values, DOE is not proposing changes to the SACC or CEER calculations in appendix CC to match these updated weighting factors, which were the basis for determining the energy conservation standards that are effective in January 2025, as discussed above. Therefore, DOE is proposing that the modified weighting factors be adopted only in the new appendix CC1. Specifically, DOE is proposing to adjust the weighting factors for the two test conditions, in accordance with the changes to the operating hours, to 0.144 for the 95 °F test condition and 0.856 for the 83 °F test condition.

DOE requests comment on the proposed weighting factors in the proposed new appendix CC1 (0.144 for the 95 °F test condition and 0.856 for the 83 °F test condition).

e. Cycling Losses

Historically, portable ACs have been designed using a single-speed compressor, which operates at full cooling capacity while the compressor is on. When the required cooling load in a space is less than the full cooling capacity of the unit, a single-speed compressor cycles on and off. This cycling behavior introduces inefficiencies often referred to as ''cycling losses.'' In addition, single-speed portable ACs may experience inefficiencies by continuing to operate the blower fan during compressor off periods after the evaporator coils have warmed to the point that any further fan operation does not contribute to the unit's overall cooling capacity. These two types of inefficiencies occur only for single-speed portable ACs; as discussed in the April 2021 RFI, variable-speed ACs avoid such inefficiencies because their compressors run continuously, adjusting their speeds as required to match the cooling load. 86 FR 20044, 20050–20051.

Cycling losses associated with single-speed compressors are not currently accounted for in appendix CC. In the LG Waiver, DOE addressed the cycling of a single-speed compressor as part of a ''performance adjustment factor'' (''PAF''). As established in the LG Waiver, the PAF represents the average performance improvement of the variable-speed unit relative to a theoretical comparable single-duct single-speed unit, resulting from the variable-speed unit's avoiding cycling losses associated with the lower temperature test condition. 85 FR 33643, 33646. The Midea Interim Waiver similarly requires use of a PAF. 86 FR 17803, 17819–17820.

In the April 2021 RFI, DOE requested further information and data on efficiency losses associated with single-speed compressor cycling at part-load conditions. DOE also requested comment on the incorporation of the current waiver approach to determine variable-speed portable AC efficiency, based on a PAF representing the performance improvement relative to a single-speed portable AC resulting from elimination of cycling losses. 86 FR 20044, 20050–20051.

Rice, the Joint Commenters, and the California IOUs encouraged DOE to account for cycling losses in the portable AC test procedure to provide an accurate comparison of single-speed and variable-speed compressor performance. (Rice, No. 11 at p. 3; Joint Commenters, No. 9 at pp. 2–3; California IOUs, No. 10 at pp. 1–2)

The Joint Commenters and the California IOUs stated that, in calculating the performance of a ''theoretical comparable'' single-speed unit, the LG Waiver and Midea Interim Waiver for variable-speed portable ACs

include an assumed cycling loss factor for single-speed units to capture the benefits of variable-speed units in reducing cycling losses. They further commented that, in the Midea Interim Waiver, DOE modified the cycling loss factor to reflect load-based testing of two single-speed room AC units at reduced cooling loads. (Joint Commenters, No. 9 at pp. 2–3; California IOUs, No. 10 at pp. 1–2) Rice and the Joint Commenters encouraged DOE to provide the basis for determining an appropriate cycling loss factor through the use of load-based testing, stating that there are likely differences related to cycling losses between room AC and portable AC designs. (Rice, No. 11 at p. 3; Joint Commenters, No. 9 at pp. 2–3) The California IOUs requested that DOE evaluate the cycling loss factor for a selection of single-duct and dual-duct portable ACs to determine the appropriate cycling loss factor to be used in the updated test procedure, but did not explicitly request that this be evaluated through the use of load-based testing. (California IOUs, No. 10 at pp. 1–2)

Rice also stated that, to date, the cooling degradation coefficients (''Cds'') proposed by DOE for portable ACs have been derived from load-based tests performed on single-speed room ACs, but asserted that there are likely various differences related to cycling losses between room AC and portable AC designs. Rice stated that no information was provided in those tests on how the fans were operated during the compressor off-cycles. Rice requested that this information should be reported and should be consistent with how these models will operate in the field at the rated control settings, asserting that fan operation can significantly affect Cd levels due to the fan power usage with minimal or no cooling output. (Rice, No. 11 at p. 3)

DOE conducted investigative testing of portable ACs to determine a representative cycling loss adjustment factor specifically for portable ACs. DOE aimed to calculate the difference in efficiency for single-speed portable ACs when tested under full-load constant load conditions and part-load cycling load conditions, while focusing on just the cycling losses and not fan operation in off-cycle mode. Load-based testing was infeasible for portable ACs with the equipment and facilities used in the investigative testing. Instead, DOE performed cyclic tests, which triggered single-speed portable AC cycling by remotely adjusting the setpoint of the test unit in a cyclic pattern while it was in the test chamber, simulating the behavior of the unit when the room temperature reaches the unit setpoint. DOE conducted tests on five units with two different test lengths, 10 minutes and 30 minutes, to account for real-world variations in unit capacity and room size. In the 30-minute test, the unit operated for roughly 16 minutes and cycled off for 14 minutes, approximating a 53 percent cooling load. In the 10-minute test, the unit operated for roughly 5.5 minutes and cycled off for 4.5 minutes, approximating a 55 percent cooling load. Table III.3 shows the relative difference in energy use during cyclic operation in comparison to energy use when operating continuously, expressed as a percentage.

As shown in Table III.3, on average, the portable ACs that were tested performed at 81.9 percent of the efficiency when operating cyclically compared to when operating continuously, not counting energy lost to fan operation in off-cycle mode.

TABLE III.3—RELATIVE EFFICIENCY DURING CYCLING OPERATION COMPARED TO CONTINUOUS OPERATION

Test length	30 min	10 min
Unit 1	86%	[1]
Unit 2	80%	84%
Unit 3	81%	84%
Unit 4	79%	82%
Unit 5	76%	82%
Combined Avg	81.9%	

[1] The 10-minute test was not performed on Unit 1 due to limited test laboratory availability.

Based on these test results, DOE proposes to use 0.82 as the cycling factor (CF), representing that a cycling unit is 82 percent as efficient as a unit which does not cycle, not accounting for any power consumed during off-cycle mode.

Appendix CC and Appendix CC1

DOE is proposing to account for cycling losses in the amended appendix CC by comparing variable-speed unit performance to that of a theoretical comparable single-speed unit, using the test procedure waiver approach, as previously discussed. Based on DOE's investigative testing, the proposed CF for the theoretical comparable single-speed unit in appendix CC would be 0.82.

In the proposed new appendix CC1, DOE would account for cycling losses directly in the single-speed portable AC CEER calculation, using the same CF proposed for appendix CC, 0.82.

DOE requests comment on the proposal to adopt a CF of 0.82 based on DOE's investigative testing, in appendix CC and in the proposed new appendix CC1.

f. Energy Efficiency Calculations

The current portable AC test procedure at appendix CC represents efficiency using CEER, an efficiency metric calculated as the weighted average of the condition-specific CEER values, including the annual energy consumption in cooling mode, off-cycle mode, and off or inactive mode. The alternate test procedures in the LG Waiver and Midea Interim Waiver adjusts the CEER metric in the test procedure to address the cycling of a single-speed compressor through a PAF. The PAF, which represents the average performance improvement of the variable-speed unit relative to a theoretical comparable single-duct single-speed unit at reduced operating conditions, is applied to the measured variable-speed unit efficiency. This approach increases the measured efficiency of a variable-speed portable AC relative to the measured efficiency of single-speed portable ACs. This approach reasonably represents the efficiency of a variable-speed portable AC relative to a single-speed portable AC as currently measured in accordance with appendix CC, and maintains compatibility with the existing portable AC standards. Therefore, DOE proposes to adopt in appendix CC the general approach from the LG Waiver and Midea Interim Waiver to determine variable-speed portable AC efficiency.

However, DOE recognizes that the waiver approach only indirectly addresses cycling losses and does not consider the effect on a single-speed unit's performance of cycling losses from operating at reduced conditions. A more representative approach would be to apply the cycling losses to a single-speed portable AC's performance directly, and to make no such modifications to the measured variable-speed portable AC efficiency. Such an approach would require no calculation of a comparable theoretical single-speed portable AC and would no longer require a PAF. DOE notes that this general approach has been adopted in AHAM PAC–1–2022 Draft and, in the interest of adopting a simpler and most representative test procedure, DOE proposes to adopt such an approach in the proposed new appendix CC1.

Section 5.4 of appendix CC currently specifies the equations for calculating CEER for both single-duct and dual-duct portable ACs. In each equation, the final CEER value is calculated as a weighted average of performance at each test condition (as applicable for the configuration):

$$CEER_{SD} = \left[\frac{ACC_{95} \times 0.2 + ACC_{83} \times 0.8}{\left(\frac{AEC_{SD} + AEC_T}{k \times t}\right)}\right]$$

$$CEER_{DD} = \left[\frac{ACC_{95}}{\left(\frac{AEC_{95} + AEC_T}{k \times t}\right)}\right] \times 0.2 + \left[\frac{ACC_{83}}{\left(\frac{AEC_{83} + AEC_T}{k \times t}\right)}\right] \times 0.8$$

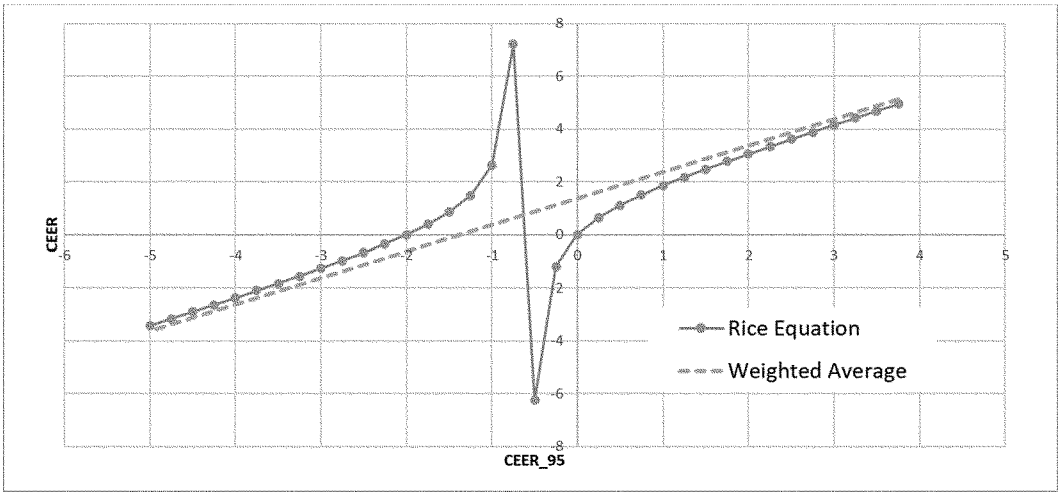
DOE received comments on the CEER equations in response to the April 2021 RFI. Rice suggested that the equation for CEER should be revised with the weighting factors as he recommended. Rice also urged DOE to use his recommended CEER equation for both variable-speed and single-speed portable ACs, which he asserted best represents the cooling season performance difference between variable-speed and single-speed portable AC units, as follows:

$$CEER = \frac{1}{\left(\frac{0.27}{CEER_{95}} + \frac{0.73}{(CEER_{83} \times CLF_{83})}\right)}$$

(Rice, No. 11 at pp. 2–3)

The equation suggested by Rice aims to produce an efficiency metric that that is simply total cooling provided divided by total power consumption, utilizing the CEER values for each test condition as determined in accordance with appendix CC. Although DOE agrees that the approach of representing efficiency as total cooling provided divided by total power consumption is appropriate for portable ACs, DOE has tentatively determined that Rice's specific approach is not. At low and negative $CEER_{95}$ values, the overall CEER is unrepresentatively driven to extreme high or low values due to the asymptotic behavior of the equation. In past testing, DOE has observed very small or negative $CEER_{95}$ values in single-speed portable ACs, particularly in single-duct configurations. DOE has observed values as low as −3.76 Btu/Wh and has tested at least 11 units with values that fall between −2 and +2 Btu/Wh, within the range of concern for Rice's approach. Although other residential AC products typically provide net cooling to the conditioned space, two factors can lead to such low $CEER_{95}$ values for portable ACs. Portable ACs lose cooling capacity to infiltration air and duct heat transfer, both of which appendix CC includes provisions to measure As shown in Figure 1, under the Rice suggested equation, the overall CEER can change drastically when $CEER_{95}$ becomes small or negative, producing unrealistic values, which is not the case for the weighted-average approach currently implemented in appendix CC. Figure 1 provides an example of the impact on overall CEER when $CEER_{95}$ ranges from −5 to 5 Btu/Wh for both Rice's suggested approach and the current weighted-average appendix CC approach.

Figure 1: CEER Values at Very Low and Negative $CEER_{95}$ Using Two Approaches



For appendix CC1, based on comments from Rice and re-examination of the current CEER metric, DOE developed a new portable AC efficiency metric based on a ratio of annual cooling provided to annual energy consumed. This approach reflects EPCA requirements. First, DOE design the test procedure to produce test results which measure energy efficiency during a representative period of use. (42 U.S.C. 6293(b)(2)) Second, EPCA defines energy efficiency as ''the ratio of the useful output of services from a consumer product to the energy use of such product . . .'' (42 U.S.C. 6291(5)) The ratio of annual cooling provided to annual energy consumed would best reflect the efficiency of portable ACs during a full year of use by directly accounting for the efficiency of each mode in accordance with the number of operating hours spent in that mode. The two values would be calculated as follows.

The total cooling provided by a portable AC over the course of the year, in Btu, is equivalent to the average rate of cooling provided at each temperature condition, in Btu/h, multiplied by the number of hours operating at that test condition.

The total annual energy consumption of a portable AC, in kilowatt-hours (''kWh''), is equal to the sum of the average power consumed in each mode multiplied by the amount of time spent in that mode.

DOE tentatively concludes it is appropriate to deviate from AHAM PAC–1–2022 Draft because at an 83 °F outdoor temperature condition, part-load, rather than full-load operation, reflects an average period of use. AHAM PAC–1–2022 Draft includes a term in the CEER calculation representing the portable AC performance at full load with an 83 °F outdoor temperature condition. The proposed CEER calculations in appendix CC and appendix CC1 do not. Although this is a test condition in the proposed new appendix CC1, part-load operation is most representative of portable AC operation at the 83 °F outdoor temperature condition, based on the building load calculation found in AHRI 210/240. Therefore, DOE is proposing to include only low-speed variable-speed compressor efficiency or cycling-adjusted single-speed compressor efficiency at the 83 °F outdoor temperature condition when calculating overall CEER in the proposed new appendix CC1.

Appendix CC

In this NOPR, DOE is not proposing to amend the CEER equation for single-speed portable ACs in appendix CC. DOE is proposing to determine variable-speed portable AC efficiency by comparing the measured efficiency of the variable-speed unit to the efficiency of a theoretical single-speed unit of the same capacity, taking into account efficiency losses due to cycling, consistent with the general approach from the LG Waiver and Midea Interim Waiver, with changes to the CF as previously described.

Appendix CC1

DOE proposes to create a new efficiency metric for portable ACs in appendix CC1, AEER, which is equal to the total annual cooling delivered divided by the total annual energy consumption as previously described.

The proposed equation is as follows:

$$AEER = 0.001 \times \frac{(ACC_{95} \times 164) + (ACC_{83} \times t_{cm\_83})}{AEC_{95} + AEC_{83} + AEC_{oc} + AEC_{ia/om}}$$

Where:

AEER = annualized energy efficiency ratio of the sample unit in Btu/Wh.

ACC_{95} and ACC_{83} = adjusted cooling capacity at the 95 °F and 83 °F outdoor temperature conditions, respectively, as discussed in section III.5.c of this document.

AEC_{95}, AEC_{83}, AEC_{oc}, and $AEC_{ia/om}$ = total annual energy consumption attributed to all modes representative of the 95 °F operating condition, the 83 °F operating condition, off-cycle mode, and inactive or off mode, respectively, in kWh/year.

164 = number of annual hours spent in cooling mode at the 95 °F operating condition, as shown in Table III.2 of this document.

t_{cm_83} = number of annual hours spent in cooling mode at the 83 °F operating condition, t_{DD_83} for dual-duct single-speed units, $t_{DD\_83\_Low}$ for dual-duct variable-speed units, t_{SD_83} for single-duct single-speed units, or t_{SD_Low} for single-duct variable-speed units, as shown in Table III.2 of this document.

0.001 = kWh/Wh conversion factor for watt-hours to kilowatt-hours.

DOE requests comment on its proposal to adopt in appendix CC the PAF-based approach from the LG Waiver and Midea Interim Waiver to determine variable-speed portable AC efficiency, the weighted-average approach for the CEER equation, and not to change the CEER equation for single-speed portable ACs. DOE also requests comment on its proposal to adopt a new efficiency metric, AEER, to represent efficiency as the total annual cooling divided by the total annual energy consumption in the proposed new appendix CC1.

g. Load-Based Testing

The current test procedure prescribed by ANSI/AHAM PAC–1–2015 does not use a load-based test. It measures cooling capacity and energy efficiency ratio when the portable AC operates continuously at fixed indoor and outdoor temperature and humidity conditions (*i.e.,* a constant-temperature test), using an air enthalpy approach.[15] In contrast, a load-based test either fixes or varies the amount of heat added to the indoor test room by the reconditioning equipment, while the indoor test room temperature is permitted to change and is controlled by the test unit according to its thermostat setting. In the April 2021 RFI, DOE sought further comment and information on the feasibility and applicability of load-based testing for portable ACs. 86 FR 20044, 20051.

NEEA, the Joint Commenters, and Rice encouraged the use of load-based testing for the portable AC test procedure. (NEEA, No. 12 at pp. 2–3; Joint Commenters, No. 9 at p. 2; Rice, No. 11 at p. 3) NEEA stated a load-based test would measure equipment performance under conditions that better mimic what a unit is likely to experience in the field. According to NEEA, a load-based test is the best way to fully account for the effectiveness of controls, cycling effects, and variable-speed performance, which would better reflect field performance. (NEEA, No. 12 at pp. 2–3) The Joint Commenters stated a load-based test would further improve representativeness for both single-speed and variable-speed portable ACs. Specifically, they stated that a load-based test would capture cycling losses for single-speed units (as well as for variable-speed units to the extent that they exhibit cycling behavior) and, for variable-speed units, a load-based test would eliminate the need to use confidential, manufacturer-specified compressor speeds for the ''low speed'' test. (Joint Commenters, No. 9 at p. 2)

DOE continues to recognize the challenges associated with implementing load-based testing in the portable AC test procedure. As discussed in the recent final rule for room AC test procedures and in the April 2021 RFI, DOE expects that a load-based test would reduce repeatability and reproducibility due to current limitations in current test chamber capabilities—namely, the lack of specificity in industry standards regarding chamber dimensions and reconditioning equipment characteristics, which would negatively impact the representativeness of the results and potentially be unduly burdensome. 86 FR 16446, 16466 (March 29, 2021); 86 FR 20044, 20051. The psychrometer chambers used to test portable ACs using the air enthalpy approach present additional challenges for potential load-based testing, because they are not well equipped to conduct load-based testing. Air enthalpy testing equipment and controls systems are not designed to impose a cooling load; instead, they are designed to maintain specified temperature and humidity conditions.

Appendix CC and Appendix CC1

DOE has not identified approaches to mitigate the previously identified challenges that are associated with load-based testing, and commenters provided none. DOE does not propose load-based testing in either appendix CC or the proposed new appendix CC1.

DOE requests comment on its proposal not to prescribe load-based testing in appendix CC or the proposed new appendix CC1.

6. Heating Mode

DOE tentatively maintains its previous decision not to require measuring energy efficiency in heating mode. In the June 2016 Final Rule, DOE did not establish an efficiency metric for heating mode. 81 FR 35241, 35257. In the test procedure NOPR for portable ACs published by DOE on February 25, 2015 (February 2015 NOPR), DOE proposed to define heating mode as an active mode in which a portable AC has activated the main heating function in response to the thermostat or temperature sensor signal, including activating a resistance heater, the refrigeration system with a reverse refrigerant flow valve, or the fan or blower without activation of the resistance heater or refrigeration system. 80 FR 10211, 10217. In the June 2016 Final Rule, DOE did not establish a heating mode test or efficiency metric, noting that although some portable ACs offer an ''auto mode'' that allows for both cooling and heating mode operation depending upon the ambient temperature, available data suggested that portable ACs are not used for heating purposes for a substantial amount of time. 81 FR 35241, 35257. In the April 2021 RFI, DOE sought usage data on portable AC heating mode and what portion of portable AC annual energy use is in heating mode. 86 FR 20044, 20049.

In response to the April 2021 RFI, AHAM agreed with DOE's conclusion in the June 2016 Final Rule that portable ACs are not used for heating purposes for a substantial amount of time and urged DOE to not include heating mode in the test procedure. AHAM stated that there is no need to capture the energy usage of heating mode since the energy use in heating mode is not significant compared to the cooling function. AHAM further commented that DOE does not have data on the usage of these modes and asserted that without such data, DOE cannot add heating mode to the test procedure. AHAM noted that the AHAM PAC–1 test procedure does not address heating mode, in alignment with the current DOE test procedure. (AHAM, No. 8 at p. 3)

DOE has not identified nor have commenters provided any data that would allow DOE to draw a different conclusion to the use of portable ACs to provide heating. Thus, DOE requests comment on the tentative determination not to establish a heating mode efficiency metric in appendix CC and proposed new appendix CC1.

7. Air Circulation Mode

In air circulation mode, a portable AC has activated only the fan or blower and the compressor is off. Unlike off-cycle mode, air circulation mode is consumer-initiated. In the June 2016 Final Rule, due to a lack of usage information for this mode, DOE adopted the proposal not to measure or allocate annual operating hours to air circulation mode. 81 FR 35241, 35257.

In the April 2021 RFI, DOE discussed comments encouraging the incorporation of a ''fan-only mode,'' in which the fan is operating but the compressor is off, without distinguishing whether the fan operation is consumer initiated. DOE stated that it expects that the annual usage hours and energy consumption of fan operation referenced in comments could include operation in both off-cycle mode, which is currently addressed in appendix CC, and a user-initiated air circulation mode. DOE

[15] The air enthalpy approach entails measuring the air flow rate, dry-bulb temperature, and water vapor content of air at the inlet and outlet of the portable AC.

therefore sought further clarification and distinction from commenters regarding operating hours and energy consumption for a user-initiated air-circulation mode, which is not currently addressed in appendix CC. 86 FR 20044, 20050.

The portable AC field metering study conducted by Lawrence Berkeley National Laboratory (''LBNL'') in 2014 [16] reported the time only the fan was operating. NEEA and the California IOUs commented that it did not clearly specify whether those hours were spent in user-initiated air-circulation mode or were off-cycle mode hours in which the unit is waiting to respond to the thermostat. (NEEA, No. 12 at p. 1; California IOUs, No. 10 at p. 5) NEEA stated that the LBNL study did indicate that the number of hours spent in fan-only mode are significant and recommended that DOE further evaluate the market distribution of portable ACs with fan-only mode and the number of hours spent in this mode. (NEEA, No. 12 at p. 1)

The California IOUs stated that the LBNL study did not determine how much time is spent in either of these modes or whether there is any difference in power consumption between fan-only and air-circulation modes. They recommended that DOE further investigate the market distribution of portable ACs and their operating hours in user-initiated air circulation mode. (California IOUs, No. 10 at p. 5)

DOE continues to lack data on annual operating hours in air circulation mode. DOE is not aware of publicly available data, nor has DOE received data from commenters regarding consumer use of user-initiated air circulation mode. As commenters pointed out, the field metering study did not differentiate between time spent with fan operation in air circulation mode versus off-cycle mode. When the field study was conducted in 2014, DOE investigative testing found that all portable ACs in its test sample operate the fan in off-cycle mode once cooling mode operation reduces the ambient temperature below the set point, as shown in Table III.9 of the portable AC test procedure NOPR published on February 25, 2015. 80 FR 10211, 10232. The hours attributed to ''fan-only mode'' likely include substantial time in off-cycle mode, in addition to any time in the user-initiated air circulation mode because fan operation in off-cycle mode was likely common in portable ACs at the time of the field metering study, based on samples analyzed during the previous portable AC test procedure rulemaking. 80 FR 10212, 10231. Therefore, DOE cannot effectively utilize the field metering study to identify a reliably representative number of operating hours in air circulation mode and currently is unable to justify the additional test burden that would be associated with testing air circulation mode. Only with data for consumer use of air circulation mode could DOE determine typical operating hours in air circulation mode.

Appendix CC as proposed and proposed new appendix CC1 would require testing in off-cycle mode, and the energy use in that mode would be considered part of the efficiency metric. However, DOE is not proposing a test for user-initiated air circulation mode.

DOE requests comment on the tentative determination not to dedicate distinct operating hours or testing to user-initiated air circulation mode in appendix CC and proposed new appendix CC1.

8. Dehumidification Mode

In the April 2021 RFI, DOE discussed a comment stating that most portable ACs provide a dehumidification feature and recommending that DOE further investigate its usage and consider including dehumidification mode in an updated test procedure. DOE sought usage data on dehumidification features available on portable ACs, including prevalence in units on the market, annual operating hours, and energy consumption associated with this mode. 86 FR 20044, 20051.

In response to the April 2021 RFI, AHAM stated that there is no need for added testing for dehumidification mode because it is not a significant energy user compared to the cooling function and it would unnecessarily increase testing burden. Additionally, AHAM asserted that absent data on the usage of dehumidification mode, DOE cannot accurately add it to the test procedure. (AHAM, No. 8 at p. 3)

By contrast, NEEA commented that 212 out of the 218 products available on a major retailer's website as of January 2021 had a dehumidification feature. NEEA recommended, given the prevalence of this feature, that DOE further investigate the number of hours spent in dehumidification mode and include this energy usage in the test procedure as warranted. (NEEA, No. 12 at p. 2)

DOE is unaware of available consumer use data regarding dehumidification mode, and the presence of a function in and of itself is insufficient to indicate the frequency of its use. Given the lack of data, DOE is unable to address dehumidification mode in a representative manner. DOE therefore is not proposing test procedure provisions regarding dehumidification mode in either appendix CC or proposed new appendix CC1.

DOE requests comment on the tentative determination not to include dehumidification mode in appendix CC and proposed new appendix CC1.

9. Network Connectivity

Network connectivity implemented in portable ACs can enable functions such as providing real-time room temperature conditions or receiving commands via a remote user interface such as a smartphone. DOE has observed that network connectivity typically operates continuously in the background while the portable AC performs other functions. DOE recognizes that portable ACs with network functions are now readily available on the market in the United States and, in the April 2021 RFI, requested (1) further comment and data on the prevalence of network connectivity in portable ACs available on the market currently or in the near future, (2) available data quantifying the power consumption and usage time associated with network functionality in portable ACs, and (3) information regarding the capabilities and attributes enabled by network functions (*e.g.,* energy savings, demand response, convenience functions). 86 FR 20044, 20049–20050.

The Joint Commenters and California IOUs encouraged DOE to investigate network connectivity in the portable AC test procedure. (Joint Commenters, No. 9 at pp. 1–2; California IOUs, No. 10 at p. 5) To improve the representativeness of the test procedure, the Joint Commenters encouraged DOE to investigate the power consumed by portable ACs in network mode and consider incorporating a measurement of the standby power consumed when a portable AC with network functions is connected to a network. (Joint Commenters, No. 9 at pp. 1–2) The California IOUs stated that network connectivity is an important operational characteristic. They commented that appliance capability to participate in demand response events is growing in relevance and stated that California and other states are looking to demand response as an option in their flexible demand standards. They further commented that, by assessing the effects of network connectivity and further encouraging manufacturers to produce appliances capable of responding to

[16] ''Using Field-Metered Data to Quantify Annual Energy Use of Portable Air Conditioners,'' T. Burke *et al.,* Environmental Energy Technologies Division, LBNL, December 2014.

demand response signals, DOE may contribute to greater grid reliability. (California IOUs, No. 10 at p. 5)

By contrast, AHAM urged DOE to follow the approach it adopted for room ACs regarding network connectivity and require all network functions to be disabled during testing. AHAM revised its room AC test procedure to maintain consistency with DOE's position. It noted that Section 4.1 of AHAM RAC–1–2020, ''Energy Measurement Test Procedure for Room Air Conditioners'' now specifies that units shipped with communication devices shall be tested with the communication device off, and not connected to any communication network. AHAM asserted that there is not yet adequate consumer use data to justify including provisions within the room AC or portable AC test procedures to measure the energy performance of network-connected products. AHAM further stated it is aware that some consumers do not connect their network-enabled appliances to use the available features. AHAM stated that DOE should be mindful that it will take time before many new features, designs, and technologies lend themselves to a ''representative average'' consumer use, and urged DOE to ensure that the portable AC test procedure does not prematurely address new designs which may not yet have an average use or be in common use, as doing so could stifle innovation. (AHAM, No. 8 at p. 4)

Based on testing and information from industry, the total power use attributable to network connectivity is less than 1 watt and would occur only during active hours of operation. DOE estimates that including the power consumption of network connectivity would decrease CEER by 0.1 percent. While there are several network-connected portable ACs on the market with varying implementations of network functions, DOE is not aware of any data available, nor did interested parties provide any data, regarding the consumer use of network functions. Without these data, DOE is unable to establish a representative test configuration for assessing the energy consumption of network functionality for portable ACs. Therefore, DOE proposes to test portable ACs with network functions disabled, if possible, unless they cannot be disabled, in which case the portable AC would be tested with network functions in the factory default configuration.

In this NOPR, DOE proposes to specify in both appendix CC and proposed new appendix CC1 that, if a portable AC has network functions disable all network functions throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. If an end-user cannot disable the network functions, or the product's user manual does not provide instruction for disabling network settings, test the unit with the network settings in the factory default configuration for the duration of the test. DOE requests comment on this proposal.

10. Infiltration Air, Duct Heat Transfer, and Case Heat Transfer

The portable AC test procedure accounts for the effects of heat transfer from two sources: (1) infiltration of outdoor air into the conditioned space (*i.e.,* ''infiltration air'') and (2) heat leakage through the duct surface to the conditioned space (*i.e.,* ''duct heat transfer''). In the June 2016 Final Rule, DOE considered the effects of heat transfer through the outer chassis of the portable AC to the conditioned space (*i.e.,* ''case heat transfer'') but did not adopt provisions accounting for case heat transfer. The reasons for DOE's choice were that case heat transfer has a minimal impact on cooling capacity and that including measurement of it would substantively increase the test burden. 81 FR 35241, 35254–35255.

In the April 2021 RFI, DOE requested: (1) any available information or data on portable AC infiltration air, duct heat transfer, or case heat transfer that may improve the representativeness, repeatability, or reproducibility of the test procedure; (2) input on any industry test procedures that measure case heat transfer, estimates of test burden required to measure it, and data quantifying its impact on cooling capacity and efficiency; (3) input on any less burdensome approaches to address case heat transfer than previously considered in the June 2016 Final Rule; (4) feedback on the impacts of case material and case design on case heat transfer, and whether certain materials or designs soon to be implemented in units on the market would result in significantly different case heat transfer than current designs; and (5) data and feedback on any additional available data regarding a duct convection heat transfer coefficient, and whether the current convection heat transfer coefficient of 3 British thermal units per hour-square foot-degree Fahrenheit (''Btu/h-ft^2-°F'') remains representative for portable ACs in their typical installation and use environments. 86 FR 20044, 20049.

NEEA recommended that DOE maintain key features in the existing test procedure in any revision, specifically recommending that DOE continue to account for the energy impacts of infiltration air and duct heat transfer in the portable AC test procedure, which NEEA asserted can have significant effects on capacity and efficiency and therefore are appropriately accounted for in the test procedure. (NEEA, No. 12 at p. 3)

The Joint Commenters stated that, while DOE found the average impact of case heat transfer on SACC was about 2 percent, the impact for individual units tested by DOE ranged from 0 to 9.1 percent. They stated that for some units, the current test procedure may be significantly overestimating cooling capacity and failing to capture design differences that may improve efficiency by reducing case heat transfer. The Joint Commenters encouraged DOE to continue to investigate the impact of case heat transfer and methods to measure case heat transfer to improve the representativeness of the test procedure. (Joint Commenters, No. 9 at p. 1)

DOE has not received data from commenters or otherwise that indicates the impacts of case heat transfer have become more significant since the publication of the June 2016 Final Rule and when the supporting analysis was conducted. Thus, DOE has tentatively determined to continue to exclude case heat transfer from the portable AC test procedure both in appendix CC and appendix CC1 as concluded in the June 2016 Final Rule. DOE also proposes to maintain the incorporation of the energy impacts of infiltration air and duct heat transfer in the portable AC test procedure.

DOE requests comment on the tentative determinations to continue to include the energy impacts of infiltration air and duct heat transfer and exclude case heat transfer in appendix CC and proposed new appendix CC1.

C. Representations of Energy Efficiency

Manufacturers, including importers, must use product-specific test procedures in 10 CFR part 430 and sampling and rounding requirements in 10 CFR part 429 to determine the represented values of energy consumption or energy efficiency of a basic model. The proposed appendix CC1 would require use of AEER for representing the energy efficiency of a basic model of portable AC, which is different from the current metric for models tested using appendix CC. DOE proposes to add rounding instructions consistent with those in Table 1 of AHAM PAC–1–2022 Draft in 10 CFR 429.62 when representing the energy efficiency of a basic model tested using

appendix CC1. DOE also proposes to incorporate the AHAM PAC–1–2022 Draft standard by reference in 10 CFR 429.4.

DOE requests comment on the proposals to add rounding requirements consistent with AHAM PAC–1–2022 Draft when certifying using appendix CC1 in 10 CFR 429.62. DOE also requests comment on its proposal to incorporate AHAM PAC–1–2022 Draft by reference in 10 CFR 429.4.

D. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this NOPR, DOE proposes to amend the existing test procedure for portable ACs by amending appendix CC and adopting a new appendix CC1. DOE has tentatively determined that these proposed amendments would not impact testing costs as discussed in the following paragraphs.

a. Appendix CC

DOE proposes to amend appendix CC to account for variable-speed portable ACs per the LG Waiver and Midea Interim Waivers with modifications. As discussed, the LG Waiver uses manufacturer instructions to achieve a fixed full compressor speed, but DOE's proposal uses consumer settings and a setpoint of 75 °F to do so. However, the modification would not require testing at additional conditions or increase the test time, as compared to the LG Waiver. As such, DOE has tentatively determined that the cost per test under appendix CC as proposed would be the same as the alternate test procedure specified in the LG Waiver. Due to the modification, the compressor speed required by the LG Waiver may differ from the compressor speed that would be required under the proposed amendments to appendix CC. LG would need to retest the variable-speed portable ACs subject to the LG Waiver if DOE amends the test procedure in a way that requires testing at a different compressor speed. At a minimum, LG would need to recertify any such units that are already certified, given the different full compressor speed and cycling factor proposed in appendix CC. Furthermore, if DOE adopts the amendments proposed in this NOPR, LG would be required to update representations of its variable-speed portable ACs subject to the LG Waiver to rely on $SACC_{Full}$ using the full compressor speed at the 83 °F test condition and to use the proposed new CF. These updates would not require retesting, only additional calculations using data already collected. The Midea variable-speed portable ACs subject to the existing interim waiver would not need to be retested, as there is no substantive difference in testing between the Midea Interim Waiver and the proposed amended appendix CC. However, like LG, Midea would be required to update representations of their variable-speed portable ACs to rely on $SACC_{Full}$ using the full compressor speed at the 83 °F test condition and to use the proposed new CF, if DOE adopts the proposed amendments. This update would not require retesting, only additional calculations using data already collected.

DOE requests comment on its characterization of test procedure costs and impacts of the proposed amendments to appendix CC.

b. Appendix CC1

DOE proposes to adopt a new appendix CC1 consistent with AHAM PAC–1–2022 Draft with modifications. For single-speed units, AHAM PAC–1–2022 Draft uses the same test conditions as the current appendix CC. For variable-speed portable ACs, AHAM PAC–1–2022 Draft uses the existing temperature conditions but has two additions. First, for a dual-duct variable-speed portable AC it adds a third test condition for full compressor speed at the low test condition. Second, it adds a specification to set the compressor speed to a low speed using manufacturer instructions at the lower temperature test condition. This proposal is consistent with the amendments to appendix CC above with three exceptions. First, appendix CC1 also updates the SACC and CEER calculations for all units to improve the representativeness of the test procedure with updated operating hours. Second, it adds a single-speed CF. Third, it includes adjustments to reflect the cooling provided at the 83 °F test condition. Under the proposed appendix CC1, cycling behavior would be factored into the measured values for all single-speed units, not just for variable-speed units as in appendix CC. DOE proposes that testing under proposed new appendix CC1 would not be required unless and until DOE adopts amended energy conservation standards that are based on the proposed new appendix CC1, and compliance with those standards is required. At that time, manufacturers would have to, in accordance with appendix CC1, re-test and re-certify all currently certified basic models.

DOE requests comment on its characterization of test procedure costs and impacts of the proposed new test procedure at appendix CC1.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. Section 8(c) of appendix A of 10 CFR part 430 subpart C. When the industry standard does not meet EPCA statutory criteria for test procedures, through the rulemaking process DOE will establish a test procedure reflecting modifications to these standards.

As discussed, appendices CC and CC1 incorporate by reference ANSI/AHAM PAC–1–2015, ANSI/ASHRAE Standard 37–2009, IEC Standard 62301, ANSI/ASHRAE Standard 41.1–1986, ANSI/ASRHAE Standard 41.6–1994 (RA 2006), and ANSI/ASHRAE Standard 51–1999 with modifications. The industry standards DOE proposes to incorporate by reference are discussed in further detail in section IV.N of this document. DOE requests comments on the benefits and burdens of the proposed updates and additions to industry standards referenced in the test procedure for portable ACs.

E. Compliance Date and Waivers

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)) To the extent the modified test procedure proposed in this document is required only for the evaluation and issuance of updated efficiency standards, use of the modified test procedure, if finalized, would not be required until the compliance date of updated standards. Section 8(e) of appendix A 10 CFR part 430 subpart C.

If DOE publishes 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 would 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 manufacturer will experience undue hardship. (*Id.*)

If DOE amends the test procedure, upon the compliance date of test procedure provisions of the amended test procedure, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 430.27(h)(3). As of the compliance date of the amended test procedure, recipients of any such waivers would be required to test the products subject to the waiver according to the amended test procedure. This includes LG and Midea because the amendments proposed in this document pertain to issues addressed by waiver and interim waiver DOE granted to them.[17]

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

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 E.O. 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: *energy.gov/gc/office-general-counsel.*

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis of this certification is set forth in the following paragraphs.

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))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including portable ACs, 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))

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 integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for 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 IEC Standard 62301 and IEC Standard 62087 as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is proposing amendments to the test procedure for portable ACs in satisfaction of its statutory obligations under EPCA. Specifically, DOE proposes to amend 10 CFR 429.4 ''Materials incorporated by reference'' and 10 CFR 429.62, ''Portable air conditioners'' as follows:

(7) Incorporate by reference AHAM PAC–1–2022 Draft, ''Portable Air Conditioners'' (''AHAM PAC–1–2022 Draft'') which includes an industry-accepted method for testing variable-speed portable ACs, in 10 CFR 429.4;

(8) Add rounding instructions for the SACC, CEER, and AEER in 10 CFR 429.62;

In addition, DOE proposes to update 10 CFR 430.2, ''Definitions'' and 10 CFR 430.23, ''Test procedures for the measurement of energy and water consumption'' as follows:

(1) Add a definition for the term ''combined-duct'' to 10 CFR 430.2; and

(2) Add requirements to determine estimated annual operating cost for single-duct and dual-duct variable-speed portable ACs in 10 CFR 430.23.

DOE also proposes to amend appendix CC to subpart B of part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners'' as follows:

[17] The LG Waiver was in Case No. 2018–004; the Midea Interim Waiver was in Case No. 2020–006.

(3) Add definitions in section 2 for ''combined-duct,'' ''single-speed,'' ''variable-speed,'' ''full compressor speed (full),'' ''low compressor speed (low),'' and ''theoretical comparable single-speed;''

(4) Divide section 4.1 into two sections, 4.1.1 and 4.1.2, for single-speed and variable-speed portable ACs, respectively, and detail configuration-specific cooling mode testing requirements for variable-speed portable ACs;

(5) Add a requirement in section 4.1.2 that, for variable-speed portable ACs, the full compressor speed at the 95 °F test condition be achieved with user controls, and the low compressor speed at the 83 °F test condition be achieved with manufacturer-provided settings or controls;

(6) Add a cycling factor, CF, in section 5.5.1;

(7) Add a requirement to calculate SACC with full compressor speed at the 95 °F test condition and low compressor speed at the 83 °F test condition in sections 5.1 and 5.2, consistent with the LG waiver and Midea interim waiver, with an additional requirement for variable-speed portable ACs to represent SACC with full compressor speed for both test conditions, and;

(8) Add a requirement in section 3.1.2 that, if a portable AC has network functions, all network functions must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. If the network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network settings, test the unit with the network settings in the factory default configuration for the duration of the test.

DOE additionally proposes to adopt a new ''appendix CC1 to subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners'' which would incorporate by reference AHAM PAC–1–2022 Draft and include the following changes:

(9) Incorporate by reference parts of AHAM PAC–1–2022 Draft, which includes an industry-accepted method for testing variable-speed portable ACs;

(10) Adopt a new efficiency metric, AEER, to more representatively calculate the efficiency of both variable-speed and single-speed portable ACs;

(11) Amend the annual operating hours;

(12) Update the SACC and CEER equations for both single-speed and variable-speed portable ACs;

(13) Apply a CF to single-speed portable AC efficiency; and

(14) Add a requirement that, if a portable AC has network functions, disable all network functions throughout testing. If the network functions cannot be disabled by the end-user, or the product's user manual does not provide instruction for disabling network settings, then test the unit with the network function settings in the factory default configuration for the duration of the test.

Testing according to the proposed new appendix CC1, if made final, would not be required until compliance is required with amended energy conservation standards that are based on the proposed new appendix CC1, should such standards be established.

The Small Business Administration (''SBA'') considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. DOE used SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. These size standards and codes are established by the North American Industry Classification System (''NAICS'') and are available at *www.sba.gov/document/support--table-size-standards.* Portable ACs are classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration 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 used the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS'') [18] to create a list of companies that sell portable ACs covered by this rulemaking in the United States. DOE consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import and export logs, and basic model numbers, to identify original equipment manufacturers (''OEMs'') of the products covered by this proposed rulemaking. DOE relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports) [19] to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this proposed rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 17 companies that are OEMs of portable ACs. In reviewing the 17 OEMs, DOE did not identify any domestic OEMs that met the SBA criteria for a small entity. Given the lack of small entities with a direct compliance burden, DOE concludes that the impacts of the proposed test procedure amendments outlined in this NOPR would not have a ''significant economic impact on a substantial number of small entities.'' 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).

DOE seeks comment on its findings that there are no small businesses that are OEMs of portable ACs based in the United States. DOE also seeks comment on its conclusion that the proposed test procedure amendments would not have a significant impact on a substantial number of small manufacturers.

C. Review Under the Paperwork Reduction Act of 1995

OMB Control Number 1910–1400, Compliance Statement Energy/Water Conservation Standards for Appliances, is currently valid and assigned to the certification reporting requirements applicable to covered equipment, including portable ACs.

DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of 10 CFR part 429, 10 CFR part 430, and/or 10 CFR part 431. Certification reports

[18] *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx.* Last accessed November 22, 2021.

[19] The Dun & Bradstreet Hoovers subscription login is available online at *app.dnbhoovers.com/.*

provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

The proposal in this NOPR would amend the representations of capacity for variable-speed portable ACs currently subject to test procedure waivers. If made final, the proposed amendments to appendix CC in this NOPR would require use of a new metric, *i.e.,* $SACC_{Full}$. DOE is not proposing certification or reporting requirements for portable ACs subject to appendix CC in this NOPR. Instead, DOE may consider proposals to address amendments to the certification requirements and reporting for portable ACs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

To the extent that the proposed new appendix CC1 would necessitate the reporting of different or additional information, DOE may consider proposals to amend the certification requirements and reporting for portable ACs under a separate rulemaking regarding appliance and equipment certification.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for portable ACs. DOE has determined that this proposed 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

E.O. 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 E.O. 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 E.O. 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, 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 E.O. 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 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 E.O. 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 E.O. 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 E.O. 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 *http://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 E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 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 E.O. 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 portable ACs is not a significant regulatory action under E.O. 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 NOPR 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 portable ACs would incorporate testing methods contained in certain sections of the following commercial standards: ANSI/AHAM PAC–1–2015, AHAM PAC–1–2022 Draft, ANSI/ASHRAE Standard 37–2009, and IEC 62301. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference in the proposed appendix CC1 the draft test standard provided by AHAM, titled, ''Portable Air Conditioners AHAM PAC–1–2022 Draft.'' AHAM PAC–1–2022 Draft is a draft industry test procedure that measures portable AC performance in cooling mode in a more representative manner than the previous iteration, ANSI/AHAM PAC–1–2015, and is applicable to products sold in North America. AHAM PAC–1–2022 Draft specifies testing conducted in accordance with other industry-accepted test procedures and determines energy efficiency metrics for various portable AC configurations and compressor types (*i.e.,* single-speed and variable-speed). The appendix CC1 test procedure proposed in this NOPR references various sections of AHAM PAC–1–2022 Draft that address test setup, instrumentation, test conduct, calculations, and rounding.

Copies of AHAM PAC–1–2022 Draft may be purchased from the Association of Home Appliance Manufacturers at 1111 19th Street NW, Suite 402, Washington, DC 20036, or by going to *www.aham.org/ht/d/Store/.*

In this NOPR, DOE also proposes to incorporate by reference the test standard ASHRAE Standard 37–2009, titled ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' (ANSI Approved). ANSI/ASHRAE Standard 37–2009 is an industry-accepted test standard referenced by ANSI/AHAM PAC–1–2015 that defines various uniform methods for measuring performance of air conditioning and heat pump equipment. Although ANSI/AHAM PAC–1–2015 references a number of sections in ANSI/ASHRAE Standards 37–2009, the test procedure established in this proposed rule additionally references one section in ANSI/ASHRAE Standard 37–2009 that addresses test duration.

Copies of ANSI/ASHRAE Standard 37–2009 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., at Publication Sales, 1791 Tullie Circle NE, Atlanta, GA 30329, or by going to *www.ashrae.org.*

In this NOPR, DOE also proposes to incorporate by reference the test standard ANSI/ASHRAE 51–1999 (also called ANSI/AMCA 210), titled ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating.'' ANSI/ASHRAE 51–1999 is an industry-accepted test standard referenced by ANSI/ASHRAE Standard 37–2009 that defines methods for measuring the characteristics of air flow.

Copies of ANSI/ASHRAE 51–1999 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., at Publication Sales, 1791 Tullie Circle NE, Atlanta, GA 30329, or by going to *www.ashrae.org.*

In this NOPR, DOE also proposes to incorporate by reference the test standard ANSI/ASHRAE 41.1–1986, titled ''Standard Method for Temperature Measurement,'' (ANSI

Approved). ANSI/ASHRAE 41.1–1986 is an industry-accepted test standard referenced by ANSI/ASHRAE Standard 37–2009 that defines a standard method for measuring temperature.

Copies of ANSI/ASHRAE 41.1–1986 can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., at Publication Sales, 1791 Tullie Circle NE, Atlanta, GA 30329, or by going to *www.ashrae.org.*

In this NOPR, DOE also proposes to incorporate by reference the test standard ANSI/ASHRAE 41.6–1994 (RA 2006), titled ''Standard Method for Measurement of Moist Air Properties,'' (ANSI Approved). ANSI/ASHRAE 41.6–1994 (RA 2006) is an industry-accepted test standard referenced by ANSI/ASHRAE Standard 37–2009 that defines a standard method for measuring moist air properties, including humidity and wet-bulb temperature.

Copies of ANSI/ASHRAE 41.6–1994 (RA 2006) can be obtained from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., at Publication Sales, 1791 Tullie Circle NE, Atlanta, GA 30329, or by going to *www.ashrae.org.*

In this NOPR, DOE also proposes to incorporate by reference the test standard IEC 62301, titled ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0, 2011–01). IEC 62301 is an industry-accepted test standard that sets a standardized method to measure the standby power of household and similar electrical appliances. IEC 62301 includes details regarding test set-up, test conditions, and stability requirements that are necessary to ensure consistent and repeatable standby and off-mode test results.

Copies of IEC 62301 can be obtained from the American National Standards Institute at 25 W 43rd Street, 4th Floor, New York, or by going to *webstore.ansi.org.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the functions available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=65.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this proposed 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/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the proposed rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed 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/public meeting.

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

D. 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.[20] Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via http://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

[20] 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 E.O. 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 Canada (''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.

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, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail 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. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No faxes will be accepted.

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

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

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

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

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on the proposal to incorporate by reference AHAM PAC–1–2022 Draft in a new appendix CC1, with modifications to address comparability and representativeness.

(2) DOE requests comment on the proposal to amend the operating hours in the proposed new appendix CC1 as shown in Table III.2 above.

(3) DOE requests comment on the proposal to adopt in the new appendix CC1 the requirement that portable ACs able to operate as both a single-duct and dual-duct portable AC, as distributed in commerce by the manufacturer, must be tested and rated for both duct configurations.

(4) DOE requests comment on the proposal to add variable-speed test conditions in appendix CC consistent with the LG Waiver and Midea Interim Waiver while otherwise retaining the current test conditions, and to adopt the AHAM PAC–1–2022 Draft test conditions in the proposed new appendix CC1.

(5) DOE requests comment on the proposal to add compressor speed requirements in appendix CC consistent with the Midea Interim Waiver, and to adopt the AHAM PAC–1–2022 Draft compressor speed requirements in the proposed new appendix CC1.

(6) DOE requests comment on the proposal to maintain in the revised appendix CC the current SACC calculation for single-speed units and to adopt a SACC calculation consistent with the test procedure waivers for variable-speed units for the purposes of determining CEER. DOE also requests comment on the proposal to require manufacturers of variable-speed units to represent cooling capacity using a new metric, SACCFull, based on full load performance at the low temperature condition. DOE further requests comment on the proposal to adopt an updated SACC calculation for single-speed units and variable-speed units that accounts for reduced cooling load at the 83 °F test condition in the proposed new appendix CC1.

(7) DOE requests comment on the proposed weighting factors in the proposed new appendix CC1 (0.144 for the 95 °F test condition and 0.856 for the 83 °F test condition).

(8) DOE requests comment on the proposal to adopt a CF of 0.82 based on DOE's investigative testing, in appendix CC and in the proposed new appendix CC1.

(9) DOE requests comment on its proposal not to prescribe load-based testing in appendix CC or the proposed new appendix CC1.

(10) DOE requests comment on the tentative determination not to dedicate distinct operating hours or testing to user-initiated air circulation mode in appendix CC and proposed new appendix CC1.

(11) DOE requests comment on the tentative determination not to include dehumidification mode in appendix CC and proposed new appendix CC1.

(12) DOE requests comment on this proposal.

(13) DOE requests comment on the tentative determinations to continue to include the energy impacts of infiltration air and duct heat transfer and exclude case heat transfer in appendix CC and proposed new appendix CC1.

(14) DOE requests comment on its characterization of test procedure costs and impacts of the proposed amendments to appendix CC.

(15) DOE requests comment on its characterization of test procedure costs and impacts of the proposed new test procedure at appendix CC1.

(16) DOE seeks comment on its findings that there are no small businesses that are OEMs of portable ACs based in the United States. DOE also seeks comment on its conclusion that the proposed test procedure amendments would not have a significant impact on a substantial number of small manufacturers.

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, Incorporation by reference, Reporting and recordkeeping requirements.

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 May 23, 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 May 24, 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. Section 429.4 is amended by adding paragraph (b)(3) to read as follows:

§ 429.4 Materials incorporated by reference.

* * * * *

(b) * * *

(3) ANSI/AHAM PAC–1–2022 Draft, (''AHAM PAC–1–2022 Draft''), Portable Air Conditioners, IBR approved for § 429.62.

* * * * *

■ 3. Section 429.62 is amended by revising paragraphs (a)(3) and (4) to read as follows:

§ 429.62 Portable air conditioners.

* * * * *

(a) * * *

(3) The value of seasonally adjusted cooling capacity of a basic model must be the mean of the seasonally adjusted cooling capacities for each tested unit of the basic model. When using appendix CC of subpart B of part 430, round the mean seasonally adjusted cooling capacity value to the nearest 50, 100, 200, or 500 Btu/h, depending on the magnitude of the calculated seasonally adjusted cooling capacity, in accordance with Table 1 of ANSI/AHAM PAC–1–2015, (incorporated by reference, see § 429.4), ''Multiples for reporting Dual Duct Cooling Capacity, Single Duct Cooling Capacity, Spot Cooling Capacity, Water Cooled Condenser Capacity and Power Input Ratings''. When using appendix CC1 of subpart B of part 430, round to the nearest 50, 100, 200, or 500 Btu/h, depending on the magnitude of the calculated seasonally adjusted cooling capacity, in accordance with Table 1 of AHAM PAC–1–2022 Draft, (incorporated by reference, see § 429.4), ''Multiples for reporting Dual Duct Cooling Capacity, Single Duct Cooling Capacity, Spot Cooling Capacity, Water Cooled Condenser Capacity and Power Input Ratings''.

(4) The represented value of combined energy efficiency ratio or annualized energy efficiency ratio of a basic model must be rounded to the nearest 0.1 Btu/Wh.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 5. Section 430.2 is amended by adding in alphabetical order the definition for ''Combined-duct'' to read as follows:

§ 430.2 Definitions.

* * * * *

Combined-duct means, for a portable air conditioner, the condenser inlet and outlet air streams flow through separate ducts housed in a single duct structure.

* * * * *

■ 6. Section 430.3 is amended by:

■ a. Adding paragraph (b)(5);

■ b. Revising paragraph (g)(3) and (5); c. Redesignating paragraphs (g)(11) through (18) as paragraphs (g)(12) through(19);

■ d. Adding new paragraphs (g)(11) and (i)(7);

■ e. Revising paragraph (o)(6).

The additions and revisions to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(b) * * *

(5) ANSI/ASHRAE 51–1999/ANSI/AMCA 210–99 (''ANSI/ASHRAE 51''), Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, ANSI approved December 2, 1999; ASHRAE approved June 23, 1999; IBR approved for appendices CC and CC1 to subpart B.

* * * * *

(g) * * *

(3) ANSI/ASHRAE Standard 37–2009, (''ASHRAE 37–2009''), Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009, IBR approved for appendices AA, CC, and CC1 to subpart B.

* * * * *

(5) ANSI/ASHRAE 41.1–1986 (Reaffirmed 2006), Standard Method for Temperature Measurement, approved February 18, 1987, IBR approved for appendices E, AA, and CC1 to subpart B.

* * * * *

(11) ANSI/ASHRAE Standard 41.6–1994 (RA 2006), (''ASHRAE 41.6–1994''), Standard Method for Measurement of Moist Air Properties, ANSI reaffirmed on January 27, 2006, IBR approved for appendix CC1 to subpart B.

* * * * *

(i) * * *

(7) AHAM PAC–1–2022 Draft, (''AHAM PAC–1–2022 Draft''), Portable Air Conditioners, IBR approved for appendix CC1 to subpart B.

* * * * *

(o) * * *

(6) 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, H, I, J2, N, O, P, Q, X, X1, Y, Z, BB, CC, and CC1 to subpart B.

* * * * *

■ 7. Section 430.23 is amended by revising paragraph (dd) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(dd) *Portable air conditioners.*

(1) When using appendix CC of this subpart, measure the seasonally adjusted cooling capacity, in British thermal units per hour (Btu/h), and the combined energy efficiency ratio, in British thermal units per watt-hour (Btu/Wh) in accordance with sections 5.2 and 5.4 of appendix CC of this subpart, respectively. When using appendix CC1 of this subpart, measure the seasonally adjusted cooling capacity, in British thermal units per hour (Btu/h), and the combined energy efficiency ratio, in British thermal units per watt-hour (Btu/Wh) in accordance with sections 5.2 and 5.4, respectively, of appendix CC1 of this subpart.

(2) When using appendix CC of this subpart, determine the estimated annual operating cost for portable air conditioners, in dollars per year and rounded to the nearest whole number, by multiplying a representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary by the total annual energy consumption, determined as follows:

(i) For dual-duct single-speed portable air conditioners, the sum of AECDD_95 multiplied by 0.2, AECDD_83 multiplied by 0.8, and AECT as measured in accordance with section 5.3 of appendix CC of this subpart.

(ii) For single-duct single-speed portable air conditioners, the sum of AECSD and AECT as measured in accordance with section 5.3 of appendix CC of this subpart.

(iii) For dual-duct variable-speed portable air conditioners the overall sum of

(A) The sum of $AEC_{DD\_95\_Full}$ and $AEC_{ia/om}$, multiplied by 0.2, and

(B) The sum of $AEC_{DD\_83\_Low}$ and $AEC_{ia/om}$, multiplied by 0.8, as measured in accordance with section 5.3 of appendix CC of this subpart.

(iv) For single-duct variable-speed portable air conditioners, the overall sum of

(A) The sum of AECSD_Full and AECia/om, multiplied by 0.2, and

(B) The sum of AECSD_Low and AECia/om, multiplied by 0.8, as measured in accordance with section 5.3 of appendix CC of this subpart.

(3) When using appendix CC1 of this subpart, determine the estimated annual operating cost for portable air conditioners, in dollars per year and rounded to the nearest whole number, by multiplying a representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary by the total annual energy consumption. The total annual energy consumption is the sum of AEC_{95}, AEC_{83}, AEC_{oc}, and AEC_{ia}, as measured in accordance with section 5.3 of appendix CC1 of this subpart.

■ 8. Appendix CC to subpart B of part 430 is amended by:

■ a. Adding an introductory note;

■ b. Adding section 0;

■ c. Revising sections 2, 3.1.1, 3.1.1.1, 3.1.1.6, 3.1.2, 3.2, 3.2.1, 3.2.2.2, 3.2.3, 4.1, 4.1.1, and 4.1.2, ;

■ d. Adding sections 4.1.3 and 4.1.4;

■ e. Revising sections 4.3 and 5.1 ;

■ f. Adding sections 5.1.1 and 5.1.2;

■ g. Revising section 5.2;

■ h. Adding section 5.2.1;

■ i. Revising sections 5.3 and 5.4;

■ j. Adding sections 5.4.1, 5.4.2 and 5.4.2.1; and

■ k. Adding sections 5.5, 5.5.1, 5.5.2, 5.5.3, 5.5.4, 5.5.5, 5.5.6, 5.5.7, and 5.5.8.

The additions and revisions read as follows:

Appendix CC to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the standard at § 430.32(cc) with which compliance is required as of January 10, 2025. Before [Date 180 days following publication of the final rule] representations must be based upon results generated either under this appendix or under this appendix as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

Manufacturers must use the results of testing under appendix CC1 to determine compliance with any standards that amend the portable air conditioners standard at § 430.32(cc) with which compliance is required on January 10, 2025. Any representations related to energy also must be made in accordance with the appendix that applies (*i.e.,* this appendix CC or appendix CC1). Manufacturers may use appendix CC1 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3 the entire standard for ANSI/AHAM PAC–1–2015, ANSI/ASHRAE Standard 37–2009, ANSI/ASHRAE 51, and IEC 62301; however, only enumerated provisions of those documents apply to this appendix as follows. Treat ''should'' in IEC 62301 as mandatory.0.1 ANSI/AHAM PAC–1–2015

(a) Section 4 ''Definitions,'' as specified in section 3.1.1 of this appendix, except for AHAM's definition for ''Portable Air Conditioner'';

(b) Section 7 ''Tests,'' as specified in section 3.1.1, 3.1.1.3, 3.1.1.4, 4.1.1, and 4.1.2 of this appendix.

0.2 ANSI/ASHRAE Standard 37–2009

(a) Section 5.4 ''Electrical Instruments,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(b) Section 7.3 ''Indoor and Outdoor Air Enthalpy Methods,'' as specified in section 4.1.1 of this appendix;

(c) Section 7.6 ''Outdoor Liquid Coil Method,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(d) Section 7.7 ''Airflow Rate Measurement,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(e) Section 8.7 ''Test Procedure for Cooling Capacity Tests,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(f) Section 9.2 ''Test Tolerances,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(g) Section 11.1 ''Symbols Used In Equations,'' as specified in sections 4.1.1 and 4.1.2 of this appendix.

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(a) Paragraph 5.2 ''Preparation of product,'' as specified in section 3.2.1 of this appendix;

(b) Paragraph 4.3.2 ''Supply voltage waveform,'' as specified in section 3.2.2.2 of this appendix;

(c) Paragraph 4.4 ''Power measuring instruments,'' as specified in section 3.2.3 of this appendix;

(d) Annex D, ''Determination of Uncertainty of Measurement,'' as specified in sections 3.2.1, 3.2.2.2, and 3.2.3 of this appendix;

(e) Paragraph 4.2 ''Test room,'' as specified in section 3.2.4 of this appendix;

(f) Paragraph 5.1, ''General,'' Note 1, as specified in section 4.3 of this appendix;

(g) Paragraph 5.3.2 ''Sampling method,'' as specified in section 4.3 of this appendix.

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(a) Figure 12 and Notes, ''Outlet Chamber Setup-Multiple Nozzles in Chamber'' as specified in section 4.1.1 of this appendix.

(b) [Reserved]

When there is a conflict, the language of this appendix takes precedence over those documents. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until DOE amends the test procedure. Material is incorporated as it exists on the date of the approval, and any change to the reference to the material will be published in the **Federal Register**.

* * * * *

2. Definitions

Combined-duct means the condenser inlet and outlet air streams flow through separate ducts housed in a single duct structure.

Combined energy efficiency ratio means the energy efficiency of a portable air conditioner as measured in accordance with this test procedure in Btu per watt-hours (Btu/Wh) and determined in section 5.4 of this appendix.

Cooling mode means a mode in which a portable air conditioner either has activated the main cooling function according to the thermostat or temperature sensor signal, including activating the refrigeration system, or has activated the fan or blower without activating the refrigeration system.

Dual-duct means drawing some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, potentially drawing additional condenser inlet air from the conditioned space, and discharging the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

Full compressor speed (full) means the compressor speed at which the unit operates at full load test conditions, when using user controls with a unit thermostat setpoint of 75 °F to achieve maximum cooling capacity.

Inactive mode means a standby mode that facilitates the activation of an active mode or off-cycle mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Low compressor speed (low) means the compressor speed specified by the manufacturer, at which the unit operates at low load test conditions (*i.e.,* Test Condition C and Test Condition E in Table 2 of this appendix, for a dual-duct and single-duct portable air conditioner, respectively), such that the measured cooling capacity at this speed is no less than 50 percent and no greater than 60 percent of the measured cooling capacity with the full compressor speed at full load test conditioners (*i.e.,* Test Condition A and Test Condition C in Table 2 of this appendix, for a dual-duct and single-duct portable air conditioner, respectively).

Off-cycle mode means a mode in which a portable air conditioner:

(1) Has cycled off its main cooling or heating function by thermostat or temperature sensor signal;

(2) May or may not operate its fan or blower; and

(3) Will reactivate the main function according to the thermostat or temperature sensor signal.

Off mode means a mode that may persist for an indefinite time in which a portable air conditioner is connected to a mains power source, and is not providing any active mode, off-cycle mode, or standby mode function. This includes an indicator that only shows the user that the portable air conditioner is in the off position.

Seasonally adjusted cooling capacity means the amount of cooling provided to the indoor conditioned space, measured under the specified ambient conditions, in Btu/h.

Single-duct means drawing all of the condenser inlet air from the conditioned space without the means of a duct, and discharging the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket.

Single-speed means incapable of automatically adjusting the compressor speed based on detected conditions.

Standby mode means any mode where a portable air conditioner is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of cooling mode) by remote switch (including remote control), internal sensor, or timer; or

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

Theoretical comparable single-speed means a hypothetical single-speed unit that would have the same cooling capacity and electrical power input as the variable-speed unit under test, with no cycling losses considered, when operating with the full compressor speed and at the test conditions in table 1 of this appendix.

Variable-speed means capable of automatically adjusting the compressor speed based on detected conditions.

* * * * *

3.1 * * *

3.1.1 *Test conduct.* The test apparatus and instructions for testing portable air conditioners in cooling mode and off-cycle mode must conform to the requirements specified in Section 4, ''Definitions'' and Section 7, ''Tests,'' of ANSI/AHAM PAC–1–2015, except as otherwise specified in this appendix. Measure duct heat transfer and infiltration air heat transfer according to section 4.1.1 and section 4.1.2 of this appendix, respectively.

3.1.1.1 *Duct setup.* Use all ducting components provided by or required by the manufacturer and no others. Ducting components include ducts, connectors for attaching the duct(s) to the test unit, sealing, insulation, and window mounting fixtures. Do not apply additional sealing or insulation. For combined-duct units, the manufacturer must provide the testing facility an adapter that allows for the individual connection of the condenser inlet and outlet airflows to the test facility's airflow measuring apparatuses. Use that adapter to measure the condenser inlet and outlet airflows for any corresponding unit.

* * * * *

3.1.1.6 *Duct temperature measurements.* Install any insulation and sealing provided by the manufacturer. For a dual-duct or single-duct unit, adhere four thermocouples per duct, spaced along the entire length equally, to the outer surface of the duct. Measure the surface temperatures of each duct. For a combined-duct unit, adhere sixteen thermocouples to the outer surface of the duct, spaced evenly around the circumference (four thermocouples, each 90 degrees apart, radially) and down the entire length of the duct (four sets of four thermocouples, evenly spaced along the entire length of the duct), ensuring that the thermocouples are spaced along the entire length equally, on the surface of the combined duct. Place at least one thermocouple preferably adjacent to, but otherwise as close as possible to, the condenser inlet aperture and at least one thermocouple on the duct surface preferably adjacent to, but otherwise as close as possible to, the condenser

outlet aperture. Measure the surface temperature of the combined duct at each thermocouple. Temperature measurements must have an error no greater than ±0.5 °F over the range being measured.

3.1.2 *Control settings.* For a single-speed unit, set the controls to the lowest available temperature setpoint for cooling mode, as described in section 4.1.1 of this appendix. For a variable-speed unit, set the thermostat setpoint to 75 °F to achieve the full compressor speed and use the manufacturer instructions to achieve the low compressor speed, as described in section 4.1.2 of this appendix. If the portable air conditioner has a user-adjustable fan speed, select the maximum fan speed setting. If the unit has an automatic louver oscillation feature and there is an option to disable that feature, disable that feature throughout testing. If the unit has adjustable louvers, position the louvers parallel with the air flow to maximize air flow and minimize static pressure loss. If the portable air conditioner has network functions, that an end-user can disable and the product's user manual provides instructions on how to do so, disable all network functions throughout testing. If an end-user cannot disable a network function or the product's user manual does not provide instruction for disabling a network function, test the unit with that network function in the factory default configuration for the duration of the test.

* * * * *

3.2 Standby mode and off mode.

3.2.1 Installation requirements. For the standby mode and off mode testing, install the portable air conditioner in accordance with Paragraph 5.2 of IEC 62301, referring to Annex D of that standard as necessary. Disregard the provisions regarding batteries and the determination, classification, and testing of relevant modes.

* * * * *

3.2.2.2 Supply voltage waveform. For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in, Paragraph 4.3.2 of IEC 62301, referring to Annex D of that standard as necessary.

3.2.3 *Standby mode and off mode wattmeter.* The wattmeter used to measure standby mode and off mode power consumption must meet the requirements specified in Paragraph 4.4 of IEC 62301, using a two-tailed confidence interval and referring to Annex D of that standard as necessary.

4. * * *

4.1 Cooling mode.

Note: For the purposes of this cooling mode test procedure, evaporator inlet air is considered the ''indoor air'' of the conditioned space and condenser inlet air is considered the ''outdoor air'' outside of the conditioned space.

4.1.1 *Single-Speed Cooling Mode Test.* For single-speed portable air conditioners, measure the indoor room cooling capacity and overall power input in cooling mode in accordance with Sections 7.1.b and 7.1.c of ANSI/AHAM PAC–1–2015, respectively, including the references to Sections 5.4, 7.3, 7.6, 7.7, and 11 of ANSI/ASHRAE Standard 37–2009. Determine the test duration in accordance with Section 8.7 of ASHRAE Standard 37–2009, including the reference to Section 9.2 of the same standard. Disregard the test conditions in Table 3 of ANSI/AHAM PAC–1–2015. Instead, apply the test conditions for single-duct and dual-duct portable air conditioners presented in table 1 of this appendix. For single-duct units, measure the indoor room cooling capacity, $Capacity_{SD,}$ and overall power input in cooling mode, $P_{SD,}$ in accordance with the ambient conditions for test condition 1.C, presented in table 1 of this appendix. For dual-duct units, measure the indoor room cooling capacity and overall power input twice, first in accordance with ambient conditions for test condition 1.A ($Capacity_{95}$, P_{95}), and then in accordance with test condition 1.B ($Capacity_{83}$, P_{83}), both presented in Table 1 of this appendix. For the remainder of this test procedure, test combined-duct single-speed portable air conditioners following any instruction for dual-duct single-speed portable air conditioners, unless otherwise specified.

TABLE 1—SINGLE-SPEED EVAPORATOR (INDOOR) AND CONDENSER (OUTDOOR) INLET TEST CONDITIONS

Test condition	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry bulb	Wet bulb	Dry bulb	Wet bulb
1.A	80 (26.7)	67 (19.4)	95 (35.0)	75 (23.9)
1.B	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)
1.C	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)

4.1.2 *Variable-Speed Cooling Mode Test.* For variable-speed portable air conditioners, measure the indoor room cooling capacity and overall power input in cooling mode in accordance with Section 7.1.b and 7.1.c of ANSI/AHAM PAC–1–2015, respectively, including the references to Sections 5.4, 7.3, 7.6, 7.7, and 11 of ANSI/ASHRAE Standard 37–2009, except as detailed below. Determine the test duration in accordance with Section 8.7 of ASHRAE Standard 37–2009, including the reference to Section 9.2 of the same standard. Disregard the test conditions in Table 3 of ANSI/AHAM PAC–1–2015. Instead, apply the test conditions for single-duct and dual-duct portable air conditioners presented in Table 2 of this appendix. For a single-duct unit, measure the indoor room cooling capacity and overall power input in cooling mode twice, first in accordance with the ambient conditions and compressor speed settings for test condition 2.D ($Capacity_{SD\_Full,}$ P_{SD_Full}), and then in accordance with the ambient conditions for test condition 2.E ($Capacity_{SD\_Low,}$ P_{SD_Low}), both presented in table 2 of this appendix. For dual-duct units, measure the indoor room cooling capacity and overall power input three times, first in accordance with ambient conditions for test condition 2.A ($Capacity_{95\_Full}$, P_{95_Full}), second in accordance with the ambient conditions for test condition 2.B ($Capacity_{83\_Full}$, P_{83_Full}), and third in accordance with the ambient conditions for test condition 2.C ($Capacity_{83\_Low}$, P_{83_Low}), each presented in table 2 of this appendix. For the remainder of this test procedure, test combined-duct variable-speed portable air conditioners following any instruction for dual-duct variable-speed portable air conditioners, unless otherwise specified. For test conditions 2.A, 2.B, and 2.D, achieve the full compressor speed with user controls, as defined in section 2.13 of this appendix. For test conditions 2.C and 2.E, set the required compressor speed in accordance with instructions the manufacturer provided to DOE.

TABLE 2—VARIABLE-SPEED EVAPORATOR (INDOOR) AND CONDENSER (OUTDOOR) INLET TEST CONDITIONS

Test condition	Evaporator inlet air °F (°C)		Condenser inlet air °F (°C)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
2.A	80 (26.7)	67 (19.4)	95 (35.0)	75 (23.9)	Full.
2.B	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)	Full.
2.C	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)	Low.
2.D	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)	Full.
2.E	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)	Low.

4.1.3. Duct Heat Transfer.

Throughout the cooling mode test, measure the surface temperature of the condenser exhaust duct and condenser inlet duct, where applicable. Calculate the average temperature at each thermocouple placement location. Then calculate the average surface temperature of each duct. For single-duct and dual-duct units, calculate the average of the four average temperature measurements taken on the duct. For combined-duct units, calculate the average of the sixteen average temperature measurements taken on the duct. Calculate the surface area (A_{duct_j}) of each duct according to:

$$A_{duct\_j} = Cj \times Lj$$

Where:

Cj = the circumference of duct ''j'', including any manufacturer-supplied insulation, measured by wrapping a flexible measuring tape, or equivalent, around the outside of a combined duct, making sure the tape is on the outermost ridges or, alternatively, if the duct has a circular cross-section, by multiplying the outer diameter by 3.14.

Lj = the extended length of duct ''j'' while under test.

j represents the condenser exhaust duct for single-duct units, the condenser exhaust duct and the condenser inlet duct for dual-duct units, and the combined duct for combined-duct units.

Calculate the total heat transferred from the surface of the duct(s) to the indoor conditioned space while operating in cooling mode at each test condition, as follows:

For single-duct single-speed portable air conditioners:

$$Q_{duct\_SD} = 3 \times A_{duct\_j} \times (T_{duct\_j} - T_{ei})$$

For dual-duct single-speed portable air conditioners:

$$Q_{duct\_DD\_95} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_95\_j} - T_{ei})\}$$

$$Q_{duct\_DD\_83} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_83\_j} - T_{ei})\}$$

For single-duct variable-speed portable air conditioners:

$$Q_{duct\_SD\_Full} = 3 \times A_{duct} \times (T_{duct\_Full\_j} - T_{ei})$$

$$Q_{duct\_SD\_Low} = 3 \times A_{duct} \times (T_{duct\_Low\_j} - T_{ei})$$

For dual-duct variable-speed portable air conditioners:

$$Q_{duct\_DD\_95\_Full} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_Full\_95\_j} - T_{ei})\}$$

$$Q_{duct\_DD\_83\_Full} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_Full\_83\_j} - T_{ei})\}$$

$$Q_{duct\_DD\_83\_Low} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_Low\_83\_j} - T_{ei})\}$$

Where:

Q_{duct_SD} = the total heat transferred from the duct to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Condition 1.C.

$Q_{duct\_DD\_95}$ and $Q_{duct\_DD\_83}$ = the total heat transferred from the ducts to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Conditions 1.A and 1.B, respectively.

$Q_{duct\_SD\_Full}$ and $Q_{duct\_SD\_Low}$ = the total heat transferred from the duct to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Conditions 2.D and 2.E, respectively.

$Q_{duct\_DD\_95\_Full}$, $Q_{duct\_DD\_83\_Full}$, and $Q_{duct\_DD\_83\_Low}$ = the total heat transferred from the ducts to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Condition 2.A, Test Condition 2.B, and Test Condition 2.C, respectively.

3 = empirically-derived convection coefficient in Btu/h per square foot per °F.

A_{duct_j} = surface area of the duct ''j'', as calculated in this section, in square feet.

T_{duct_j} = average surface temperature for duct ''j'' of single-duct single-speed portable air conditioners, in °F, as measured at Test Condition 1.C.

$T_{duct\_95\_j}$ and $T_{duct\_83\_j}$ = average surface temperature for duct ''j'' of dual-duct single-speed portable air conditioners, in °F, as measured at Test Conditions 1.A and 1.B, respectively.

$T_{duct\_Full\_j}$ and $T_{duct\_Low\_j}$ = average surface temperature for duct ''j'' of single-duct variable-speed portable air conditioners, in °F, as measured at Test Conditions 2.D and 2.E, respectively.

$T_{duct\_Full\_95\_j}$, $T_{duct\_Full\_83\_j}$, and $T_{duct\_Low\_83\_j}$ = average surface temperature for duct ''j'' of dual-duct variable-speed portable air conditioners, in °F, as measured at Test Conditions 2.A, 2.B, and 2.C, respectively.

j represents the condenser exhaust duct for single-duct units, the condenser exhaust duct and the condenser inlet duct for dual-duct units, and the combined duct for combined-duct units.

T_{ei} = average evaporator inlet air dry-bulb temperature, as measured in section 4.1 of this appendix, in °F.

4.1.4. Infiltration Air Heat Transfer.

Calculate the sample unit's heat contribution from infiltration air into the conditioned space for each cooling mode test as follows:

Calculate the dry air mass flow rate of infiltration air, which affects the sensible and latent components of heat contribution from infiltration air, according to the following equations.

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For a single-duct single-speed unit:

$$\dot{m}_{SD} = \frac{V_{co\_SD} \times \rho_{co\_SD}}{(1 + \omega_{co\_SD})}$$

For a dual-duct single-speed unit:

$$\dot{m}_{95} = \frac{V_{co\_95} \times \rho_{co\_95}}{(1 + \omega_{co\_95})} - \frac{V_{ci\_95} \times \rho_{ci\_95}}{(1 + \omega_{ci\_95})}$$

$$\dot{m}_{83} = \frac{V_{co\_83} \times \rho_{co\_83}}{(1 + \omega_{co\_83})} - \frac{V_{ci\_83} \times \rho_{ci\_83}}{(1 + \omega_{ci\_83})}$$

For a single-duct variable-speed unit:

$$\dot{m}_{SD\_Full} = \frac{V_{co\_SD\_Full} \times \rho_{co\_SD\_Full}}{(1 + \omega_{co\_SD\_Full})}$$

$$\dot{m}_{SD\_Low} = \frac{V_{co\_Low} \times \rho_{co\_Low}}{(1 + \omega_{co\_Low})}$$

For a dual-duct variable-speed unit:

$$\dot{m}_{95\_Full} = \frac{V_{co\_95\_Full} \times \rho_{co\_95\_Full}}{(1 + \omega_{co\_95\_Full})} - \frac{V_{ci\_95\_Full} \times \rho_{ci\_95\_Full}}{(1 + \omega_{ci\_95\_Full})}$$

$$\dot{m}_{83\_Full} = \frac{V_{co\_83\_Full} \times \rho_{co\_83\_Full}}{(1 + \omega_{co\_83\_Full})} - \frac{V_{ci\_83\_Full} \times \rho_{ci\_83\_Full}}{(1 + \omega_{ci\_83\_Full})}$$

$$\dot{m}_{83\_Low} = \frac{V_{co\_83\_Low} \times \rho_{co\_83\_Low}}{(1 + \omega_{co\_83\_Low})} - \frac{V_{ci\_83\_Low} \times \rho_{ci\_83\_Low}}{(1 + \omega_{ci\_83\_Low})}$$

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Where:

$\dot{m}_{SD}$, $\dot{m}_{SD\_Full}$, and $\dot{m}_{SD\_Low}$ = dry air mass flow rate of infiltration air for single-duct portable air conditioners, in pounds per minute (lb/m) when tested at Test Conditions 1.C, 2.D, and 2.E, respectively.

$\dot{m}_{95}$, $\dot{m}_{83}$, $\dot{m}_{95\_Full}$, $\dot{m}_{83\_Full}$, and $\dot{m}_{83\_Low}$ = dry air mass flow rate of infiltration air for dual-duct portable air conditioners, in lb/m, when tested at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively.

V_{co_SD}, $V_{co\_SD\_Full}$, $V_{co\_SD\_Low}$, V_{co_95}, V_{co_83}, $V_{co\_95\_Full}$, $V_{co\_83\_Full}$, and $V_{co\_83\_Low}$ = average volumetric flow rate of the condenser outlet air, in cubic feet per minute (cfm), as measured at Test Conditions 1.C, 2.D, 2.E, 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

V_{ci_95}, V_{ci_83}, $V_{ci\_95\_Full}$, $V_{ci\_83\_Full}$, and $V_{ci\_83\_Low}$ = average volumetric flow rate of the condenser inlet air, in cfm, as measured at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

ρ_{co_SD}, $\rho_{co\_SD\_Full}$, $\rho_{co\_SD\_Low}$, ρ_{co_95}, ρ_{co_83}, $\rho_{co\_95\_Full}$, $\rho_{co\_83\_Full}$, and $\rho_{co\_83\_Low}$ = average density of the condenser outlet air, in pounds mass per cubic foot (lb_m/ft^3), as measured at Test Conditions 1.C, 2.D, 2.E, 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

ρ_{ci_95}, ρ_{ci_83}, $\rho_{ci\_95\_Full}$, $\rho_{ci\_83\_Full}$, and $\rho_{ci\_83\_Low}$ = average density of the condenser inlet air, in lb_m/ft^3, as measured at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in section 4.1.1 and 4.1.2 of this appendix.

ω_{co_SD}, $\omega_{co\_SD\_Full}$, $\omega_{co\_SD\_Low}$, ω_{co_95}, ω_{co_83}, $\omega_{co\_95\_Full}$, $\omega_{co\_83\_Full}$, and $\omega_{co\_83\_Low}$ = average humidity ratio of condenser outlet air, in pounds mass of water vapor per pounds mass of dry air (lb_w/lb_{da}), as measured at Test Conditions 1.C, 2.D, 2.E, 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

ω_{ci_95}, ω_{ci_83}, $\omega_{ci\_95\_Full}$, $\omega_{ci\_83\_Full}$, and $\omega_{ci\_83\_Low}$ = average humidity ratio of condenser inlet air, in lb_w/lb_{da}, as measured at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

Calculate the sensible component of infiltration air heat contribution according to the following equations.

For single-duct single-speed units:

$Q_{s\_SD\_95} = \dot{m}_{SD} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$

$Q_{s\_SD\_83} = \dot{m}_{SD} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$

For dual-duct single-speed units:

$Q_{s\_DD\_95} = \dot{m}_{95} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$

$Q_{s\_DD\_83} = \dot{m}_{83} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$

For single-duct variable-speed units:

$Q_{s\_SD\_95\_Full} = \dot{m}_{SD\_Full} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$

$Q_{s\_SD\_83\_Full} = \dot{m}_{SD\_Full} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$

$Q_{s\_SD\_83\_Low} = \dot{m}_{SD\_Low} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$

For dual-duct variable-speed units:

$Q_{s\_DD\_95\_Full} = \dot{m}_{95\_Full} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$

$Q_{s\_DD\_83\_Full} = \dot{m}_{83\_Full} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$

$Q_{s\_DD\_83\_Low} = \dot{m}_{83\_Low} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$

Where:

$Q_{s\_SD\_95}$, $Q_{s\_SD\_83}$, $Q_{s\_DD\_95}$, and $Q_{s\_DD\_83}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration and temperature condition.

$Q_{s\_SD\_95\_Full}$, $Q_{s\_SD\_83\_Full}$, $Q_{s\_SD\_83\_Low}$, $Q_{s\_DD\_95\_Full,}$ $Q_{s\_DD\_83\_Full,}$ and $Q_{s\_DD\_83\_Low}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$\dot{m}_{SD}$, $\dot{m}_{95}$, and $\dot{m}_{83}$ = dry air mass flow rate of infiltration air for single-speed portable air conditioners, in lb/m, as calculated in section 4.1.4 of this appendix.

$\dot{m}_{SD\_95\_Full}$, $\dot{m}_{SD\_83\_Low}$, $\dot{m}_{95\_Full}$ and $\dot{m}_{83\_Low}$ = dry air mass flow rate of infiltration air for variable-speed portable air conditioners, in lb/m, as calculated in section 4.1.4 of this appendix.

c_{p_da} = specific heat of dry air, 0.24 Btu/(lbm °F).

c_{p_wv} = specific heat of water vapor, 0.444 Btu/(lbm °F).

80 = indoor chamber dry-bulb temperature, in °F.

95 = infiltration air dry-bulb temperature for Test Conditions 1.A and 2.A, in °F.

83 = infiltration air dry-bulb temperature for Test Conditions 1.B, 2.B, and 2.C, in °F.

0.0141 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.A and 2.A, in lb_w/lb_{da}.

0.01086 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.B, 2.B, and 2.C, in lb_w/lb_{da}.

0.0112 = humidity ratio of the indoor chamber air, in lb_w/lb_{da} (ω_{indoor}).

60 = conversion factor from minutes to hours.

Calculate the latent heat contribution of the infiltration air according to the following equations. For a single-duct single-speed unit:

$Q_{l\_SD\_95} = \dot{m}_{SD} \times 60 \times 1061 \times (0.0141 - 0.0112)$

$Q_{l\_SD\_83} = \dot{m}_{SD} \times 60 \times 1061 \times (0.01086 - 0.0112)$

For a dual-duct single-speed unit:

$Q_{l\_DD\_95} = \dot{m}_{95} \times 60 \times 1061 \times (0.0141 - 0.0112)$

$Q_{l\_DD\_83} = \dot{m}_{83} \times 60 \times 1061 \times (0.01086 - 0.0112)$

For a single-duct variable-speed unita:

$Q_{l\_SD\_95\_Full} = \dot{m}_{SD\_Full} \times 60 \times 1061 \times (0.0141 - 0.0112)$

$Q_{l\_SD\_83\_Full} = \dot{m}_{SD\_Full} \times 60 \times 1061 \times (0.01086 - 0.0112)$

$Q_{l\_SD\_83\_Low} = \dot{m}_{SD\_Low} \times 60 \times 1061 \times (0.01086 - 0.0112)$

For a dual-duct variable-speed unit:

$Q_{l\_DD\_95\_Full} = \dot{m}_{95\_Full} \times 60 \times 1061 \times (0.0141 - 0.0112)$

$Q_{l\_DD\_83\_Full} = \dot{m}_{83\_Full} \times 60 \times 1061 \times (0.01086 - 0.0112)$

$Q_{l\_DD\_83\_Low} = \dot{m}_{83\_Low} \times 60 \times 1061 \times (0.01086 - 0.0112)$

Where:

$Q_{l\_SD\_95}$, $Q_{l\_SD\_83}$, $Q_{l\_DD\_95}$, and $Q_{l\_DD\_83}$= latent heat added to the room by infiltration air, in Btu/h, for each duct configuration and temperature condition.

$Q_{l\_SD\_95\_Full}$, $Q_{l\_SD\_83\_Full}$, $Q_{l\_SD\_Low}$, $Q_{l\_DD\_95\_Full,}$ $Q_{l\_DD\_83\_Full,}$ and $Q_{l\_DD\_83\_Low}$ = latent heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$\dot{m}_{SD}$, $\dot{m}_{95}$, and $\dot{m}_{83}$ = dry air mass flow rate of infiltration air for portable air conditioners, in lb/m, when tested at Test Conditions 1.C, 1.A, and 1.B, respectively, as calculated in section 4.1.4 of this appendix.

$\dot{m}_{SD\_Full}$, $\dot{m}_{SD\_Low}$, $\dot{m}_{95\_Full}$, $\dot{m}_{83\_Full}$ and $\dot{m}_{83\_Low}$ = dry air mass flow rate of infiltration air for portable air conditioners, in lb/m, when tested at Test Conditions 2.D, 2.E, 2.A, 2.B, and 2.C, respectively, as calculated in section 4.1.4 of this appendix.

1061 = latent heat of vaporization for water vapor, in Btu/lb_m (H_{fg}).

0.0141 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.A and 2.A, in lb_w/lb_{da}.

0.01086 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.B, 2.B, and 2.C, in lb_w/lb_{da}.

0.0112 = humidity ratio of the indoor chamber air, in lb_w/lb_{da}.

60 = conversion factor from minutes to hours.

Calculate the total heat contribution of the infiltration air at each test condition by adding the sensible and latent heat according to the following equations.

For a single-duct single-speed unit:

$Q_{infiltration\_SD\_95} = Q_{s\_SD\_95} + Q_{l\_SD\_95}$

$Q_{infiltration\_SD\_83} = Q_{s\_SD\_83} + Q_{l\_SD\_83}$

For a dual-duct single-speed unit:

$Q_{infiltration\_DD\_95} = Q_{s\_DD\_95} + Q_{l\_DD\_95}$

$Q_{infiltration\_DD\_83} = Q_{s\_DD\_83} + Q_{l\_DD\_83}$

For a single-duct variable-speed unit:

$Q_{infiltration\_SD\_95\_Full} = Q_{s\_SD\_95\_Full} + Q_{l\_SD\_95\_Full}$

$Q_{infiltration\_SD\_83\_Full} = Q_{s\_SD\_83\_Full} + Q_{l\_SD\_83\_Full}$

$Q_{infiltration\_SD\_83\_Low} = Q_{s\_SD\_83\_Low} + Q_{l\_SD\_83\_Low}$

For a dual-duct variable-speed unit:

$Q_{infiltration\_DD\_95\_Full} = Q_{s\_DD\_95\_Full} + Q_{l\_DD\_95\_Full}$

$Q_{infiltration\_DD\_83\_Full} = Q_{s\_DD\_83\_Full} + Q_{l\_DD\_83\_Full}$

$Q_{infiltration\_DD\_83\_Low} = Q_{s\_DD\_83\_Low} + Q_{l\_DD\_83\_Low}$

Where:

$Q_{infiltration\_SD\_95}$, $Q_{infiltration\_SD\_83}$, $Q_{infiltration\_DD\_95}$, $Q_{infiltration\_DD\_83}$ = total infiltration air heat in cooling mode, in Btu/h, for each duct configuration and temperature condition.

$Q_{infiltration\_SD\_95\_Full}$, $Q_{infiltration\_SD\_83\_Full}$, $Q_{infiltration\_SD\_83\_Low}$, $Q_{infiltration\_DD\_95\_Full}$, $Q_{infiltration\_DD\_83\_Full}$, and $Q_{infiltration\_DD\_83\_Low}$ = total infiltration air heat in cooling mode, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$Q_{s\_SD\_95}$, $Q_{s\_SD\_83}$, $Q_{s\_DD\_95}$, and $Q_{s\_DD\_83}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$Q_{s\_SD\_95\_Full}$, $Q_{s\_SD\_83\_Full}$, $Q_{s\_SD\_83\_Low}$, $Q_{s\_DD\_95\_Full}$, $Q_{s\_DD\_83\_Full}$, and $Q_{s\_DD\_83\_Low}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$Q_{l\_SD\_95}$, $Q_{l\_SD\_83}$, $Q_{l\_DD\_95}$, and $Q_{l\_DD\_83}$= latent heat added to the room by infiltration air, in Btu/h, for each duct configuration, and temperature condition.

$Q_{l\_SD\_95\_Full}$, $Q_{l\_SD\_83\_Full}$, $Q_{l\_SD\_83\_Low}$, $Q_{l\_DD\_95\_Full,}$ $Q_{l\_DD\_83\_Full,}$ and $Q_{l\_DD\_83\_Low}$ = latent heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

* * * * *

4.3 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this appendix, ensuring that the unit does not enter any active modes during the test. As discussed in Paragraph 5.1, Note 1 of IEC 62301, allow sufficient time for the unit to reach the lowest power state before proceeding with the test measurement. Follow the test procedure specified in Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.3.1 and 4.3.2 of this appendix. If the standby mode is cyclic and irregular or unstable, collect 10 cycles worth of data.

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5.1 * * *

5.1.1 *Single-Speed Adjusted Cooling Capacity.* For a single-speed portable air conditioner, calculate the adjusted cooling capacity at each outdoor temperature operating condition, in Btu/h, according to the following equations.

For a single-duct single-speed portable air conditioner unit:

$ACC_{SD\_95\_SS} = Capacity_{SD} - Q_{duct\_SD} - Q_{inflitration\_SD\_95}$

$ACC_{SD\_83\_SS} = Capacity_{SD} - Q_{duct\_SD} - Q_{inflitration\_SD\_83}$

For a dual-duct single-speed portable air conditioner unit:

$ACC_{DD\_95\_SS} = Capacity_{95} - Q_{duct\_95} - Q_{inflitration\_DD\_95}$

$ACC_{SD\_83\_SS} = Capacity_{83} - Q_{duct\_83} - Q_{inflitration\_SD\_83}$

Where:

$Capacity_{SD}$, $Capacity_{95}$, and $Capacity_{83}$ = cooling capacity for each duct configuration or temperature condition measured in section 4.1.1 of this appendix.

Q_{duct_SD}, $Q_{duct\_DD\_95}$, and $Q_{duct\_DD\_83}$ = duct heat transfer for each duct configuration or temperature condition while operating in cooling mode, calculated in section 4.1.3 of this appendix.

$Q_{infiltration\_SD\_95}$, $Q_{infiltration\_SD\_83}$, $Q_{infiltration\_DD\_95}$, $Q_{infiltration\_DD\_83}$= total infiltration air heat transfer in cooling mode for each duct configuration and temperature condition, calculated in section 4.1.4 of this appendix.

5.1.2 *Variable-Speed Adjusted Cooling Capacity.* For variable-speed portable air conditioners, calculate the adjusted cooling capacity at each outdoor temperature operating condition, in Btu/h, according to the following equations:

For a single-duct variable-speed portable air conditioner unit:

$ACC_{SD\_95} = Capacity_{SD\_Full} - Q_{duct\_SD\_Full} - Q_{inflitration\_SD\_95\_Full}$

$ACC_{SD\_83\_Full} = Capacity_{SD\_Full} - Q_{duct\_SD\_Full} - Q_{inflitration\_SD\_83\_Full}$

$ACC_{SD\_83\_Low} = Capacity_{SD\_Low} - Q_{duct\_SD\_Low} - Q_{inflitration\_SD\_83\_Low}$

For a dual-duct variable-speed portable air conditioner unit:

$ACC_{DD\_95} = Capacity_{DD\_95\_Full} - Q_{duct\_DD\_95\_Full} - Q_{inflitration\_DD\_95\_Full}$

$ACC_{DD\_83\_Full} = Capacity_{DD\_83\_Full} - Q_{duct\_DD\_83\_Full} - Q_{inflitration\_DD\_83\_Full}$

$ACC_{DD\_83\_Low} = Capacity_{DD\_83\_Low} - Q_{duct\_DD\_83\_Low} - Q_{inflitration\_DD\_83\_Low}$

Where:

$Capacity_{SD\_Full}$, $Capacity_{SD\_Low}$, $Capacity_{DD\_95\_Full}$, $Capacity_{DD\_83\_Full}$, and $Capacity_{DD\_83\_Low}$ = cooling capacity in Btu/h for each duct configuration, temperature condition (where applicable), and compressor speed, as measured in section 4.1.2 of this appendix.

$Q_{duct\_SD\_Full}$, $Q_{duct\_SD\_Low}$, $Q_{duct\_DD\_95\_Full}$, $Q_{duct\_DD\_83\_Full}$, and $Q_{duct\_DD\_83\_Low}$ = combined duct heat transfer for each duct configuration, temperature condition (where applicable), and compressor speed, as calculated in section 4.1.3 of this appendix.

$Q_{infiltration\_SD\_95\_Full}$, $Q_{infiltration\_SD\_83\_Full}$, $Q_{infiltration\_SD\_83\_Low}$, $Q_{infiltration\_DD\_95\_Full}$, $Q_{infiltration\_DD\_83\_Full}$, and $Q_{infiltration\_DD\_83\_Low}$ = total infiltration air heat transfer in cooling mode for each duct configuration, temperature condition, and compressor speed, as calculated in section 4.1.4 of this appendix.

5.2 *Seasonally Adjusted Cooling Capacity.* Calculate the unit's seasonally adjusted cooling capacity, SACC, in Btu/h, according to the following equations:

For a single-speed portable air conditioner unit:

$SACC_{SD} = ACC_{SD\_95\_SS} \times 0.2 + ACC_{SD\_83\_SS} \times 0.8$

$SACC_{DD} = ACC_{DD\_95\_SS} \times 0.2 + ACC_{DD\_83\_SS} \times 0.8$

For a variable-speed portable air conditioner unit:

$SACC_{SD} = ACC_{SD\_95} \times 0.2 + ACC_{SD\_83\_Low} \times 0.8$

$SACC_{DD} = ACC_{DD\_95} \times 0.2 + ACC_{DD\_83\_Low} \times 0.8$

Where:

$ACC_{SD\_95\_SS}$, $ACC_{SD\_83\_SS}$, $ACC_{DD\_95\_SS}$, and $ACC_{DD\_83\_SS}$ = adjusted cooling capacity for single-speed portable air conditioners for each duct configuration and temperature condition, in Btu/h, calculated in section 5.1.1 of this appendix.

ACC_{SD_95}, $ACC_{SD\_83\_Low}$, ACC_{DD_95}, and $ACC_{DD\_83\_Low}$ = adjusted cooling capacity for variable-speed portable air conditioners for each duct configuration, temperature condition, and compressor speed, in Btu/h, calculated in section 5.1.2 of this appendix.

0.2 = weighting factor for the 95 °F test condition.

0.8 = weighting factor for the 83 °F test condition.

5.2.1 *Full-Load Seasonally Adjusted Cooling Capacity Calculation.* For variable-speed portable ACs determine a Full-Load Seasonally Adjusted Cooling Capacity ($SACC_{Full}$) using the following formulas:

$SACC_{Full\_SD} = ACC_{SD\_95} \times 0.2 + ACC_{SD\_83\_Full} \times 0.8$

$SACC_{Full\_DD} = ACC_{DD\_95} \times 0.2 + ACC_{DD\_83\_Full} \times 0.8$

ACC_{SD_95}, $ACC_{SD\_83\_Full}$, ACC_{DD_95}, and $ACC_{DD\_83\_Full}$ = adjusted cooling capacity for variable-speed portable air conditioners for each duct configuration, temperature condition, and compressor speed (where applicable), in Btu/h, calculated in section 5.1.2 of this appendix.

0.2 = weighting factor for the 95 °F test condition.

0.8 = weighting factor for the 83 °F test condition.

5.3 *Annual Energy Consumption.* Calculate the sample unit's annual energy consumption in each operating mode according to the following equation. For each operating mode, use the following annual hours of operation and equation:

Type of portable air conditioner	Operating mode	Subscript	Annual operating hours
Variable speed (single- or dual-duct).	Cooling Mode: Test Conditions 2.A, 2.B, 2.C, 2.D, and 2.E [1].	DD_95_Full, DD_83_Full, DD_83_Low, SD_Full, and SD_Low..	750
Single speed (single- or dual-duct).	Cooling Mode: Test Conditions 1.A, 1.B, and 1C [1].	DD_95, DD_83, and SD	750
all	Off-Cycle	oc	880
all	Inactive or Off	ia or om	1,355

[1] These operating mode hours are for the purposes of calculating annual energy consumption under different ambient conditions and are not a division of the total cooling mode operating hours. The total cooling mode operating hours are 750 hours.

$AEC_m = P_m \times t_m \times 0.001$

Where:

AEC_m = annual energy consumption in the operating mode, in kWh/year.

m represents the operating mode as shown in the table above with each operating mode's respective subscript.

P_m = average power in the operating mode, in watts, as determined in sections 4.1.1 and 4.1.2 of this appendix.

t_m = number of annual operating time in each operating mode, in hours.0.001 kWh/Wh = conversion factor from watt-hours to kilowatt-hours.

Calculate the sample unit's total annual energy consumption in off-cycle

mode and inactive or off mode as follows:

$$AEC_T = \sum_{ncm} AEC_{ncm}$$

Where:

AEC_T = total annual energy consumption attributed to off-cycle mode and inactive or off mode, in kWh/year;

AEC_m = total annual energy consumption in the operating mode, in kWh/year.

ncm represents the following two non-cooling operating modes: off-cycle mode and inactive or off mode.

5.4 *Combined Energy Efficiency Ratio.*

5.4.1 *Combined Energy Efficiency Ratio for Single-Speed Portable Air Conditioners.* Using the annual operating hours established in section 5.3 of this appendix, calculate the combined energy efficiency ratio, CEER, in Btu/Wh, for single-speed portable air conditioners according to the following equation, as applicable:

$$CEER_{SD} = \left[\frac{\left(ACC_{SD\_95\_SS} \times 0.2 + ACC_{SD\_83\_SS} \times 0.8\right)}{\left(\frac{AEC_{SD} + AEC_T}{0.750}\right)}\right]$$

$$CEER_{DD} = \left[\frac{ACC_{DD\_95\_SS}}{\left(\frac{AEC_{DD\_95} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_SS}}{\left(\frac{AEC_{DD\_83} + AEC_T}{0.750}\right)}\right] \times 0.8$$

Where:

$CEER_{SD}$ and $CEER_{DD}$ = combined energy efficiency ratio for a single-duct unit and dual-duct unit, respectively, in Btu/Wh.

$ACC_{SD\_95\_SS}$, $ACC_{SD\_83\_SS}$, $ACC_{DD\_95\_SS}$, $ACC_{DD\_83\_SS}$ = adjusted cooling capacity for each duct configuration and temperature condition, in Btu/h, calculated in section 5.1 of this appendix.

AEC_{SD}, AEC_{DD_95} and AEC_{DD_83} = annual energy consumption in cooling mode for each duct configuration and temperature condition, in kWh/year, calculated in section 5.3 of this appendix.

AEC_T = total annual energy consumption attributed to all modes except cooling, in kWh/year, calculated in section 5.3 of this appendix.

0.750 = number of cooling mode hours per year, 750, multiplied by the conversion factor for watt-hours to kilowatt-hours, 0.001 kWh/Wh.

0.2 = weighting factor for the 95 °F dry-bulb outdoor condition test.

0.8 = weighting factor for the 83 °F dry-bulb outdoor condition test.

5.4.2 *Combined Energy Efficiency Ratio for Variable-Speed Portable Air Conditioners.*

5.4.2.1 *Unadjusted Combined Energy Efficiency Ratio.*

For a variable-speed portable air conditioner, calculate the unit's unadjusted combined energy efficiency ratio, $CEER_{UA,}$ in Btu/Wh, as follows:

For single-duct variable-speed portable air conditioners:

$$CEER_{SD\_UA} = \left[\frac{ACC_{SD\_95}}{\left(\frac{AEC_{SD\_Full} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{SD\_83\_Low}}{\left(\frac{AEC_{SD\_Low} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.8$$

For dual-duct variable-speed portable air conditioners:

$$CEER_{DD\_UA} = \left[\frac{ACC_{DD\_95}}{\left(\frac{AEC_{DD\_95\_Full} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_Low}}{\left(\frac{AEC_{DD\_83\_Low} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.8$$

Where:

$CEER_{SD\_UA}$, and $CEER_{DD\_UA}$ = unadjusted combined energy efficiency ratio for a single-duct and dual-duct sample unit, in Btu/Wh, respectively.

ACC_{SD_95}, $ACC_{SD\_83\_Low}$, ACC_{DD_95}, and ACC_{DD_83} = adjusted cooling capacity for each duct configuration, temperature condition, and compressor speed, as calculated in section 5.1.2 of this appendix, in Btu/h.

AEC_{SD_Full}, AEC_{SD_Low}, $AEC_{DD\_95\_Full}$, and $AEC_{DD\_83\_Low}$ = annual energy consumption for each duct configuration, temperature condition, and compressor speed in cooling mode operation, as calculated in section 5.3 of this appendix, in kWh/year.

$AEC_{ia/om}$ = annual energy consumption attributed to inactive or off mode, in kWh/year, calculated in section 5.3 of this appendix.

0.750 = number of cooling mode hours per year, 750, multiplied by the conversion factor for watt-hours to kilowatt-hours, 0.001 kWh/Wh.

0.2 = weighting factor for the 95 °F dry-bulb outdoor temperature operating condition.

0.8 = weighting factor for the 83 °F dry-bulb outdoor temperature operating condition.

5.5 *Adjustment of the Combined Energy Efficiency Ratio.* Adjust the sample unit's unadjusted combined energy efficiency ratio as follows.

5.5.1 *Theoretical Comparable Single-Speed Portable Air Conditioner Cooling Capacity and Power at the Lower Outdoor Temperature Operating Condition.* Calculate the cooling capacity without and with cycling losses, in British thermal units per hour (Btu/h), and electrical power input, in watts, for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at an 83 °F outdoor dry-bulb outdoor temperature operating condition according to the following equations:

For a single-duct theoretical comparable single speed portable air conditioner:

$Capacity_{SD\_83\_SS} = Capacity_{SD\_Full}$

$Capacity_{SD\_83\_SS\_CF} = Capacity_{SD\_Full} \times 0.82$

$P_{SD\_83\_SS} = P_{SD\_Full}$

For a dual-duct theoretical comparable single speed portable air conditioner:

$Capacity_{DD\_83\_SS} = Capacity_{83\_Full}$

$Capacity_{DD\_83\_SS\_CF} = Capacity_{83\_Full} \times 0.82$

$P_{DD\_83\_SS} = P_{83\_Low}$

Where:

$Capacity_{SD\_83\_SS}$ and $Capacity_{DD\_83\_SS}$ = cooling capacity of a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, calculated for the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in Btu/h.

$Capacity_{SD\_83\_SS\_CF}$ and $Capacity_{DD\_83\_SS\_CF}$ = cooling capacity of a single-duct and dual-duct theoretical comparable single-speed portable air conditioner with cycling losses, in Btu/h, calculated for the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively).

$Capacity_{SD\_Full}$ and $Capacity_{83\_Full}$ = cooling capacity of the sample unit, measured in section 4.1.2 of this appendix at Test Conditions 2.D and 2.B, in Btu/h.

$P_{SD\_83\_SS}$ and $P_{DD\_83\_SS}$ = power input of a single-duct and dual-duct theoretical comparable single-speed portable air conditioner calculated for the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in watts.

P_{SD_Full} and P_{83_Low} = electrical power input of the sample unit, measured in section 4.1.2 of this appendix at Test Conditions 2.D and 2.B, in watts.

0.82 = empirically-derived cycling factor for the 83 °F dry-bulb outdoor temperature operating condition.

5.5.2 *Duct Heat Transfer for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the duct heat transfer to the conditioned space for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition as follows:

For a single-duct theoretical comparable single-speed portable air conditioner:

$Q_{duct\_SD\_83\_SS} = Q_{duct\_SD\_Full}$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$Q_{duct\_DD\_83\_SS} = Q_{duct\_DD\_83\_Full}$

Where:

$Q_{duct\_SD\_83\_SS}$ and $Q_{duct\_DD\_83\_SS}$ = total heat transferred from the condenser exhaust duct to the indoor conditioned space in cooling mode, for single-duct and dual-duct theoretical comparable single-speed portable air conditioners, respectively, at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in Btu/h.

$Q_{duct\_SD\_Full}$ and $Q_{duct\_DD\_83\_Full}$ = the total heat transferred from the duct to the indoor conditioned space in cooling mode, when tested at Test Conditions 2.D and 2.B, respectively, as calculated in section 4.1.3 of this appendix, in Btu/h.

5.5.3 *Infiltration Air Heat Transfer for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the total heat contribution from infiltration air for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition, as follows:

For a single-duct theoretical comparable single-speed portable air conditioner:

$Q_{infiltration\_SD\_83\_SS} = Q_{infiltration\_SD\_83\_Full}$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$Q_{infiltration\_DD\_83\_SS} = Q_{infiltration\_DD\_83\_Full}$

Where:

$Q_{infiltration\_SD\_83\_SS}$ and $Q_{infiltration\_DD\_83\_SS}$ = total infiltration air heat in cooling mode for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in Btu/h.

$Q_{infiltration\_SD\_83\_Full}$ and $Q_{infiltration\_DD\_83\_Full}$ = total infiltration air heat transfer of the sample unit in cooling mode for each duct configuration, temperature condition, and compressor speed, as calculated in section 4.1.4 of this appendix, in Btu/h.

5.5.4 *Adjusted Cooling Capacity for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the adjusted cooling capacity without and with cycling losses for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition, in Btu/h, according to the following equations:

For a single-duct theoretical comparable single-speed portable air conditioner:

$ACC_{SD\_83\_SS} = Capacity_{SD\_83\_SS} - Q_{duct\_SD\_83\_SS} - Q_{infiltration\_SD\_83\_SS}$

$ACC_{SD\_83\_SS\_CF} = Capacity_{SD\_83\_SS\_CF} - Q_{duct\_SD\_83\_SS} - Q_{infiltration\_SD\_83\_SS}$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$ACC_{DD\_83\_SS} = Capacity_{83\_SS} - Q_{duct\_DD\_83\_SS} - Q_{infiltration\_DD\_83\_SS}$

$ACC_{DD\_83\_SS\_CF} = Capacity_{DD\_83\_SS\_CF}—Q_{duct\_DD\_83\_SS} - Q_{infiltration\_DD\_83\_SS}$

Where:

$ACC_{SD\_83\_SS}$, $ACC_{SD\_83\_SS\_CF}$, $ACC_{DD\_83\_SS}$, and $ACC_{DD\_83\_SS\_CF}$ = adjusted cooling capacity for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively) without and with cycling losses, respectively, in Btu/h.

$Capacity_{SD\_83\_SS}$ and $Capacity_{SD\_83\_SS\_CF}$ = cooling capacity of a single-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.1 of this appendix, in Btu/h.

$Capacity_{DD\_83\_SS}$ and $Capacity_{DD\_83\_SS\_CF}$ = cooling capacity of a dual-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.1 of this appendix, in Btu/h.

$Q_{duct\_SD\_83\_SS}$ and $Q_{duct\_DD\_83\_SS}$ = total heat transferred from the ducts to the indoor conditioned space in cooling mode for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.2 of this appendix, in Btu/h.

$Q_{infiltration\_SD\_83\_SS}$ and $Q_{infiltration\_DD\_83\_SS}$ = total infiltration air heat in cooling mode for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.3 of this appendix, in Btu/h.

5.5.5 *Annual Energy Consumption in Cooling Mode for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the annual energy consumption in cooling mode for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition, in kWh/year, according to the following equations:

For a single-duct theoretical comparable single-speed portable air conditioner:

$AEC_{SD\_83\_SS} = P_{SD\_83\_SS} \times 0.750$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$AEC_{DD\_83\_SS} = P_{DD\_83\_SS} \times 0.750$

Where:

$AEC_{SD\_83\_SS}$ and $AEC_{DD\_83\_SS}$ = annual energy consumption for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, in cooling mode at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in kWh/year.

$P_{SD\_83\_SS}$ and $P_{DD\_83\_SS}$ = electrical power input for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively) as calculated in section 5.5.1 of this appendix, in watts.

0.750 = number of cooling mode hours per year, 750, multiplied by the conversion factor for watt-hours to kilowatt-hours, 0.001 kWh/Wh.

5.5.6 *Combined Energy Efficiency Ratio for a Theoretical Comparable Single-Speed Portable Air Conditioner.* Calculate the combined energy efficiency ratios for a theoretical comparable single-speed portable air conditioner without cycling losses, $CEER_{SD\_SS}$ and $CEER_{DD\_SS}$, and with cycling losses, $CEER_{SD\_SS\_CF}$ and $CEER_{DD\_SS\_CF}$, in Btu/Wh, according to the following equations:

For a single-duct portable air conditioner:

$$CEER_{SD\_SS} = \left[\frac{ACC_{SD\_95}}{\left(\frac{AEC_{SD\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{SD\_83\_SS}}{\left(\frac{AEC_{SD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

$$CEER_{SD\_SS\_CF} = \left[\frac{ACC_{SD\_95}}{\left(\frac{AEC_{SD\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{SD\_83\_SS\_CF}}{\left(\frac{AEC_{SD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

For a dual-duct portable air conditioner:

$$CEER_{DD\_SS} = \left[\frac{ACC_{DD\_95}}{\left(\frac{AEC_{DD\_95\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_SS}}{\left(\frac{AEC_{DD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

$$CEER_{DD\_SS\_CF} = \left[\frac{ACC_{DD\_95}}{\left(\frac{AEC_{DD\_95\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_SS\_CF}}{\left(\frac{AEC_{DD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

Where:

$CEER_{SD\_SS}$ and $CEER_{SD\_CF\_SS}$ = combined energy efficiency ratio for a single-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, in Btu/Wh.

$CEER_{DD\_SS}$ and $CEER_{DD\_CF\_SS}$ = combined energy efficiency ratio for a dual-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, in Btu/Wh.

ACC_{SD_95} and ACC_{DD_95} = adjusted cooling capacity of the sample unit, as calculated in section 5.1.2 of this appendix, when tested at Test Conditions 2.D and 2.A, respectively, in Btu/h.

$ACC_{SD\_83\_SS}$ and $ACC_{SD\_83\_SS\_CF}$ = adjusted cooling capacity for a single-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E) without and with cycling losses, respectively, as calculated in section 5.5.4 of this appendix, in Btu/h.

$ACC_{DD\_83\_SS}$ and $ACC_{DD\_83\_SS\_CF}$ = adjusted cooling capacity for a dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition (Test Condition 2.B) without and with cycling losses, respectively, as calculated in section 5.5.4 of this appendix, in Btu/h.

AEC_{SD_Full} = annual energy consumption of the single-duct sample unit, as calculated in section 5.4.2.1 of this appendix, in kWh/year.

$AEC_{DD\_95\_Full}$ = annual energy consumption for the dual-duct sample unit, as calculated in section 5.4.2.1 of this appendix, in kWh/year.

$AEC_{SD\_83\_SS}$ and $AEC_{DD\_83\_SS}$ = annual energy consumption for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, in cooling mode at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B,

respectively), calculated in section 5.5.5 of this appendix, in kWh/year.

AEC_T = total annual energy consumption attributed to all operating modes except cooling for the sample unit, calculated in section 5.3 of this appendix, in kWh/year.

0.750 as defined previously in this section.

0.2 = weighting factor for the 95 °F dry-bulb outdoor temperature operating condition.

0.8 = weighting factor for the 83 °F dry-bulb outdoor temperature operating condition.

5.5.7 *Combined-Duct Variable-Speed Portable Air Conditioner Performance Adjustment Factor.* Calculate the sample unit's performance adjustment factor, F_p, as follows:

For a single-duct unit:

$$F_{p\_SD} = \frac{\left(CEER_{SD\_SS} - CEER_{SD\_SS\_CF}\right)}{CEER_{SD\_SS\_CF}}$$

For a dual-duct unit:

$$F_{p\_DD} = \frac{\left(CEER_{DD\_SS} - CEER_{DD\_SS\_CF}\right)}{CEER_{DD\_SS\_CF}}$$

Where:

$CEER_{SD\_SS}$ and $CEER_{SD\_SS\_CF}$ = combined energy efficiency ratio for a single-duct theoretical comparable single-speed portable air conditioner without and with cycling losses considered, respectively, calculated in section 5.5.6 of this appendix, in Btu/Wh.

$CEER_{DD\_SS}$ and $CEER_{DD\_SS\_CF}$ = combined energy efficiency ratio for a dual-duct theoretical comparable single-speed portable air conditioner without and with cycling losses considered, respectively, calculated in section 5.5.6 of this appendix, in Btu/Wh.

5.5.8 *Single-Duct and Dual-Duct Variable-Speed Portable Air Conditioner Combined Energy Efficiency Ratio.* Calculate the sample unit's final combined energy efficiency ratio, CEER, in Btu/Wh, as follows:

For a single-duct portable air conditioner:

$$CEER_{SD} = CEER_{SD\_UA} \times (1 + F_{p\_SD})$$

For a dual-duct portable air conditioner:

$$CEER_{DD} = CEER_{DD\_UA} \times (1 + F_{p\_DD})$$

Where:

$CEER_{SD}$ and $CEER_{DD}$ = combined energy efficiency ratio for a single-duct and dual-duct sample unit, in Btu/Wh, respectively.

$CEER_{SD\_UA}$ and $CEER_{DD\_UA}$= unadjusted combined energy efficiency ratio for a single-duct and dual-duct sample unit, respectively, calculated in section 5.4.2.1 of this appendix, in Btu/Wh.

F_{p_SD} and F_{p_DD} = single-duct and dual-duct sample unit's performance adjustment factor, respectively, calculated in section 5.5.7 of this appendix.

9. Add appendix CC1 to subpart B of part 430 to read as follows:

Appendix CC1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

Note: Manufacturers must use the results of testing under this appendix to determine compliance with any standards that amend the portable air conditioners standard at § 430.32(cc) with which compliance is required on January 10, 2025. Any representation related to energy also must be made in accordance with the appendix that applies (*i.e.,* appendix CC or this appendix). Manufacturers may use this appendix to certify compliance with any amended standards before the compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for AHAM PAC–1–2022 Draft, ANSI/ASHRAE Standard 37–2009, ANSI/ASHRAE 51, and IEC 62301; however, only enumerated provisions of those documents are applicable to this appendix as follows. Treat ''should'' in IEC 62301 as mandatory.

0.1 AHAM PAC–1–2022 Draft

(a) Section 2 ''Scope,'' as specified in section 1 of this appendix;

(b) Section 4 ''Definitions,'' as specified in sections 2 and 3 of this appendix;

(c) Section 7 ''Tests,'' as specified in sections 3 and 4 of this appendix;

(d) Section 8.1 ''Cooling Mode,'' as specified in section 5 of this appendix;

(e) Section 9.1 ''Duct Heat Transfer,'' as specified in section 5.1 of this appendix;

(f) Section 9.2 ''Infiltration Air Heat Transfer,'' as specified in section 5.1 of this appendix.

0.2 ANSI/ASHRAE Standard 37–2009

(a) Section 5.1 ''Temperature Measuring Instruments,'' as specified in section 3 of this appendix;

(b) Section 5.3 ''Air Differential Pressure and Airflow Measurements,'' as specified in section 3 of this appendix;

(c) Section 5.4 ''Electrical Instruments,'' as specified in section 4 of this appendix;

(d) Section 6.2 ''Nozzle Airflow Measuring Apparatus,'' as specified in section 4 of this appendix;

(e) Section 6.3 ''Nozzles,'' as specified in section 4 of this appendix;

(f) Section 7.3 ''Indoor and Outdoor Air Enthalpy Methods,'' as specified in section 4 of this appendix;

(g) Section 7.7 ''Airflow Rate Measurement,'' as specified in section 4 of this appendix;

(h) Section 8.7 ''Test Procedure for Cooling Capacity Tests,'' as specified in section 4 of this appendix.

(i) Section 9 ''Data to be Recorded,'' as specified in section 4 of this appendix;

(j) Section 10 ''Test Results,'' as specified in section 4 of this appendix;

(k) Section 11.1 ''Symbols Used In Equations,'' as specified in section 4 of this appendix.

0.3 IEC 62301 (Edition 2.0, 2011–01)

(a) Paragraph 5.2 ''Preparation of product,'' as specified in section 3 of this appendix;

(b) Paragraph 4.3.2 ''Supply voltage waveform,'' as specified in section 3 of this appendix;

(c) Paragraph 4.4 ''Power measuring instruments,'' as specified in section 3 of this appendix;

(d) Annex D, ''Determination of Uncertainty of Measurement,'' as specified in section 3 of this appendix;

(e) Paragraph 4.2 ''Test room,'' as specified in section 3 of this appendix;

(f) Paragraph 5.1, ''General,'' Note 1, as specified in section 4 of this appendix;

(g) Paragraph 5.3.2 ''Sampling method,'' as specified in section 4 of this appendix.

0.4 ANSI/ASHRAE 51

(a) Figure 12 and Notes, ''Outlet chamber Setup—Multiple Nozzles in Chamber,'' as specified in section 4 of this appendix.

(0.5) ANSI/ASHRAE 41.1 as specified in section 4 of this appendix.

(0.6) ANSI/ASHRAE 41.7 as specified in section 4 of this appendix.

When there is a conflict, the language of this appendix takes precedence over those documents. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until DOE amends the test procedure. Material is incorporated as it exists on the date of the approval, and any change to the reference to the material will be published in the **Federal Register**.

1. Scope

Establishes test requirements to measure the energy performance of single-duct and dual-duct, and single-speed and variable-speed portable air conditioners in accordance with AHAM PAC–1–2022 Draft, unless otherwise specified.

2. Definitions

Definitions for industry standards, terms, modes, calculations, etc. are in accordance with AHAM PAC–1–2022 Draft.

3. Test Apparatus and General Instructions

Follow requirements and instructions for test conduct and test setup in accordance with AHAM PAC–1–2022 Draft, including references to ASHRAE 37 Sections 5.1 and 5.3, and IEC 62301 Sections 4.3.2, 4.4, and 5.2, and Annex D. If the portable air conditioner has network functions, disable all network functions throughout testing if possible. If an end-user cannot disable a network function or the product's user manual does not provide instruction for disabling a network function, test the unit with that network function in the factory default configuration for the duration of the test.

4. Test Measurement

Follow requirements for test measurement in active and inactive modes of operation in accordance with AHAM PAC–1–2022 Draft, including references to Sections 5.4, 6.2, 6.3, 7.3, 7.7, 8.7, 9, 10, and 11 of ANSI/ASHRAE Standard 37–2009, referring to Figure 12 of ANSI/ASHRAE 51 to determine placement of static pressure taps, and including references to ANSI/ASHRAE 41.1–1986 and ANSI/ASHRAE 41.6–1994. When conducting standby power testing using the sampling method described in Section 5.3.2 of IEC 62301, if the standby mode is cyclic and irregular or unstable, collect 10 cycles worth of data.

5. Calculation of Derived Results From Test Measurements

Perform calculations from test measurements to determine Seasonally Adjusted Cooling Capacity (SACC) and Combined Energy Efficiency Ratio (CEER) in accordance with AHAM PAC–1–2022 Draft, unless otherwise specified in this section.

5.1 *Adjusted Cooling Capacity.* Calculate the adjusted cooling capacities at the 95 °F and 83 °F operating conditions specified below of the sample unit, in Btu/h, according to the following equations.

For a single-duct single-speed unit:

$$ACC_{95} = Capacity_{SD} - Q_{duct\_SD} - Q_{infiltration\_95}$$

$$ACC_{83} = 0.6000 \times (Capacity_{SD} - Q_{duct\_SD} - Q_{infiltration\_95})$$

For a single-duct variable-speed unit:

$$ACC_{95} = Capacity_{SD\_Full} - Q_{duct\_SD\_Full} - Q_{infiltration\_95}$$

$$ACC_{83} = Capacity_{SD\_Low} - Q_{duct\_SD\_Low} - Q_{infiltration\_83\_Low}$$

$$ACC_{83} = Capacity_{SD\_Low} - Q_{duct\_SD\_Low} - Q_{infiltration\_83\_Low}$$

For a dual-duct single-speed unit:

$$ACC_{95} = Capacity_{DD\_95} - Q_{duct\_DD\_95} - Q_{infiltration\_95}$$

$$ACC_{83} = 0.5363 \times (Capacity_{DD\_83} - Q_{duct\_DD\_83} - Q_{infiltration\_83})$$

For a dual-duct variable-speed unit:

$$ACC_{95} = Capacity_{DD\_95\_Full} - Q_{duct\_DD\_95\_Full} - Q_{infiltration\_95}$$

$$ACC_{83} = Capacity_{DD\_83\_Low} - Q_{duct\_DD\_83\_Low} - Q_{infiltration\_83\_Low}$$

Where:

ACC_{95} and ACC_{83} = adjusted cooling capacity of the sample unit, in Btu/h, calculated from testing at:

For a single-duct single-speed unit, test configuration 2A in Table 2 of AHAM PAC–1–2022 Draft.

For a single-duct variable-speed unit, test configurations 2B and 2C in Table 2 of AHAM PAC–1–2022 Draft.

For a dual-duct single-speed unit, test configurations 1A and 1B in Table 2 of AHAM PAC–1–2022 Draft.

For a dual-duct variable-speed unit: test configurations 1C and 1E in Table 2 of AHAM PAC–1–2022 Draft.

$Capacity_{SD}$, $Capacity_{SD\_Full}$, $Capacity_{SD\_Low}$, $Capacity_{DD\_95}$, $Capacity_{DD\_83}$, $Capacity_{DD\_95\_Full}$, and $Capacity_{DD\_83\_Low}$ = cooling capacity, in Btu/h, measured in testing at test configuration 2A, 2B, 2C, 1A, 1B, 1C, and 1E of Table 2 in Section 8.1 of AHAM PAC–1–2022 Draft, respectively.

Q_{duct_SD}, $Q_{duct\_SD\_Full}$, $Q_{duct\_SD\_Low}$, $Q_{duct\_DD\_95}$, $Q_{duct\_DD\_83}$, $Q_{duct\_DD\_95\_Full}$, and $Q_{duct\_DD\_83\_Low}$ = duct heat transfer while operating in cooling mode for each duct configuration, compressor speed (where applicable) and temperature condition (where applicable), calculated in Section 9.1 of AHAM PAC–1–2022 Draft, in Btu/h.

$Q_{infiltration\_95}$, $Q_{infiltration\_83}$, and $Q_{infiltration\_83\_Low}$ = total infiltration air heat transfer in cooling mode, in Btu/h, for each of the following compressor speed and duct configuration combinations:

For a single-duct single-speed unit, use $Q_{infiltration\_95}$ as calculated for a single-duct single-speed unit in Section 9.2 of AHAM PAC–1–2022 Draft.

For a single-duct variable-speed unit, use $Q_{infiltration\_95}$ and $Q_{infiltration\_83\_Low}$ as calculated for a single-duct variable-speed unit in Section 9.2 of AHAM PAC–1–2022 Draft.

For a dual-duct single-speed unit, use $Q_{infiltration\_95}$ and $Q_{infiltration\_83}$ as calculated for a dual-duct single-speed unit in Section 9.2 of AHAM PAC–1–2022 Draft.

For a dual-duct variable-speed unit, use $Q_{infiltration\_95}$ and $Q_{infiltration\_83\_Low}$ as calculated for a dual-duct variable-speed unit in Section 9.2 of AHAM PAC–1–2022 Draft.0.6000 and 0.5363 = empirically-derived load-based capacity adjustment factor for a single-duct and dual-duct single-speed unit, respectively, when operating at test conditions 1B and 2C.

5.2 *Seasonally Adjusted Cooling Capacity.* Calculate the seasonally adjusted cooling capacity for the sample unit, SACC, in Btu/h, according to:

$$SACC = ACC_{95} \times 0.144 + ACC_{83} \times 0.856$$

Where:

ACC_{95} and ACC_{83} = adjusted cooling capacities at the 95 °F and 83 °F outdoor temperature conditions, respectively, in Btu/h, calculated in section 5.1 of this appendix.

0.144 = empirically-derived weighting factor for ACC_{95}.

0.856 = empirically-derived weighting factor for ACC_{83}.

5.3 *Annual Energy Consumption.* Calculate the annual energy consumption in each operating mode, AECm, in kilowatt-hours per year (kWh/year). Use the following annual hours of operation for each mode:

TABLE 1—ANNUAL OPERATING HOURS

Operating mode	Annual operating hours
Cooling Mode Test Configurations 1A, 1C, 2A (95), 2B	164
Cooling Mode Test Configurations 1B, 2A (83)	586
Cooling Mode Test Configuration 1E, 2C	977
Off-Cycle, Single-Speed	391
Off-Cycle, Variable-Speed	0
Total Cooling and Off-cycle Mode	1,141
Inactive or Off Mode	1,844

Calculate total annual energy consumption in all modes according to the following equations:

$$AEC_{ia/om} = P_{ia/om} \times t_{ia/om} \times k$$

For a single-duct single-speed unit:

$$AEC_{95} = P_{SD\_95} \times t_{SD\_95} \times k$$

$$AEC_{83} = \frac{P_{SD\_83} \times t_{SD\_83} \times k}{0.82}$$

For a single-duct variable-speed unit:

$$AEC_{95} = P_{SD\_Full} \times t_{SD\_Full} \times k$$

$$AEC_{83} = P_{SD\_Low} \times t_{SD\_Low} \times k$$

For a dual-duct single-speed unit:

$$AEC_{95} = P_{DD\_95} \times t_{DD\_95} \times k$$

$$AEC_{83} = \frac{P_{DD\_83} \times t_{DD\_83} \times k}{0.82}$$

For a dual-duct variable-speed unit:

$$AEC_{95} = P_{DD\_95\_Full} \times t_{DD\_95\_Full} \times k$$

$$AEC_{83} = P_{DD\_83\_Low} \times t_{DD\_83\_Low} \times k$$

Where:

AEC_{95} and AEC_{83} = total annual energy consumption attributed to all modes representative of either the 95 °F and 83 °F operating condition, respectively, in kWh/year.

P_m = average power in each mode, in watts, as determined in sections 4.1.1 and 4.1.2 of this appendix.

t_m = number of annual operating time in each mode, in hours.

k = 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours.

0.82 = empirically-derived factor representing efficiency losses due to compressor cycling outside of fan operation

m represents the operating mode:

—''DD_95'' and ''DD_83'' correspond to cooling mode in Test Configurations 1A and 1B in Table 2 of AHAM PAC–1–2022 Draft, respectively, for dual-duct single-speed units,

—''DD_95_Full'', ''DD_83_Low'' correspond to cooling mode in Test Configurations 1C and 1E in Table 2 of AHAM PAC–1–2022 Draft, respectively, for dual-duct variable-speed units,

—''SD_95'' corresponds to cooling mode in Test Configuration 2A in Table 2 of AHAM PAC–1–2022 Draft for single-duct single-speed units, for use when calculating AEC at the 95 °F outdoor temperature condition,

—''SD_83'' corresponds to cooling mode in Test Configuration 2A in Table 2 of AHAM PAC–1–2022 Draft for single-duct single-speed units, for use when calculating AEC at the 83 °F outdoor temperature condition

—''SD_Full'' and ''SD_Low'' correspond to cooling mode in Test Configurations 2B and 2C in Table 2 of AHAM PAC–1–2022 Draft, respectively, for single-duct variable-speed units

—''oc'' corresponds to off-cycle,

—''ia/om'' corresponds to inactive or off mode,

5.4 *Annual Cooling and Energy Ratio.* Calculate the annualized energy

efficiency ratio, AEER, in Btu/Wh, according to the following equation:

$$AEER = 0.001 \times \frac{(ACC_{95} \times t_{cm\_95}) + (ACC_{83} \times t_{cm\_83})}{AEC_{95} + AEC_{83} + AEC_{oc} + AEC_{ia/om}}$$

Where:

AEER = the annualized energy efficiency ratio of the sample unit in Btu/Wh.

ACC_{95} and ACC_{83} = adjusted cooling capacity at the 95 °F and 83 °F outdoor temperature conditions, respectively, calculated in section 5.1 of this appendix.

AEC_{95}, AEC_{83}, AEC_{oc}, and $AEC_{ia/om}$ = total annual energy consumption attributed to all modes representative the 95 °F operating condition, the 83 °F operating condition, off-cycle mode, and inactive or off mode respectively, in kWh/year, calculated in section 5.3 of this appendix.

t_{cm_95} = number of annual hours spent in cooling mode at the 95 °F operating condition, t_{DD_95} for dual-duct single-speed units, $t_{DD\_95\_Full}$ for dual-duct variable-speed units, t_{SD_95} for single-duct single-speed units, or t_{SD_Full} for single-duct variable-speed units, defined in section 5.3 of this appendix.

164 = number of annual hours spent in cooling mode at the 95 °F operating condition, as shown in Table 1 of section 5.3 of this appendix.

t_{cm_83} = number of annual hours spent in cooling mode at the 83 °F operating condition, t_{DD_83} for dual-duct single-speed units, $t_{DD\_83\_Low}$ for dual-duct variable-speed units, t_{SD_83} for single-duct single-speed units, or t_{SD_Low} for single-duct variable-speed units, defined in section 5.3 of this appendix.

0.001 = kWh/Wh conversion factor for watt-hours to kilowatt-hours.

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Part III

Department of Agriculture

Agricultural Marketing Service

9 CFR Part 201

Transparency in Poultry Grower Contracting and Tournaments; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–FTPP–21–0044]

RIN 0581–AE03

Transparency in Poultry Grower Contracting and Tournaments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is soliciting comments on proposed revisions to the regulations under the Packers and Stockyards Act, 1921. The proposal would revise the list of disclosures and information live poultry dealers must furnish to poultry growers and sellers with whom dealers make poultry growing arrangements. The proposal would establish additional disclosure requirements in connection with the use of poultry grower ranking systems by live poultry dealers to determine settlement payments for poultry growers. The proposals are intended to promote transparency in poultry production contracting and to give poultry growers and prospective poultry growers relevant information with which to make business decisions.

DATES: Comments must be received by August 8, 2022. Comments on the information collection aspects of this proposed rule must be received by August 8, 2022.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690–4355; or email: *s.brett.offutt@usda.gov*.

SUPPLEMENTARY INFORMATION: At the beginning of the 20th century, a small number of meat packing companies dominated the industry and engaged in practices that were deemed anticompetitive and harmful to producers. In response, Congress enacted the Packers and Stockyards Act, 1921 (Act), 7 U.S.C. 181 *et seq.,* which seeks to promote fairness, reasonableness, and transparency in the marketplace by prohibiting practices that are contrary to these goals. In the 100 years since the Act went into effect, business practices changed significantly, particularly in the poultry industry, for which provisions were added to the law in 1935.

Within the last 40 years, the poultry industry has become increasingly concentrated, both horizontally and vertically, with the use of the poultry grower ranking or ''tournament'' pay system increasingly predominant throughout. With vertical integration, live poultry dealers frequently own or control all segments of the production process except growout, where poultry growers raise young poultry to harvest size under poultry growing arrangements (contracts). Under this system, poultry grower investment is substantial and growing, yet they may face a market dominated by only one or two live poultry dealers for which they can grow.

We will explain in this document how poultry growers and prospective poultry growers may find themselves unable to negotiate for (1) access to critical information needed to properly assess farm revenue streams, and (2) information related to the distribution of inputs affecting performance among tournament participants. The inability to secure this information may expose growers to various risks of deception that could be reduced or eliminated with the provision of the information. Additionally, we will establish that live poultry dealers possess this information and are able to provide it to growers.

Most chicken growers and some turkey growers raise poultry under a growing arrangement commonly known as a tournament system. Under this system, live poultry dealers use a relative performance or grower ranking system for settlement purposes, *i.e.,* to determine grower payment among a group of competing growers. We will explain in this document how poultry growers in tournament systems may find themselves competing for payment without access to information that would allow them to optimize poultry production and payment or manage the risks related thereto.

Over the past several years, the Department of Agriculture (USDA) has received numerous complaints from poultry growers about poultry growing contracting in general and tournament systems particularly. While the complaints cover a range of concerns, a central concern is the gap between expected earnings and the ability to actually achieve those outcomes through reasonable efforts by the grower. Accordingly, AMS is proposing rules that would increase transparency in all poultry growing contracting, including tournament systems, targeted at key inflection points for growers—at the time of contracting and housing upgrades, and at the provision of inputs during tournaments. In this rulemaking, we are seeking to utilize transparency to secure a more level playing field for growers and enable a marketplace with fairer contracts and the fairer operation of those contracts under the contract production model.

Outline of the Notice of Proposed Rulemaking

I. Background

Among other things, sec. 202(a) of the Act (7 U.S.C. 192) prohibits live poultry dealers, with respect to live poultry, from engaging in or using deceptive practices or devices. Further, sec. 410(a) of the Act (7 U.S.C. 228b–1) requires live poultry dealers obtaining live poultry under a poultry growing arrangement to make full payment for such poultry to the poultry grower from whom the dealer obtains the poultry on a timely basis. Sec. 407(a) of the Act authorizes the Secretary of Agriculture (Secretary) to make rules and regulations as necessary to carry out the provisions of the Act. Such regulations are found, in part, in the Code of Federal Regulations (CFR) at 9 CFR part 201.

This proposed rule builds on existing disclosure concepts under the Packers and Stockyards Act in 7 U.S.C 197(a) through (c) and 9 CFR 201.100. The current disclosure framework has improved transparency in poultry contracting. However, the modern poultry industry now requires larger, and growing, capital investments, and growers need additional information with which to make business decisions. Growers have consistently expressed concerns about the inadequacy of some production contract terms and the discretionary functions exercised by live poultry dealers under those contracts, which they assert have exposed them to deception and other abuses. AMS agrees many production contracts do not provide enough information for growers to assess their expected value, and important information relating to live poultry dealer obligations and practices should be better illuminated. The purpose of this proposed rule is to provide growers with this type of relevant information. This proposal reflects AMS's desire to build on existing Packers and Stockyard Act disclosure concepts to ensure poultry growers have the tools and information they need to be successful in their pursuits.

Disclosure has been a staple [1] of the Act's regulatory scheme and is required under the regulations. Moreover, disclosure for the primary purpose of providing adequate information necessary for parties in asymmetrical business relationships to make informed business decisions and risk assessments has long been the subject of Federal Trade Commission (FTC) regulation under section 5 of the FTC Act, which, like section 202(a) of the Packers and Stockyards Act, addresses deception. For example, the Federal Trade Commission's Franchise Rule requires the franchising industry to provide prospective purchasers of franchises information necessary to weigh the risks and benefits of an investment by providing required disclosures in a uniform format.[2] This proposed rule is designed to similarly provide current and prospective poultry growers with sufficient information prior to entering into an agreement.

This proposed rule would revise § 201.100 of the regulations by adding certain items to the list of required disclosures a live poultry dealer must make to poultry growers and prospective poultry growers in connection with poultry growing arrangements. The proposal would further require live poultry dealers to specify additional terms in poultry growing contracts. AMS intends these proposed revisions to improve transparency and forestall deception in the use of poultry growing arrangements.

This proposed rule would also add a new § 201.214 to the regulations that would require live poultry dealers to provide certain information to poultry growers in tournament pay systems about integrator-controlled inputs related to the poultry flocks growers receive for growout. The proposed provisions also would add a new level of transparency to grower ranking sheets, ensuring that poultry growers can evaluate the distribution of inputs among all tournament participants and better assess the effect on grower payment. AMS intends the proposed requirements to provide greater transparency and forestall deception in the use of poultry grower ranking systems.

Finally, this proposed rule would make conforming changes to the regulations by adding to the list of definitions in § 201.2 to define terms used in revised § 201.100 and new § 201.214. Specifics of each of these proposals are provided later in this document.

A. Previous Rulemaking

USDA has made previous attempts to address grower concerns arising from the use of poultry growing arrangements and poultry grower ranking systems. Two such attempts were made by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA), which previously administered the provisions of the Act. GIPSA issued a proposed rule in 2010 (75 FR 35338; June 22, 2010) that would have, among other things, identified as unfair, unjustly discriminatory, and deceptive specific practices related to poultry contracting. The 2010 proposed rule would have required live poultry dealers—when paying growers under poultry grower ranking systems—to pay growers the same base pay for growing the same type and kind of poultry. The 2010 proposed rule further would have required that tournament system growers be settled in groups with other growers with similar house types. After considering comments on the 2010 proposal, GIPSA elected not to finalize certain provisions related to poultry contracting, so it modified the original proposal and published a second proposed rule in 2016 (81 FR 92723; December 20, 2016). The 2016 proposed rule would have identified criteria that the Secretary could consider when determining whether a live poultry dealer's use of a system for ranking poultry growers for settlement purposes is unfair, unjustly discriminatory, or deceptive or gives an undue or unreasonable preference, advantage, prejudice, or disadvantage. The proposed amendments would also have clarified that, absent demonstration of a legitimate business justification, failing to use a poultry grower ranking system in a fair manner after applying the identified criteria is unfair, unjustly discriminatory, or deceptive and a violation of the Packers and Stockyards Act, regardless of whether it harms or is likely to harm competition. The original 60-day public comment period for the 2016 proposed rule was extended an additional 30 days, consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled ''Regulatory Freeze Pending Review.''

In November 2017, responsibility for GIPSA activities was transferred to AMS, which now administers the Act and regulations, and which has assumed responsibility for this rulemaking. In its review of public comments on the 2016 proposed rule, AMS found that many of

[1] For example, see current 9 CFR 201.100(a)—Poultry growing arrangement, timing of disclosure.

[2] 16 CFR part 436; 84 FR 9051 (May 2019).

the comments—both supportive and opposed—identified reasonable concerns regarding the proposed regulation's structure and language. AMS recognized further that the proposed rule may not have adequately addressed information imbalances between contracting parties. AMS determined that the 2016 proposed rule was unable to address many of the commenters' concerns without material changes and elected to withdraw the 2016 proposed rule and develop a new regulatory proposal pertaining to information imbalances in poultry grower contracting and grower ranking systems. The 2016 proposed rule was withdrawn on November 4, 2021 (86 FR 60779).

Executive Order 14036—Promoting Competition in the American Economy (86 FR 36987; July 9, 2021) directs the Secretary of Agriculture to address unfair treatment of farmers and improve conditions of competition in their markets by considering rulemaking to address, among other things, certain practices related to poultry grower ranking systems. AMS has considered that direction in undertaking this rulemaking. While the discussions in this rule focus largely on broiler (chicken) production, the industry concepts presented—and the proposed regulations—are intended to apply to the commercial production of all poultry species where the proposed regulatory requirements are relevant. The bulk of available research and information currently available to AMS specifically addresses broiler production. Nevertheless, AMS believes that body of research and information is relevant to other poultry species, given the absence of material differences in their commercial production.

B. Relevant Terms and Definitions

For this preamble, section 2(a) of the Act (7 U.S.C. 182) provides various useful definitions: A *live poultry dealer* is any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another. A *poultry grower* is any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such a person or by another, but not an employee of the owner of such poultry. A *poultry growing arrangement* is any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter.

C. Industry Background

In this section, we explain how high levels of vertical integration in U.S. commercial poultry production have influenced the poultry production contracting process and the production contracts themselves. We also illustrate how the effects of market concentration limit poultry growers' options in relation to dealers with whom they can contract to produce poultry. When they have few or no alternative options, growers lack the bargaining power to negotiate for, among other things, better information symmetry, which gives rise to the risk of deception at a series of points in the relationship. We also describe some of the factors that affect grower payments as they relate to the information imbalances we are proposing to remedy.

1. Market Structure

Some live poultry dealer firms own and manage local ''complexes'' of integrated operations that include hatcheries, feed mills, transportation systems, and processing facilities, and they contract with individual growers within a local region to raise birds for meat and hatchery eggs.[3] These live poultry dealers that own and manage vertically integrated operations are referred to in the industry as ''integrators.'' Other industries may follow this model to some extent (for example, some firms manage multiple aspects of hog production), but it is used in almost all broiler chicken production[4] and is fairly common in turkey production.

Through vertical integration, integrators control the complete supply chain from poultry genetics to slaughter. Integrators also own most of the inputs and manage the operation of the supply chain. However, integrators outsource the function and major costs of raising the poultry to broiler growers, while controlling much of that process through their production contracts. Through the poultry growing arrangement, broiler growers provide the growout facilities and the equipment, labor, and management associated with those facilities. Broiler growers are responsible for utilities, fuel, maintenance, and repair. The growers' tasks include ensuring the equipment functions properly and the environment inside the house is satisfactory at all times. The grower is responsible for waste removal and disposal of dead birds. These activities are subject to significant direction and control by the integrator or integratory subsidiary. Integrators exert significant power over contract poultry grower operations through individual production contracts, payment systems, and control of certain production variables, such as poultry breeds, breeder stock age, frequency of flock placements, stocking density, length of the growout periods (the number of days birds are housed on the grower's farm), feed quality and delivery, and the type and administration of veterinary medicines.

Market consolidation combined with certain natural factors (such as the fragility of birds limiting their transport), many integrators operate as monopsonists[5] or oligopsonists[6] in their relevant regional market. Some research[7] shows a correlation in local markets between the number of available integrators and grower payments, with payments shrinking as the number of integrators decreases. In local markets, the lack of alternative integrators coupled with integrator control and discretion over production contracts leaves growers with little market power to demand reasonable contract transparency. As discussed in the following section, growers' plights are aggravated further by the substantial investment required to enter the poultry business.

2. Poultry Housing Construction and Grower Debt

Poultry growout operations require significant financial investments on the part of poultry growers, who typically provide the facilities (poultry housing and necessary equipment), utilities (electricity, gas, and water), manure management, compliance with environmental regulations, labor, and day-to-day management of the growing poultry. One of the costliest investments

[3] MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126,* U.S. Department of Agriculture, Economic Research Service, June 2014.

[4] In a 2011 survey of 17 sample states, 97% of broiler production was done by contract growers. MacDonald (June 2014) Op. Cit.

[5] Merriam-Webster online dictionary: A monopsonist is one who is a single buyer for a product or service of many sellers. *https://www.merriam-webster.com/dictionary/monopsonist*; accessed 3/8/2022.

[6] Merriam-Webster online dictionary: Oligopsony is a market situation in which each of a few buyers exerts a disproportionate influence on the market. An oligopsonist is a member of an oligopsonistic industry or market. *https://www.merriam-webster.com/dictionary/oligopsonist*; accessed 3/8/2022.

[7] MacDonald, James M., and Nigel Key. ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey''. *Journal of Agricultural and Applied Economics* 44 (November 2012): 477–490. See also, MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126,* U.S. Department of Agriculture, Economic Research Service, (June 2014): 29–30.

is in poultry housing and equipment. A poultry growing contract includes the live poultry dealer's specifications for the poultry housing and equipment the growers are required to supply under the contract. At times, the live poultry dealer may encourage, incentivize, or even require a poultry grower to upgrade existing housing or equipment in order to renew or revise an existing contract.

A 2011 study estimated a cost of $924,000 for site preparation, construction, and necessary equipment for four 25,000-square-foot poultry houses (or $231,000 per house) in rural Georgia at that time, independent of the cost for the land.[8] Costs for establishing poultry houses have increased substantially since 2011, due to the advancement of new technologies in poultry housing and the increased cost of materials. AMS estimates current construction costs at $350,000 to $400,000 per poultry house.[9]

Poultry growers can incur considerable debt to make the investments necessary for poultry production. Most new broiler housing is debt-financed. According to MacDonald, U.S. contract poultry growers' total debt amounted to $5.2 billion, or 22 percent of the total value of their assets, in 2011.[10] The research cited here found that debt loads—and exposure to liquidity risks, should flock placements and revenues fall—are closely related to the age of the operation, with newer farmers carrying greater debt relative to the value of farm assets. Farmers with fewer than six years of experience in broiler production carried debt equal to 51 percent of assets, on average, and one quarter of those farmers carried debt equal to at least 77 percent of assets.

The weight of poultry grower debt load can be exacerbated by three additional factors: (1) The length, in terms of time, of a poultry growing arrangement is rarely long enough to cover the grower's debt repayment period, and can be as short as one flock; (2) growers may be encouraged or required by live poultry dealers to invest in facility upgrades, which may lead to additional debt; and (3) poultry housing is a specific-use asset with little salvage or repurpose value.[11] In other words, the grower is unlikely to be able to use or sell the facilities for a different purpose should the poultry growing contract be terminated.

Grower debt problems are exacerbated by the limited number of live poultry dealers in most localities and by dealer-specific requirements that inhibit grower movement between dealers. For example, a grower who currently produces smaller birds for one live poultry dealer may desire to move to a different dealer that wants larger birds. The grower could be required to upgrade their poultry growing facility to include more cooling capacity in order to accommodate larger birds. However, such upgrades may not be economically feasible for the grower, so the grower stays with the current live poultry dealer.

3. Poultry Grower Compensation

Poultry growers are compensated on the growout of individual flocks. Most growers are paid on the basis of the weight of the finished poultry, adjusted by a feed conversion factor. Live poultry dealers calculate feed conversion by dividing the total pounds of poultry feed used during growout by the total pounds of finished poultry at the end of growout. The feed conversion factor is expressed as a ratio of pounds of feed to pounds of finished poultry. For example, a feed conversion ratio of 1.93 means an average of 1.93 pounds of poultry feed were needed to produce each pound of finished poultry. The live poultry dealer uses the feed conversion factor to measure poultry grower efficiency. Specific poultry growing arrangements may provide for a variety of nuanced cost and payment formulas, and may include supplemental fuel and square footage bonus payments. However, the greatest portion of grower compensation is determined according to the following simplified equation:

Farm Weight (in pounds) × Feed Conversion (in dollars) = Grower Pay

Under a typical scenario, birds are caught at the end of the growout period, loaded onto trucks, and delivered to the processing facility, where they are weighed. The sum of all weights of all loads originating from a grower's farm is the ''farm weight.'' ''Feed conversion,'' as described above, is determined by formula and converted to a monetary value.

Alternatively, growers may receive partial or full compensation based on their growing facility square footage. For instance, some growers may receive square footage supplements as incentives to offset new costs for housing. Or in rare cases, compensation is based strictly on facility square footage. In either of these situations, square footage compensation is based on the size of the poultry growing facility, regardless of the number or weight of birds produced.

Growers seeking to maximize farm returns would naturally prefer to keep their facilities in a near-constant state of production, receiving as many individual flock placements as possible over a relevant time period, with minimal idle or lay-out time between flocks.[12] If they are paid on a farm-weight basis, growers seeking to maximize individual flock returns will naturally strive to maximize farm weight.

4. Integrator Inputs

Two important factors affecting poultry grower compensation are the timing and quality of certain inputs controlled by the live poultry dealer. In this section we describe those inputs and explain how their timing and variation can impact farm weight and feed conversion, and thus grower payments.

a. Stocking Density and Flock Placement Frequency

Often expressed as a ratio of birds per square foot, or pounds (target weight of poultry at harvest) per square foot, stocking density reflects the number of birds placed on a farm. The target weight informs a range of stocking densities that may result in optimal bird performance. Integrators set both stocking density and target weight.

For example, one approach[13] recommends the following range of stocking densities:

[8] Cunningham, Dan L., and Brian D. Fairchild. ''Broiler Production Systems in Georgia Costs and Returns Analysis 2011–2012.'' *UGA Cooperative Extension Bulletin* 1240 (November 2011), University of Georgia Cooperative Extension.

[9] See, for example, Cunningham and Fairchild (November 2011) Op. Cit.; Simpson, Eugene, Joseph Hess and Paul Brown, *Economic Impact of a New Broiler House in Alabama,* Alabama A&M & Auburn Universities Extension, March 1, 2019 (estimating a $479,160 construction cost for a 39,600 square foot broiler house).

[10] MacDonald (June 2014) Op. Cit.

[11] Poultry growing facilities are often characterized by certain expensive attributes, such as temperature and other habitat control systems. A fully equipped poultry growing facility repurposed, for example, as a hay barn or other storage is unlikely to generate the revenue necessary to meet a grower's $400,000 mortgage obligation. Nor is repurposing it for an alternative livestock usage, such as hogs or dairy cows, possible, at least without retrofitting that would essentially demolish the growout facility. The grower's return on investment is tied to using the facility as intended.

[12] Growers views and practices may vary with respect to their preferred times between flocks for the purposes of appropriate maintenance and sanitation activities.

[13] National Chicken Council. *National Chicken Council Animal Welfare Guidelines and Audit Checklist For Broilers,* pp. 11–12, (September 2020). *https://www.nationalchickencouncil.org/wp-content/uploads/2021/02/NCC-Animal-Welfare-Guidelines_Broilers_Sept2020.pdf*; accessed 1/3/2022.

Other approaches include those set forth by the Better Chicken Commitment, which will set a

Continued

Maximum bird weight range	Maximum stocking density
Below 4.5 lbs. liveweight.	6.5 pounds per sq. ft
4.5 to 5.5 lbs. liveweight.	7.5 pounds per sq. ft.
5.6 to 7.5 lbs. liveweight.	8.5 pounds per sq. ft.
More than 7.5 lbs. liveweight.	9.0 pounds per sq. ft.

Stocking density has critical implications for poultry growers because—up to a certain point—farm weight can increase as the number of birds per facility square foot increases. Because stocking densities can impact payments based on farm weights, growers desire the maximum stocking density that does not result in performance impairments.[14] Integrators dictate the stocking density of each placement, and generally prefer maximum stocking densities to maximize production volume. Of course, complex-level supply factors may affect integrator decision making, and integrators may not place as many birds with growers as growers could accommodate and would like for maximum growout efficiency. Consumer, environmental, and animal welfare factors may also affect stocking density decisions by integrators. However, being able to anticipate the minimum size of flocks that will be placed for growout on their farms each year allows growers to make appropriate farm management and financial decisions. This is challenging because many poultry growing arrangements do not specify the minimum stocking density of flocks that will be placed with the grower.

Obviously, maximum efficiency is also achieved when a grower's facility is in production for as many days as possible during the year. Depending on the term of the poultry growing arrangement between the live poultry dealer and the poultry grower, the dealer may schedule the placement of one or more flocks at the grower's facility over the course of a year, with gaps (lay-out or idle time) for necessary cleanup and maintenance between placements. Being able to anticipate the number of flocks that will be placed for growout on their farms each year allows growers to make appropriate farm management and financial decisions. However, many poultry growing arrangements do not specify the number of flocks per year that will be placed with the grower.

b. Breed

Modern chicken breeds are the result years of evolution by means of natural selection, to which artificial selection for commercial objectives has been applied. At the highest level, the pure-breeding lines are owned and controlled by the breeding companies. These lines are subjected to full scale selection programs; it is from these lines that all of a company's broiler products have descended.[15] The great-grandparent stocks, which are produced from the pure-bred lines, are subjected to mass selection for selected traits. Specific grandparent lines are cross bred to produce the parent stock, which are then distributed to breeder growers. The final step of the intensive artificial selection is the crossbreeding of these hybrids (parent stock) to give rise to the production broilers, which are raised for slaughter by contract growers.

Growth rate has consistently been the prime selection trait since the 1950s, with more recent emphasis placed on the yield and other attributes of breast meat, limiting mortality, and feed use efficiency.[16] [17] Much progress has been made in artificial selection technologies in order to increase growth rate and feed use efficiency. In the production of broilers, different breeds may be used within each target weight category. Breeds with higher and faster growth rates may result in heavier farm weights, with the inverse also being true.

To illustrate, the following comparison uses information from the breed performance and nutrition guides published by the companies themselves.[18]

	Breed		
	Cobb 500	Cobb 700	Ross 308/ 308FF
42nd Day:			
Weight:	7.23	6.28	6.914
Cumulative Feed Conversion Rate:	1.555	1.597	1.596
56th Day:			
Weight:	10.23	9.07	10.115
Cumulative Feed Conversion Rate:	1.842	1.849	1.914

c. Gender

The gender of poultry placed on a grower's farm facility may impact the flock's growth rate and final farm weight, and thus grower payment. Differences between the growth rates of male and female broilers have been reported by many researchers. Under similar management conditions, males grow faster and achieve marketable weight earlier than females. According to Burke and Sharp,[19] the mean body weight of a male embryo was significantly greater than that of a female at 11, 13, and 18 days of incubation. Male broilers have been reported to grow faster and heavier than females under various rearing conditions. Growth rate reflects metabolic activity, which is strongly influenced by sex, age, nutritional status, and homogeneity. It also has been reported that male chickens showed better performance than females in terms of more weight gain.[20] The majority of integrators use ''straight-run'' birds to supply farms. Straight-run

maximum stocking density of 6.0 lbs./sq. foot starting in 2024, available at *https://betterchickencommitment.com/policy/* (last accessed March 2022).

[14] Dozier III, W.A., et al. ''Stocking Density Effects on Growth Performance and Processing Yields of Heavy Broilers,'' *Poultry Science* 84 (2005): 1332–1338; Puron, Diego et al. ''Broiler performance at different stocking densities.'' *Journal of Applied Poultry Research* 4.1:55–60 (1995).

[15] Muir, W.M. and SE Aggrey. *Poultry Genetics, Breeding, and BioTechnology* (2003).

[16] Muir and Aggrey (2003) Op. Cit.

[17] Laughlin, Ken, ''The Evolution of Genetics, Breeding, and Production. *Temperton Fellowship Report* 15 (2007).

[18] See: Cobb500™ Broiler Performance & Nutrition Supplement (2022), Cobb-Vantress; Cobb700™ Broiler Supplement, Cobb-Vantress, 2022; Ross 308/Ross 308FF Broiler Performance Objectives 2019, Aviagen Ross, *http://eu.aviagen.com/tech-center/download/1339/Ross308-308FF-BroilerPO2019-EN.pdf,* accessed March 25, 2022.

[19] Burke, William and Peter J. Sharp. ''Sex Differences in Body Weight of Chicken Embryos.'' *Poultry Science* 68.6 (1989): 805–810.

[20] Beg, Mah, et al. *Effects of Separate Sex Growing on Performance and Metabolic Disorders of Broilers.* Diss. Faculty of Animal Science and Veterinary Medicine, Sher-e-Bangla Agricultural University, Dhaka, Bangladesh, 2016.

birds are not sexed and are randomly grouped for growout.

d. Breeder Flock Age

Breeder facilities are populated with select poultry breeds whose purpose is to produce eggs and ultimately chicks that will go into broiler production. The age of breeder flocks may also influence the size and quality of eggs and chicks, bird mortality, and feed conversion, and ultimately the weight of poultry at harvest and thus grower payments. Older hens lay larger eggs that hatch into larger chicks,[21] [22] [23] and egg weight and hatching weight of chicks are correlated with market age weight.[24] [25] Small chicks from young hens have higher mortality after placement and reach market weight at a later age, thus theoretically requiring more time in growout and more feed to achieve market weight.

USDA research [26] indicates breeder facility flocks are typically populated and depopulated on an all-in and all-out basis. That is, the majority of birds in each breeder flock are all the same age. Each breeder flock is entirely depopulated (slaughtered) when it reaches a certain age where egg and progeny quality diminish.

Composed of a high female-to-male ratio, a typical broiler breeder flock's productive life cycle ranges from 21 weeks to 65 weeks. Studies suggest that broiler offspring from hens between 35 and 51 weeks of age perform best at different periods during growout.[27] However, research results concerning feed efficiency and weights of broilers at market age have been mixed. Feed efficiency has been shown to be positively,[28] negatively,[29] or not [30] correlated to weight of broilers at market age. Even with the benefit of static growth rates, poultry grown from smaller chicks are unlikely to match the weight of poultry grown from chicks of more mature breeder flocks in identical time frames.

e. Breeder Flock Health

Various diseases [31] and conditions can adversely affect egg production and quality either directly, by affecting the reproductive system, or indirectly, by affecting the overall health of the bird. According to Spackman,[32] many of the diseases originating in breeder flocks can result in suboptimal offspring performance.

The progeny flocks from impaired breeder flocks may be associated with higher mortality, higher morbidity, and decreased growth rates, resulting in decreased farm weight or lower feed conversion, which impact grower payment. Disease outbreaks can generally be traced to an individual breeder farm, but growers have no control or knowledge regarding the source of young poultry placed at their facilities for growout.

f. Feed Disruptions

Poultry diets are formulated by integrators to optimize bird weight. Integrators are responsible for ensuring feed is consistently delivered to growout facilities. However, feed disruptions—where poultry go without feed for a certain length of time—may occur for any number of reasons, such as feed mill power outages, ingredient supply shortages, or transportation problems, and they may result in suboptimal poultry weight gain. A study by Dozier and others [33] indicated that broiler body weights decreased when feed was removed. Depending upon the timing and duration of a feed outage, a broiler may be able to recoup any weight loss. Regardless of their cause, feed disruptions have the potential to affect bird weights, result in less farm weight, and affect grower payments.

g. Medications

A live poultry dealer may find it necessary to supply one or more flocks with veterinary medicines or supplements during flock growout. Such treatments may be necessary to mitigate disease within a single poultry house or an entire flock, or to boost the performance of suboptimal progeny from impaired breeder flocks, as described above. These treatments may affect the flock's growth rate or mortality and, therefore, grower payments.

II. Poultry Growing Arrangements

In this section, we explain the operation of poultry growing arrangements in general, as well as some of the risks growers face in connection with those arrangements. We also summarize comments we've received from growers expressing their concerns about contracting with live poultry dealers to produce poultry.

A. Incomplete Contracts

As explained earlier in this document, a poultry growing arrangement or production contract reflects the arrangement between a live poultry dealer and a poultry grower, under which the grower is compensated for raising live poultry for delivery to the dealer for slaughter. Such a contract may be viewed as complete if the terms include the substantive legal, practical, and economic promises, obligations, and contingencies needed to operate in a poultry growing arrangement. Additionally, those terms should be verifiable by a third-party and legally enforceable. Incomplete contracts may arise when practically important terms do not meet those conditions. Incomplete contracts may magnify risks with respect to the performance of the contractual counterparty and lead to other potential inefficiencies.[34] In particular, at least one party may have

[21] Washburn, K.W., and R.A. Guill. ''Relationship of Embryo Weight as a Percent of Egg Weight to Efficiency of Feed Utilization in the Hatched Chick.'' *Poultry Science* 53.2 (1974): 766–769.

[22] Weatherup, S.T.C., and W.H. Foster. ''A Description of the Curve Relating Egg Weight and Age of Hen.'' *British Poultry Science* 21.6 (1980): 511–519.

[23] Wilson, H.R. ''Interrelationships of Egg Size, Chick Size, Posthatching Growth and Hatchability.'' *World's Poultry Science Journal* 47.1 (1991): 5–20.

[24] Goodwin, K. ''Effect of Hatching Egg Size and Chick Size Upon Subsequent Growth Rate in Chickens.'' *Poultry Science* 40 (1961): 1408–1409.

[25] Morris, R.H., D.F. Hessels, and R.J. Bishop. ''The Relationship Between Hatching Egg Weight and Subsequent Performance of Broiler Chickens.'' *British Poultry Science* 9.4 (1968): 305–315.

[26] Video-conference interview with Joseph L. Purswell, Ph.D., PE, Agricultural Engineer, Dr. Katie Elliot, Hatchery Research Scientist, Dr. Klint McCafferty, Nutrition Research Scientist, Agricultural Research Service, U.S. Department of Agriculture (Sept. 2, 2021).

[27] Peebles, E. David, et al. ''Effects of Breeder Age and Dietary Fat on Subsequent Broiler Performance. 1. Growth, Mortality, and Feed Conversion.'' *Poultry Science* 78.4 (1999): 505–511.

AMS notes additionally that research in this and related areas has limitations. It is older and results are mixed. AMS is concerned that publically available research has stagnated, despite the introduction of new breed strains in the intervening years. Because integrators now own the genetics companies, AMS has additional concerns that research has, in effect, been privatized, creating informational asymmeteries. Based on regulatory experience and on public comments, growers believe these factors affect performance, highlight its value to growers from disclosure.

[28] O'Neill, J.B. ''Relationship of Chick Size to Egg Size and its Effect Upon Growth and Mortality.'' *Poultry Science* 29 (1950): 774.

[29] Wyatt, C.L., W.D. Weaver Jr, and W.L. Beane. ''Influence of Egg Size, Eggshell Quality, and Posthatch Holding Time on Broiler Performance.'' *Poultry Science* 64.11 (1985): 2049–2055.

[30] Guill, R.A., and K.W. Washburn. ''Genetic Changes in Efficiency of Feed Utilization of Chicks Maintaining Body Weight Constant.'' *Poultry Science* 53.3 (1974): 1146–1154.

[31] Examples include: Bacterial (pullorum and gallinarum), Mycoplasma, and Avian encephalomyelitis (AE).

[32] Wells, R.G., and C.G. Belyawin. ''Egg quality-current problems and recent advances.'' *Poultry science symposium series*. No. 636.513 W4. 1987. (citing Spackman, D. ''The Effects of Disease on Egg Quality.''

[33] Dozier III, W.A., et al. ''Effects of Early Skip-A-Day Feed Removal on Broiler Live Performance and Carcass Yield.'' *Journal of Applied Poultry Research* 11.3 (2002): 297–303.

[34] Wu, S. 2014. ''Adapting Contract Theory to Fit Contract Farming''. *American Journal of Agricultural Economics,* Volume 96, Issue 5 (October 2014): 1241–1256.

discretionary latitude to deviate from expectations.[35] For example, poultry production contracts often do not guarantee the number of flocks a grower will receive, even under long-term contracts, although this is a critical datapoint for understanding the value of the contract to the grower.[36] The following sections will highlight areas and terms where AMS believes typical poultry growing arrangements are deficient or incomplete from an economic or operational standpoint, inhibiting growers' ability to properly assess the expected value of the contract.

B. Market Power and Risks to Growers

Live poultry dealers often operate as monopsonists [37] or oligopsonists [38] in a local market. According to MacDonald and Key,[39] about one quarter of contract growers reported that there was just one live poultry dealer in their area; another quarter reported two; another quarter reported three; and the rest reported four or more. Owing to their greater negotiating power than that of the poultry growers with whom they contract, live poultry dealers set the terms of the contracts. Consequently, most poultry growers have little or no influence over the frequency of individual flock placements they receive over any particular time period. A growout period is based on the target weight of finished poultry, as determined by the live poultry dealer. The amount of time between flocks is also decided by the dealer.

Grower payments are also influenced by live poultry dealer market power. In the study cited above, grower payments (per pound, controlling for bird size) were lower in markets with fewer dealers: going from four integrators to one lowered grower payments by eight percent (8%). This imbalance of negotiating power also exposes poultry growers to other risks.

For example, the considerable expense associated with building, maintaining, and upgrading poultry growing facilities places growers at financial risk if they are unable to realistically predict future income under a poultry growing arrangement and meet their financial obligations. Growers typically make investments in long-term assets—poultry houses that can last 20 years or more, and they typically take on long-term liabilities, in the form of 15-year mortgages, to finance those assets. However, live poultry dealers write production contracts for substantially shorter terms, with contract durations ranging from a few weeks (the time needed to raise one flock) to five years. Substantial disparities exist between the periods of time covered by the contracts and the mortgages on poultry housing, creating uncertainty around whether growers will be able to repay their debt and recoup their investments, and introducing ''hold-up'' risk problems.

Hold-up is the risk growers face at the time of contract renewal when live poultry dealers make contract renewal dependent on further grower investments not disclosed at the time of the original agreements.[40] This is of particular concern in production contracts because the capital requirements related to growing poultry are significant and highly specialized (that is, they have little value outside of growing poultry). As a result, growers entering the market are tied to growing poultry to pay off the financing of the capital investment. Growers have reported that they must accept unfavorable contract terms because they are tied to production to pay off lenders and they have few, if any, alternative dealers with whom they can contract. Long term, this behavior may result in underinvestment in broiler production. The hold-up problem is a manifestation of both market power and incomplete information.

C. Poultry Grower Earnings and Returns on Equity

Poultry growing is an intensive capital investment endeavor where returns can be unstable and fail to meet reasonable grower expectations. Grower capital investment is substantial, and contract payments received by U.S. poultry growers vary widely. Lack of transparency in returns to grower investment can create underinvestment and overinvestment problems. In 2011 data drawn from a nationally representative sample of growers, the mean payment received by contract growers was 5.77 cents per pound of farm weight. However, 10 percent of growers earned at least 7.02 cents per pound, while 10 percent earned less than 4.32 cents per pound.[41] The sample data ranged across all growers and all contract types, but research has also shown that payments can range widely within specific contract types and within individual grower pools, creating revenue uncertainty for growers.[42]

Perhaps even more concerning than the range of grower contract payments are the low returns on equity for poultry operations. According to USDA's Economic Research Service (ERS),[43] a special survey conducted in 2011 showed average returns on equity were negative for operations with one to two poultry houses, and increased with the size of the operation to a maximum of 2.7 percent among operations with six or more houses. These figures were well below rates of return on equity reported for manufacturing, mining, and trade corporations in the Quarterly Financial Reports of the U.S. Census Bureau for the same period. They were also below average rates of return on equity for large and midsize U.S. farms.

Growers must be able to evaluate their return on equity—a measure of a business's profitability relative to the equity invested in it—to remain solvent. However, many factors, including monopsonistic and oligopsonistic market structures, incomplete contracts, uncertainty about the required level of skill and involvement, and asymmetrical information, make calculation of return on equity difficult for growers. The structure of the contracts themselves results in such a wide range of potential grower financial outcomes that it is difficult for growers to make reliable profitability

[35] Steven Y. Wu and James MacDonald, ''Economics of Agricultural Contract Grower Protection Legislation,'' *Choices,* Third Quarter, 2015, pp 1–6.

[36] MacDonald (June 2014) Op. Cit.

[37] Merriam-Webster online dictionary: A monopsonist is one who is a single buyer for a product or service of many sellers. *https://www.merriam-webster.com/dictionary/monopsonist*; accessed 3/8/2022.

[38] Merriam-Webster online dictionary: Oligopsony is a market situation in which each of a few buyers exerts a disproportionate influence on the market. An oligopsonist is a member of an oligopsonistic industry or market. *https://www.merriam-webster.com/dictionary/oligopsonist*; accessed 3/8/2022.

[39] MacDonald, James M., and Nigel Key. ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey''. *Journal of Agricultural and Applied Economics* 44 (November 2012): 477–490. See also, MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126,* U.S. Department of Agriculture, Economic Research Service, (June 2014): 29–30.

[40] Vukina, Tom, and Porametr Leegomonchai. ''Oligopsony Power, Asset Specificity, and Hold-Up: Evidence from the Broiler Industry.'' *American Journal of Agricultural Economics* 88 (2006).

[41] MacDonald (June 2014) Op. Cit.

[42] Knoeber, Charles R. and Walter N. Thurman. ''Testing the Theory of Tournaments: An Empirical Analysis of Broiler Production.'' *Journal of Labor Economics* 12 (April 1994). Levy, Armando and Tomislav Vukina. ''The League Composition Effect in Tournaments with Heterogeneous Players: An Empirical Analysis of Broiler Contracts.'' *Journal of Labor Economics* 22 (2004).

[43] MacDonald (June 2014) Op. Cit., pp. 38–40. Data from the *Agricultural Resource Management Survey—Version 4, Financial and Crop Production Practices, 2011,* and U.S. Census Bureau, 2011 Quarterly Financial Report (QFR): Manufacturing, Mining, Trade, and Selected Service Industries. *https://www2.census.gov/econ/qfr/pubs/qfr11q4.pdf;* accessed 1/19/2022.

projections. Absent such information, growers face an ongoing risk of deception in their contracting and operational decisions, risks which AMS believes can be mitigated through the provision of the information and transparency provided under this rule.

D. Asymmetrical Information

As explained earlier, one symptom of incomplete contracts is asymmetrical information. This occurs when one party to a contract has more and/or better critical information than the other party. For example, because live poultry dealers determine grower pay, they have access to records of the payments made to each grower, and have information regarding the complete range of payments across growers with birds delivered for processing in each week. The individual grower—both existing and prospective—however, lacks the same ready access to this information. Additionally, dealers have information related to (and also control) strategic decision making that may include placement frequency, stocking densities, and input quality and distribution—factors that influence the weight and performance elements that comprise individual flock payments and influence grower payments in the long term. It is unlikely that poultry growers are privy to information about the range of grower payments or dealers' strategic decision making. As a result, they lack key information needed to make informed decisions with respect to the range of financial risks they face.

Prospective growers can draw upon information provided by poultry specialists in state cooperative extension services and by lenders, but those sources do not have live poultry dealers' internal data on the full range of payments or their frequencies and, as a result, typically base financial modeling and advice on average levels of payments received by growers, not on the full range of payments.[44] Existing growers know what they have been paid, and may elicit further information from other growers, but likewise lack complete integrator information on the range of grower payments, making it difficult for them to accurately project future earnings based on the past experience of similarly situated growers and, as such, to gauge their ability to meet financial obligations.

Some live poultry dealers provide pro forma income estimates to prospective growers and lenders. Grower advocate groups have complained these estimates are generally based on simple ''average pay'' projections, which are insufficient given fluctuations in grower payments, particularly under the tournament system.[45] AMS has observed these projections lack standardization making it difficult for growers to compare estimates among multiple dealers. Additionally, the assumptions underlying the projections such as number of placements, stocking densities, target weight are subject to dealer discretion and in many cases the estimates themselves are expressly disclaimed in the production agreement.

These risks are particularly acute when growers must make key investment decisions for their operation, such as whether or not to enter the poultry business and whether or not take on or invest in new or expanded facilities, all of which can be expected to involve incurring debt. AMS believes that the provision of the information in this rule will reduce the risks of these information asymmetries and enable growers to improve their decision-making and risk-management.

USDA's Farm Services Agency (FSA), which manages a loan guarantee program, has also recognized repayment reliability concerns related to informational asymmetries and their effect on poultry grower payments and total revenues.

In order to reduce FSA's exposure under the loan guarantee program, the FSA Handbook requires the following of poultry production contracts in order to assess their ''dependability.'' [46] Contracts must:

- be for a minimum period of 3 years
- provide for termination based on objective ''for cause'' criteria only
- require that the grower be notified of specific reasons for cancellation
- provide assurance of the grower's opportunity to generate enough income to ensure repayment of the loan by incorporating requirements such as a minimum number of flocks per year, minimum number of bird placements per year, or similar quantifiable requirements.

Enhanced and more reliable transparency in the poultry production contracting process is likely to assist FSA's in effectuating the mandates under the loan guarantee program as set forth in its handbook.

E. Poultry Grower Concerns

In 2010, USDA held a series of workshops in conjunction with the Department of Justice to hear from producers about concentration and trade practice issues in Agriculture. Normal, Alabama, hosted one such session with an emphasis on the poultry industry. Globally, growers complained that their success or failure is dependent on factors controlled by their integrators. Further, growers are troubled by the lack of choice among integrators in many regional relevant markets, which further enhances the bargaining position of integrators.[47] Grower public comments at the workshop were consistent with numerous comments submitted to USDA on the 2010 and 2016 GIPSA rules and identified specific areas of concern in the poultry industry.

Growers expressed concerns about contract dependency, uncertainty of pay, and informational asymmetries related to farm revenues and debt. Poultry growers have indicated they lack control over and even information about certain crucial production factors controlled by live poultry dealers, such as the anticipated frequency and density of flock placements and bird target weight under poultry growing arrangements, factors that heavily influence grower payments on an individual flock basis and over the long term.[48]

Growers cited the level of control and discretion reserved to integrators under their contracts, remarking how discretionary decisions related to flock placements, housing specifications, tournament grouping,[49] and other production factors can significantly affect grower revenue and profitably. Many growers were worried that contract terms did not cover the time required to repay the debt on their farms, noting that additional capital investments, such as those necessitated

[44] See, for example, Doye, Damona Grace, et al. ''Broiler Production: Considerations for Potential Growers'' Oklahoma Cooperative Extension Service, (March 2017); Rhodes, Jennifer and Jonathan Moye. ''Broiler Production Management for Potential and Existing Growers'', University of Maryland Extension, (October 2017); and Cunningham, Dan L., and Brian D. Fairchild. ''Broiler Production Systems in Georgia, Costs and Returns Analysis 2011–2012.'' University of Georgia Cooperative Extension (June 2011).

[45] ''A Poultry Grower's Guide to FSA Loans,'' Rural Advancement Foundation International, July 2017, available at *https://www.rafiusa.org/blog/a-poultry-growers-guide-to-fsa-loans/.*

[46] USDA Farm Service Agency, *Guaranteed Loan Making and Servicing 2–FLP (Revision 1)* pp. 8–86 (October 2008). *https://www.fsa.usda.gov/internet/FSA_File/2-flp.pdf*; accessed 1/3/2022.

[47] See Domina, David A. and Robert Taylor. ''The Debilitating Effects of Concentration Markets Affecting Agriculture,'' *Drake Journal of Agricultural Law* 15 (May 2010): 61–108. *See also* Leonard, Christopher, *The Meat Racket* (2014).

[48] Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010; Normal, Alabama.

[49] The effect of tournament groupings, or league composition, is an area requiring additional exploration and research. It is not directly addressed in this proposal.

by integrator's housing specifications, can plunge growers into further debt without assurances of adequate or stable returns. Growers indicated they do not have adequate information with which to assess original and additional capital investments because pay rates alone are insufficient for long-term revenue estimates without assumptions related to integrator discretionary production decisions.[50] Concerns have also been raised regarding the use of deficient and unreliable ''pro forma'' financial estimates during the contracting process.

Finally, poultry growers have complained to USDA about being prohibited by dealers from asserting their rights under the current regulations to discuss poultry growing contracts with government representatives, family members, lenders, and other business associates. Some growers allege they have been threatened or retaliated against for asserting those rights.

As explained in section II.A., AMS believes that poultry growing arrangements are often incomplete contracts that may be deceptive when omissions or inadequate descriptions of key terms mislead, camouflage, conceal, or otherwise inhibit growers' ability to assess the financial feasibility and expected value of investment. For example, for a grower to estimate future revenues, it is necessary for the grower to know how many flocks the dealer will place with the grower over a given time period. When contract terms do not establish the number of flocks a grower will receive during that time period, the grower could be misled or deceived into believing he will receive an optimistically high number of placements, which might increase the grower's willingness to contract with the dealer. This risk is particularly acute if the financial statements or estimates provided to the grower paint only the most optimistic picture possible regarding the returns that may be possible under complex and opaque payment arrangements, such as the commonly used tournament ranking system, rather than the range of realistically expected outcomes. If poultry contracts contain more material terms relating to revenue over the life of the agreement, we believe the potential for deception is reduced significantly.

AMS considers this imbalance of information, or ''asymmetrical information,'' as described in the previous section, an important consideration for this rulemaking. We recognize that neither dealers nor growers can predict market conditions far into the future. Yet given the substantial investment from the grower, together with the greater ability for dealers to monitor market trends, adjust contracting, and otherwise hedge risks, we believe these upfront and ongoing information asymmetries could be effectively mitigated through the disclosure regime that will be outlined later in this rule.

AMS believes that by providing critical information that addresses the risks that growers face, the rule would encourage greater certainty and confidence among growers, encourage investment, and enhance the overall competitive market for grower services. As for growers' ability to assert their rights without fear of retaliation, we note that the current regulations, at 9 CFR 201.100(b), already require live poultry dealers to allow poultry growers to discuss the terms of their contracts with government agencies, family members, and business associates and advisors, regardless of confidentiality provisions in the contracts. However, it may be appropriate to shed more light on those rights. AMS believes the proposed transparency enhancements would further aid growers in identifying illicit conduct of this type.

III. Poultry Grower Pay Systems

As discussed in section I.C.3.—Poultry Grower Compensation, the majority of poultry growers are paid on an individual flock basis, where the calculation for grower payments can be expressed as: Farm Weight (in pounds) × Feed Conversion (in dollars) = Grower Pay. Farm weight is a nearly universal measure among all poultry grower pay systems; however, the metrics and formulas for determining feed conversion vary among pay systems and between integrators.

Poultry grower pay systems can be categorized as either ranking or non-ranking. The most common non-ranking pay system is called ''fixed-performance.'' Pay systems that rank growers are called ''poultry grower ranking systems'' or ''tournaments.'' In this section we focus on the characteristics of—and challenges associated with—tournament pay systems, but we begin with a brief description of fixed-performance pay systems for comparison.

A. Fixed-Performance Pay Systems

Under fixed-performance production contracts, growers are paid a base rate for each animal or for the farm weight delivered to the processor. These contracts generally adjust payments based on fixed performance standards. For example, farmers with lower animal mortality or higher conversion of feed to live weight might receive higher pay. These are called fixed performance contracts because although compensation may fluctuate, the performance elements are tied to fixed standards.[51] In contrast, under grower ranking pay systems, performance elements are relative standards tied to the performance of other growers.

B. Tournament Pay Systems

The majority of growers producing poultry under production contracts are paid under a poultry grower ranking or ''tournament'' pay system.[52] Under poultry grower ranking systems, the contract between the live poultry dealer and the poultry grower provides for payment to the grower based on a grouping, ranking, or comparison of poultry growers delivering poultry to the dealer during a specified period. In a simplified example, the live poultry dealer places flocks with ten growers under contract to deliver the same size of finished poultry to the dealer's processing plant at the end of a specified growout period. Upon harvest, each grower's performance (*e.g.,* farm weight and feed conversion) is determined. The dealer then compares individual grower results against average results for all growers in the group, and ranks individual growers according to their relative performance within the group of ten growers. Grower base pay rate is adjusted by the grower's deviation from average within the tournament grouping for that specific growout period. For example, a contract-based pay rate of $.06 per pound might be adjusted to $.0725 for an above average grower, while a below average grower may be paid $.048.

Payments under tournament contracts still vary with flock mortality and feed conversion, but in tournament contracts, the performance elements are not fixed targets. The performance elements are compared to average performance results from a tournament group, which is group of growers delivering poultry to the plant during the same time period (usually within a week). Growers who exceed the group's average performance get higher payment, while growers who

[50] Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010; Normal, Alabama.

[51] Tsoulouhas, Theofanis, and Tomislav Vukina. ''Regulating Broiler Contracts: Tournaments Versus Fixed Performance Standards.'' *American Journal of Agricultural Economics* 83 (2001).

[52] MacDonald (June 2014) Op. Cit. See footnote 20 on page 27 citing ARMS data from 2011 that reported 97% of broilers are grown under contract, with 93% of contracts tied to relative performance.

fall short of the group average receive lower pay. The grower payment equation's feed conversion variable is modified by its deviation from average performance, and a specific grower's pay varies with his/her ranking against the average. Grower pay rates vary depending on the performance of other growers, even if a specific grower's performance remains unchanged or even improved compared to their performance in previous growout periods.

IV. Poultry Grower Ranking Systems

A. Tournament Settlements

9 CFR 201.100(d) and 9 CFR 201.100(f) are important parts of the existing tournament payment disclosure regime under the Packers and Stockyards Act. This proposal builds on the existing disclosure concepts by incorporating new transparency into the distribution of inputs, which is an area of particular concern to growers.

Currently, 9 CFR 201.100(d) requires all live poultry dealers to prepare and furnish a settlement sheet to a poultry grower at the time of settlement. Under that regulation, the settlement sheet must contain all information necessary to compute the grower's payment, including, if applicable, the number of birds marketed, the total weight and average weight of the birds, and the payment per pound. Further, § 201.100(f) requires live poultry dealers who pay growers under a tournament system to furnish growers with a grouping or ranking sheet at the time of settlement that shows the grower's precise position in the grouping or ranking sheet for that period. Currently, the grouping or ranking sheet need not disclose names of other growers, nor the housing specifications for each tournament participant, but must show the actual figures used to compute each grower's position within the ranking for that period. Neither section currently requires the live poultry dealer to provide information about the distribution or nature of integrator inputs among settlement participants.

The tournament ranking sheet required under § 201.100(f) provides growers with numeric data comparing their performance and the performance of other growers in the tournament. While the numeric data describes the relationship between grower performance, as assessed by the integrator, and settlement payments, its value is limited without information about the distribution of integrator inputs among tournament participants. Poultry grower commenters on the 2010 and 2016 GIPSA rules stated that without knowing how inputs they receive compare to inputs provided to other growers within their tournaments, growers cannot determine whether differences in pay are due strictly to grower skill or to other factors beyond their control.

B. Tournament Payments as a Measure of Grower Skill, Effort, and Innovation

In comments submitted to USDA on the 2010 and 2016 GIPSA rules, live poultry dealers suggested that tournament systems benefit poultry growers by offering financial incentives and rewards to growers who invest time and effort into their poultry growing operations. They asserted that the competition inherent in tournaments fosters grower innovation and increased efficiency, and rewards those growers who are the most efficient and provide the best services. They also stated that tournament pay systems reward above-average growers that are willing to take risks or improve their production systems. One poultry processing company stated that contract broiler growers are paid for their services based on a formula that rewards efficiency, ingenuity, and good animal welfare and animal husbandry practices.

Comments from some poultry growers and others associated with the industry concurred with those of processors, indicating that the opportunity to earn higher compensation for superior performance under tournament systems motivates above-average growers to work hard, invest in their facilities, and utilize innovative technology.

At the same time, other growers dispute this. Indeed, growers often comment on wide swings in grower rankings from flock to flock, where the same individual grower ranks high in one tournament and much lower in another. One available analysis confirms significant volatility in grower rankings from flock to flock,[53] This suggests that while grower experience and skills can lend to consistently successful individual flock performance, a grower's relative success in tournaments might be attributed to other factors.

Input variability is commonly cited by grower commenters as a key explanation for ranking volatility. We discuss the distribution of inputs and the effects of input variability on tournament rankings and grower payments in the following sections.

[53] Taylor, C. Robert, and David A. Domina, ''Restoring Economic Health to Contract Poultry Production.'' Report prepared for the Joint U.S. Department of Justice and USDA/GIPSA Public Workshop on Competition Issues in the Poultry Industry (May 2010).

C. Distribution of Inputs Among Tournament Participants

Grower experience and skill, the technical specifications and relative sophistication of the housing, and other factors, such as the makeup of tournament groupings or inconsistent grower effort, may all affect performance. In this section, we explain how integrator decisions about inputs provided to tournament growers can also impact growers' relative performance.

Under the tournament system, dealers control the source of inputs and the distribution of those inputs to growers. In section I.C.4.—Live Poultry Dealer Inputs—AMS has provided evidence that the range of inputs is nonhomogeneous. The range of inputs is selected to satisfy customer or product requirements, as well as efficiency in the slaughter process, presumably at the lowest costs. Input distribution has not been studied extensively, and little information is available in the public domain. In response to prior USDA rulemaking efforts, dealers have denied or downplayed the significance of input variability and its effect on bird performance. The existence of non-homogeneity and the persistence of grower complaints raise questions about dealer input allocation practices and the extent to which tournament parity and cost efficiency are balanced, or whether other factors may also be at play.

For example, if a complex has three breeder farms with different aged flocks, it may be costly or even impracticable for integrators to evenly distribute chicks from the three breeder flocks in identical ratios to all settlement participants. Similar cost considerations might play a role in distribution where breed and sex variation are present. In another example, supply considerations may play a role in stocking density differences among settlement participants. As a result, growers settled together could be allocated flocks with some level of variance in attributes. None of those input variances would be materially affected by incentives for uniformity of product or processing plant efficiency; they would be premised cost efficiencies.

D. Input Variability and Grower Payment

Tournament payments are based on relative measurements, including poultry mortality, morbidity, feed use efficiency, and growth rate, among tournament participants. As discussed earlier, the attributes of various integrator-controlled inputs can affect those measurements. Therefore,

variability between the inputs provided to growers in a tournament can affect relative outcomes. Here we briefly review those inputs and explain how uneven distribution of inputs may affect tournament grower rankings and payments.

1. *Stocking Density:* Variability in stocking densities among poultry growers in settlement pools are likely to result in farm weight and feed conversion disparities among settlement participants. If one or more growers in a tournament receive flocks with fewer birds than what would be optimal, and those flocks do not achieve optimal feed conversion efficiency, those growers may not rank as high as their tournament competitors who receive flocks of optimal stocking density.[54] Thus, the input variability has the potential to affect tournament grower payments.

2. *Breed Ratios:* As described in section I.C.4.b., different poultry breeds convert feed to weight gain with varying efficiency. Thus, differences between the breeds or ratios of breeds of poultry flocks placed with individual growers within a tournament group may ultimately affect each grower's relative performance and tournament ranking. Depending on the specific breeds involved, USDA has connected variances in the distribution of poultry breeds or breed ratios with farm weight disparities,[55] affecting grower pay.

3. *Gender ratios:* As explained in section I.C.4.c., The majority of integrators use straight-run (not sorted by gender) flocks to supply farms. AMS would not view the placement of randomized straight-run flocks as an input variability if all tournament growers received randomized straight-run flocks, since the ratio of males to females in each flock would be randomized and not dictated by the integrator. However, integrators placing sexed flocks, or integrators supplementing straight-run flocks with sexed flocks, may create input variability in the distribution of birds that could result in farm weight and feed conversion disparities.

4. *Breeder Flock Age:* As discussed in section I.C.4.d., the age of breeder flocks is correlated with egg and chick size, mortality, and eventual weight gain. Variability between the ages of breeder flocks producing the young poultry placed with different growers in a tournament may result in farm weight and feed conversion disparities at the end of growout, which may impact the rankings and payments to individual growers in that tournament.

5. *Breeder Flock Health:* Placing birds from breeder flocks of varying health with tournament participants may affect each flock's performance and thus each grower's ranking and pay. Other factors, such as variations between facility sanitation practices and performance may exist among breeder facilities within the same complex, and may impact progeny growout performance, creating an input variability when poultry sourced from multiple breeder farms are settled together.

6. *Feed Disruptions:* As described in section I.C.4.f., bird growth may be affected by feed disruptions (where poultry go without feed for a certain length of time), possibly resulting in less farm weight, which affects grower tournament rankings and payments. Feed disruptions for any cause, if they do not affect all growers equally, may constitute an input disparity that can affect grower ranking and pay.

7. *Medications:* The integrator may find it necessary to supply one or more flocks with veterinary medicines or supplements during flock growout. Such treatments, when provided on a flock-by-flock basis, may impact relative flock performance and grower pay.

As described in the previous section, an integrator's input allocation decisions are impacted by cost efficiencies that may be inconsistent with individual growers' interests, including risk management and earnings maximization. But variability in integrator-provided inputs among settlement participants can ultimately influence settlement rankings and payments. Thus, tournament participants prefer some level of parity in input distributions, or at least mitigation of any disparities, in order to evaluate whether grower compensation is related to grower management and skill or correlated with ''favorable'' inputs.

E. The Need for Transparency

Input variability among settlement participants have long been a point of contention between growers and integrators because growers are not involved in input distribution decisions, and any balancing between cost efficiency and parity is not transparent. With respect to this input variability, growers have repeatedly complained in public forums and to USDA of retaliation, discrimination, and other disputes arising in connection with distributions of inputs, including in ways that result in significant economic harm to growers.[56]

AMS has not identified research regarding whether variability in inputs between tournament growers affects grower outcomes. However, some existing research establishes the effects of certain inputs on poultry growth and feed conversion.

We believe growers' assertions regarding the connection have merit. AMS is aware that integrators collect input information for private use,[57] although we do not know whether it includes information about how inputs are distributed among individual growers. Nevertheless, growers complain that this information, which could be useful to them in flock management, is not generally provided to them.

At the 2010 Normal, Alabama, workshop referenced earlier, contract poultry growers further raised significant concerns regarding the design and operation of tournament systems. Commenters asserted that the high degree of integrators' control over the inputs, the reliance that growers have on the inputs for outcomes under the system, and the opacity of the tournament calculations fostered a range of risks, including risks relating to deception. These include the inability to verify the accuracy of payments, the inability to measure and manage risks, and the ways in which tournament systems can mask or facilitate hard-to-detect forms of discrimination or retaliation for disputes arising under the poultry growing arrangement.

These concerns reflect similar issues of market power and information asymmetry discussed earlier. Where integrators have made business decisions to procure and distribute inputs in a manner that most suits their cost structure and business strategies, poultry growers have limited- or no ability to negotiate, including for information that would enable them to avoid, mitigate, or manage the risks arising from the integrator's decisions. Growers may or may not be able to discern from a visual inspection of the flocks certain important information,

[54] Stocking density is a function of the desired weight of uniformly sized birds at harvest. A placement with a specified number of smaller birds would have the same density as a placement with the same number of larger birds. Smaller birds would just take somewhat longer to get there.

[55] *Tyson Farms, Inc.* 71 Agric. Dec. 1065, 1160 (U.S.D.A. 2012).

[56] See, *e.g.,* Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010, Normal, Alabama; Leonard, Christopher, *The Meat Racket* (2014).

[57] For example, integrators may contract with Agristats, a chicken, turkey, commercial egg, and swine industry research company, to collect input information and compare such information against similar organizations in the industry. Agri Stats, Inc. *Partnership and Services, https://www.agristats.com/partnership.*

such as breeder age, to which the integrator is privy. Other information, such as bird sex, may be more readily available to the integrator than to the grower.

Their lack of information at the time of placement about the specific inputs delivered to growers exposes them to the performance risks described in section IV.D. associated with the variability of those inputs. Those performance risks may manifest in in tournament ranking. Similarly, the absence of input distribution information at the time of settlement undermines growers' ability to manage their operations to address those performance risks. In both cases, growers are disadvantaged in their performance by a lack of information outside of their control. Conversely, the ability of growers to monitor and measure input differences is especially important for mitigating risks relating to the accuracy of payments and the ways in which tournament systems may mask or facilitate hard-to-detect forms of discrimination or retaliation for disputes.[58]

AMS believes that tournament growers need information about input distribution—particularly at the stage where the input is provided—when they could apply, to the extent possible, their experience and skills to the adjustment of flock management as necessary in response. For example, a grower is informed he has received a salmonella infected broiler flock, which will present with loose, runny stools that can cause floors to cake quickly, leading to burnt paws and increased coccidiosis. A grower aware of the condition can manage the flock through use of migration fences early in flock and with increased ventilation to remove excess ammonia and to help dry floors. These management adjustments may be departures from normal growout procedure, but could lower mortality, decrease condemnations, and result in higher farm weights and feed efficiency. Thus, improved outcomes would benefit growers and integrators alike.

Further, growers seek transparency regarding flock input distribution among tournament participants so they can individually assess the relationships between input variability, grower management and skills, and tournament payments. Such information is also particularly important, when shown together with housing specifications, for growers to assess the relative value and necessity of making additional capital investments. Put another way, failure to make this information available to growers puts them at risk of making very expensive investments with very little insight into their value and risks involved.

For both at placement and settlement disclosures, growers have expressed a mistrust of live poultry dealers when information about flock placements is not transparent. Improving transparency is intended to reduce concerns relating to input distribution and may help establish a higher degree of trust in the integrity of the marketplace.

Finally, relative ranking systems (tournament) premised on grower skill, effort, and innovation should measure and compensate based upon those merits. Pay systems highly correlated with individual input variability may be inconsistent with the merit premise and demonstrate misrepresentations and deception in the operation of tournament pay systems.

V. Proposed Regulations

AMS proposes to address concerns related to market power imbalance and asymmetrical information in poultry grower contracting by revising the regulations at 9 CFR part 201 that effectuate the Packers and Stockyards Act. AMS intends the proposals to better balance the quantity, quality, and type of critical information poultry growers, prospective poultry growers, and live poultry dealers have as they enter into and operate under poultry growing arrangements. AMS expects that these proposed rules would improve transparency and reduce the risk of deception in the contracting process. This section provides detailed descriptions and explanations for the proposals.

A. Definitions

Section 201.2—Terms defined—of 9 CFR part 201 provides definitions for terms used in the regulations. AMS proposes to revise § 201.2 by removing the paragraph designations within the section, reorganizing the definitions alphabetically, and adding definitions for new terms used in the proposed rule. Proposed additions to the list of terms defined in § 201.2 are described as conforming changes in connection with the proposed regulatory changes described below.

Additionally, to ensure a common understanding of the use and meaning of certain terms already used in the regulations and in the proposed regulatory revisions, AMS proposes to incorporate into § 201.2 the statutory definitions for those terms. Specifically, the term *poultry grower* means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry. The term *live poultry dealer* means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce. The term *commerce* means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. Finally, the term *poultry growing arrangement* means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter.

AMS invites comments on proposed additions to the list of definitions, including those described later in this section. Please explain fully all views and suggestions, supplying examples and data or other information to support your views where possible.

B. Disclosure

To address concerns identified in the section on *Poultry Growing Arrangements* earlier in this document, including industry concerns related to dealer transparency in poultry growing arrangements, AMS proposes to amend § 201.100—Records to be furnished poultry growers and sellers. Currently, 9 CFR 201.100 describes the documents that live poultry dealers must provide to poultry growers within certain timeframes. Paragraph (a) of § 201.100 requires a dealer to provide the grower with a true written copy of the offered poultry growing arrangement on the date the dealer provides poultry housing specifications to the grower. Paragraph (b) requires live poultry dealers to allow growers to discuss the terms of poultry growing arrangement offers with a Federal or State agency, the growers' legal and financial advisors and lenders, other growers for the same dealer, and

[58] One example of deception risk is the alleged practice of dealers offering more lucrative contracts to attract new growers but then reducing the pay once the grower is secured and in debt, (Taylor and Domina 2010; Vukina and Leegomonchai 2006). See also Vukina, T. 2001. Vertical integration and contracting in the US poultry industry. *Journal of Food Distribution Research* 81: 61–74.

family members or other business associates with whom growers have valid business reasons for consulting about the offered poultry growing arrangements. Paragraph (c) specifies required contents of the poultry growing arrangement, including contract terms and information about payment calculations and performance improvement plans. Paragraph (d) requires dealers to furnish growers with settlement sheets and supporting documents showing how grower pay is calculated. Paragraph (e) requires dealers to obtain USDA condemnation or grading certificates for poultry and to provide copies to growers at settlement. Paragraph (f) requires dealers to provide growers in a poultry grower ranking system copies of grouping or ranking sheets that show growers their precise positions within the grouping or ranking for that period, as well as the actual figures rankings are based upon. Paragraph (g) requires dealers who purchase live poultry to provide detailed purchase invoices, including applicable USDA condemnation or grading certificates, to poultry sellers at the time of settlement. Finally, paragraph (h) requires dealers to provide notices regarding termination or non-renewal of poultry growing arrangements to affected growers at least 90 days before termination. Under paragraph (h), dealers must provide the reason for a termination, the effective date of the termination, and information about grower appeal rights with the dealer. Further, dealers must provide the opportunity for growers to notify dealers in writing at least 90 days before the scheduled termination of a poultry growing arrangement of the grower's intent to terminate the arrangement.

Specifically, AMS proposes to amend § 201.100 by revising paragraph (a); redesignating paragraphs (b) through (h) as paragraphs (h) through (n), respectively; moving current paragraph (f) to a new regulatory section that addresses poultry grower ranking systems specifically; adding new paragraphs (b) through (g); and revising redesignated paragraph (i).

Proposed revisions to § 201.100(a) would modify the heading to read ''Disclosures and records to be furnished poultry growers and sellers'' and would require the dealer to provide the prospective or current poultry grower with the Live Poultry Dealer Disclosure Document (the Disclosure Document), as described in proposed new paragraph (b) of the section, in addition to the true written copy of the poultry growing arrangement, under three different scenarios. A proposed conforming change to § 201.2 would define the term *prospective poultry grower* to mean a person or entity with whom the live poultry dealer is considering entering into a poultry growing arrangement. AMS would add this definition to distinguish between a current or existing poultry grower who has previously entered into a poultry growing arrangement with the dealer and a grower who has not signed a contract. The proposed requirements for live poultry dealers are somewhat different depending on the status of growers with whom they are working.

Under the first scenario, provided in proposed new § 201.100(a)(1), a dealer seeking to renew, revise, or replace an existing poultry growing arrangement (or newly establish a poultry growing arrangement) that does not contemplate modifications to existing housing specifications would be required to provide both the poultry growing arrangement and the Disclosure Document at least seven days before the dealer executes the poultry growing arrangement. This proposal is intended to give growers adequate time to consider all the information provided and consult with others as needed before committing to the new, revised, or replacement poultry growing arrangement. Because this scenario involves growers already familiar with their dealers, and because in this scenario the contract renewal does not involve additional capital investment, we believe seven days would provide time for adequate review. AMS proposes to exempt certain small businesses from this requirement, as described in the discussion about proposed new § 201.100(e)below.

AMS proposes a conforming change to § 201.2 to add a definition for *housing specifications* to mean a description of—or document relating to—a list of equipment, products, systems, and other technical poultry housing components required by a live poultry dealer for the production of live poultry. Live poultry dealers commonly develop multiple housing specifications. Accordingly, by defining this term, AMS does not intend to limit live poultry dealers to a single housing specification. Another proposed definition would define *Live Poultry Dealer Disclosure Document* to mean the complete set of disclosures and statements that the live poultry dealer must provide to current or prospective poultry growers.

Under a second scenario, as described in proposed new § 201.100(a)(2), a dealer seeking to enter into a poultry growing arrangement that would require the grower to make an original capital investment to comply with the dealer's housing specifications would be required to provide the grower with a true written copy of the poultry growing arrangement, the housing specifications, the Disclosure Document, and a letter of intent simultaneously. Because the Disclosure Document and letter of intent would be required to accompany the housing specifications, growers would have more information with which to assess economic and financial considerations prior to obtaining financing for the original capital investment. This proposal is intended to give the grower and their lender adequate time to consider all the information provided and consult with others as needed, and to provide assurance with which to move forward with the necessary financing. A letter of intent would signal to the prospective poultry grower and their prospective lender that the dealer's contract offer is earnest and that the preliminary terms of the agreement should be assessed to determine practical and financial feasibility. Further, having the letter of intent would allow the poultry grower to discuss proposed or required upgrades to existing housing specifications with lenders and other advisors while considering whether to make those modifications and financial investments. Growers, working with their lenders, can establish an appropriate period to review and assess the disclosure document and letter of intent prior to undertaking the investment.

A proposed conforming change to § 201.2 would add a definition for *letter of intent* to mean a document that expresses a preliminary commitment from a live poultry dealer to engage in a business relationship with a prospective poultry grower and that includes the chief terms of the agreement.

Another proposed revision to § 201.2 would add a definition for *original capital investment* to mean the initial investment for facilities used to grow, raise, and care for poultry or swine. The proposed definition for *original capital investment* uses similar language as the existing definition for *additional capital investment,* and is intended to help differentiate between situations where a new or prospective grower would be required to make an initial capital investment for poultry housing in order to become a poultry grower and where a current grower has already made a capital investment related to poultry housing requirements.

Finally, under the third scenario, as described in proposed new § 201.100(a)(3), a live poultry dealer seeking to offer or impose modifications to existing housing specifications that

could reasonably require the current poultry dealer to make an additional capital investment would be required to provide the grower simultaneously with a true written copy of the poultry growing arrangement, modified housing specifications, the Disclosure Document, and a letter of intent. AMS expects the majority of growers will seek financing for additional capital investments, and the simultaneous production of the three documents is designed to (1) provide growers with improved information with which to assess the new capital investment, and (2) allow growers to establish appropriate timelines for contemplating the investment. *Additional capital investment,* as it pertains to poultry production, is defined in the current regulations at § 201.2(n) as a combined amount of $12,500 or more per structure paid by a poultry grower over the life of the poultry growing arrangement beyond the initial investment for facilities used to grow, raise, and care for poultry. The term includes the total cost of upgrades to the structure, upgrades of equipment located in and around each structure, and goods and professional services that are directly attributable to the additional capital investment. The term does not include costs of maintenance or repair.

The requirement in current § 201.100(a) to provide true written copies of the poultry growing arrangement, whether to establish a new arrangement or to renew, revise, or replace an existing arrangement, helps improve transparency in the new or ongoing relationship between the live poultry dealer and the prospective or current poultry grower, which mitigates the information asymmetries and other deception-related concerns discussed above. AMS would retain that requirement under the proposed rule. AMS believes providing written documents helps ensure that both parties have the opportunity to read and understand all the terms of the poultry growing arrangement. Further, the requirement in current § 201.100(a) to provide a copy of the poultry growing arrangement at the same time housing specifications are disclosed ensures transparency about the dealer's expectations regarding the grower's responsibility under the arrangement. Under the proposed revisions to § 201.100(a), and in the three scenarios described above, the required documents and the timelines for providing them are determined according to whether new or revised housing specifications are involved.

In each of the three scenarios presented above, the live poultry dealer must provide the grower with the Disclosure Document. The Disclosure is a set of documents prepared by the live poultry dealer. AMS believes providing the Disclosure Document to growers along with the true written copy of the poultry growing arrangement, housing specifications, and letter of intent, where applicable, would help mitigate the asymmetric information problem described earlier in this document by giving growers more information with which to assess poultry growing arrangements and efficiently allocate resources.

The contents and format of the Disclosure Document cover pages would be provided in proposed new § 201.100(b)—Prominent disclosures. Proposed § 201.100(b) would specify the elements to be included with the cover pages of the Disclosure Document, including basic information about the live poultry dealer, key points in the poultry growing arrangement, and precise language for certain notices the dealer must make to the grower. In conjunction with the requirement to include specific language in the Disclosure Document, AMS is requesting Office of Management and Budget (OMB) approval of a new information collection, as described more fully in the Paperwork Reduction Act section of this proposed rule. AMS is proposing to provide a downloadable and printable electronic form containing the required language described in proposed § 201.100(b). The proposed form is for the use of live poultry dealers and is intended to reduce the burden of creating such a form and simplify compliance with the requirement to make certain notifications to poultry growers.

Proposed new § 201.100(b)(1) would require the Disclosure Document cover page to include the title ''LIVE POULTRY DEALER DISCLOSURE DOCUMENT'' in capital letters and bold type. Proposed § 201.100(b)(2) would require the live poultry dealer to list their name, type of business organization, principal business address, telephone number, email address, and if applicable, primary internet website address. Proposed § 201.100(b)(3) would require the dealer to specify the length of the term of the poultry growing arrangement. Including this information at the front of the Disclosure Document clearly identifies for growers the live poultry dealer and the associated poultry growing arrangement under consideration.

Under proposed § 201.100(b)(4), the live poultry dealer would be required to include a notice to the grower that, ''The income from your poultry farm may be significantly affected by the number of flocks placed on your farm each year, the stocking density or number of birds placed with each flock, and the target weight at which poultry is caught. The poultry company may have full discretion and control over these and other factors. Please carefully review the information in this document.'' Then, under proposed § 201.100(b)(5), the dealer would be required to state the minimum number of poultry placements and the minimum stocking density, which is the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

New poultry growers may not understand how the discretionary actions of live poultry dealers affect grower payments. The majority of poultry growers are paid on the basis of farm weight multiplied by a feed conversion variable. A live poultry dealer exercising discretion in placements, stocking density, and target weight is directly affecting that poultry weight basis. Cautioning growers about the potential impact of dealer-controlled inputs and providing growers with the minimum number of flocks and minimum stocking density of flocks to be placed with the grower annually under the poultry growing arrangement would help growers assess the projected baseline value of their poultry growing arrangement. As discussed above, the provision of this information would mitigate the information asymmetries and other deception-related risks AMS has identified. It would enable growers to more accurately measure their financial commitments and risks based on information that they would otherwise be unable to obtain. It would also mitigate the risks of being attracted by the integrator or any other party into a poultry growing arrangement, or an additional capital expenditure in furtherance of one, based on overly optimistic scenarios.

AMS proposes to make conforming changes to § 201.2 by adding definitions for the terms *placement, minimum number of placements, growout, stocking density,* and *minimum stocking density. Placement* would be defined as the delivery of a poultry flock to the poultry grower for growout. *Minimum number of placements* would mean the least number of flocks of animals the live poultry dealer will deliver to the grower for growout annually under the terms of the poultry growing arrangement. *Growout* would be defined as the period of time between placement of livestock or poultry on a farm and the harvest or delivery of such animals for

slaughter, during which the feeding and care of such livestock or poultry are under the control of the farmer. *Stocking density* would be defined to mean a ratio that reflects the number of birds in a placement, generally expressed as head or pounds per square foot of the poultry growing facility or facilities. *Minimum stocking density* would be defined to mean the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

Under proposed § 201.100(b)(6), the live poultry dealer would be required to include one of two alternative statements, depending on whether the offered poultry growing arrangement includes housing specifications that require or could reasonably require an original or additional capital investment under one of the scenarios described earlier in connection with proposed § 201.100(a). If the new, renewed, revised, or replacement poultry growing arrangement does not contemplate modifications to existing housing specifications, the dealer would include the statement in proposed § 201.100(b)(6)(1) in the Disclosure Document cover pages. The statement explains the grower's right to read the Disclosure Document and all accompanying documents carefully, and notes that the live poultry dealer is required to provide the current or prospective poultry grower with the Disclosure Document and a copy of the poultry growing arrangement at least seven calendar days before the dealer executes the poultry growing arrangement. Alternatively, if the dealer offers a new poultry growing arrangement that would require the current or prospective poultry grower to make an original capital investment, as in proposed § 201.100(a)(2), or offers or imposes modifications to existing housing specifications that could reasonably require the current poultry grower to make an additional capital investment, as in proposed § 201.100(a)(3), the dealer would be required to include the statement in proposed § 201.100(b)(6)(ii). The statement explains the grower's right to read the Disclosure Document and all accompanying documents carefully, and notes that the live poultry dealer is required to provide the poultry grower with the Disclosure Document, a copy of the poultry growing arrangement, the new or modified housing specifications, and the letter of intent simultaneously. Inclusion of one of these statements in the Disclosure Document cover pages is intended to notify poultry growers of their rights under the regulations and indicate what documents they should receive from the live poultry dealer within the described timeframes.

Under proposed § 201.100(b)(7), the live poultry dealer would be required to include a statement notifying the poultry grower that the terms of the poultry growing arrangement will govern the grower's relationship with the live poultry dealer's company. The proposed statement would further notify the poultry grower of their right, notwithstanding any confidentiality provision in the poultry growing arrangement, to discuss the terms of the poultry growing arrangement and the Disclosure Document with a Federal or State agency; the grower's financial advisor, lender, legal advisor, or accounting services representative; other growers for the same live poultry dealer; and a member of the poultry grower's immediate family or a business associate. The proposed statement would explain that a business associate is a person not employed by the poultry grower, but with whom the current or prospective grower has a valid business reason for consulting when entering into or operating under a poultry growing arrangement.

AMS believes requiring this statement in the Disclosure Document cover pages would help growers understand their rights under the Act and the regulations and avert deception of growers. In the past, industry stakeholders have reported to USDA that they believed the terms of their poultry growing arrangements forbid growers from discussing those arrangements with Federal and State agencies, other growers for the same live poultry dealer, and other advisors. Commenters on previous proposed rulemakings have reported fearing reprisals from live poultry dealers for discussing their poultry growing arrangements with others, although the current regulations specify, at § 201.100(b), that live poultry dealers must allow poultry growers to do so. The proposed requirement to include this statement in the Disclosure Document cover pages would advise poultry growers that they have the right to discuss the terms of the poultry growing arrangement with the entities listed, regardless of confidentiality provisions that may be included in the arrangement. Further, AMS is proposing to redesignate § 201.100(b) as § 201.100(h) and to revise the language to provide that the live poultry dealer cannot prohibit current or prospective poultry growers from discussing the terms of a poultry growing arrangement offer or the accompanying Live Poultry Disclosure Document with the entities listed above. The remainder of redesignated § 201.100(h) would remain unchanged.

Finally, proposed § 201.100(b)(8) would require the live poultry dealer to include the following sentence in bold type in the Disclosure Document cover pages: ''Note that USDA has not verified the information contained in this document. However, if it contains any false or misleading statement or a material omission, a violation of federal and/or state law may have occurred.'' With this language, AMS intends to clarify that the Disclosure Document is not subjected to agency review prior to submission to poultry growers, and that legal recourse may be available for some present and future controversies related to the Disclosure Document and the poultry growing arrangement.

Proposed § 201.100(c)—Required disclosures following the cover page—would specify the information live poultry dealer must provide in the Disclosure Document following the cover pages. Under proposed § 201.100(c)(1), the dealer would be required to provide a summary of litigation over the previous six years between the live poultry dealer and any poultry grower, including the nature of the litigation, its location, the initiating party, a brief description of the controversy, and any resolution. Information about a live poultry dealer's litigation with poultry growers within the relevant period, particularly the basis of the litigation and the volume of litigation relative to the number of growers with whom the dealer contracts, would help growers identify conflict origins and better assess potential risk of conflict.

Proposed § 201.100(c)(2) would require the live poultry dealer to provide a summary of all bankruptcy filings in the previous six years by the dealer and any parent, subsidiary, or related entity of the live poultry dealer. Bankruptcy of the live poultry dealer poses a very real financial risk to grower financial returns. It is unclear to AMS to what extent lenders analyze these issues. While bankruptcy proceedings should be public, that does not mean growers would be aware of the proceedings or where the live poultry dealer might be in an ongoing process. Recent or current bankruptcy filing is an indicator relating to the financial health of the live poultry dealer, which a poultry grower may need to consider when deciding whether to enter or continue a contractual relationship with the dealer.

Proposed § 201.100(c)(3) would require the live poultry dealer to provide a statement that describes the

dealer's policies and procedures regarding the potential sale of the poultry grower's farm or assignment of the poultry growing arrangement to another party. AMS believes it is important for poultry growers to have this information when considering a poultry growing arrangement, because growers may encounter future scenarios where they choose or are forced to exit poultry farming. These scenarios might include the unfortunate death or disability of the grower or the prospect of other occupational opportunities, etc. However, in some situations, farm sales and assignments might be contingent on approval from the live poultry dealer. Growers informed of these policies and procedures would have the opportunity to develop a coherent strategy, should they desire to exit poultry farming.

Under § 201.100(d)—Financial disclosures—of this proposed rule, live poultry dealers would be required to provide certain additional information in the Disclosure Document. Under proposed § 201.100(d)(1), dealers would be required to provide a table showing average annual gross payments to poultry growers for the previous calendar year. The table would be organized by housing specification as required for growers in each complex located in the United States that is owned or operated by the live poultry dealer.[59] The table would be required to express average payments on the basis of U.S. dollars per farm facility square foot. Under § 201.100(d)(2), live poultry dealers would be required to provide tables showing quintiles of average annual gross payments to poultry growers at the local complex for each of the previous five years.[60] Again, average payments would be expressed on the basis of U.S. dollars per farm facility square foot. Further, the required tables would be organized by year, housing specification tier, and quintile. The proposed provision would describe the process dealers should use to calculate and normalize table values. A proposed conforming change to § 201.2 would add a definition for *complex,* meaning a group of local facilities under the common management of a live poultry dealer. The definition would explain further that a complex may include, but not be limited to, one or more hatcheries, feed mills, slaughtering facilities, or poultry processing facilities.

AMS is proposing to require live poultry dealers to provide recent average revenue information relating to growers at all the live poultry dealer's U.S. complexes to illuminate the range of payments to growers throughout the country. This information would allow growers to better assess housing specifications and related payment variability elsewhere in relation to what is offered at the local complex. AMS is proposing to require dealers to provide historical revenue information relating to growers in the same local complex because the information would give the current or prospective poultry grower considering a poultry growing arrangement a fairer picture of potential earnings under the arrangement and would help the grower evaluate whether those earnings would be sufficient to meet personal and business financial obligations. As described earlier, research shows poultry grower payments range widely above and below the mean received by contract growers. As well, payments range widely between specific contracts and grower pools. AMS believes providing quintiles for the previous five years, as proposed, organized by housing specification tier and normalized by square footage payments, would give growers information with which to better assess projected payments under the poultry growing arrangement. We believe that providing insights into the variability of cash flow within any given year would enable growers to make informed business decisions, manage risk, and improve farm management.

Proposed § 201.100(d)(3) would provide that if the housing specifications for poultry growers under contract with the live poultry dealer in the local complex may be modified so that an additional capital investment may be required, or if for some other reason annual gross payment averages for the previous five years do not accurately represent expected future grower payment averages, the live poultry dealer also would be required to provide the grower annual payment projections for the term of the poultry growing arrangement under consideration by housing specification and quintile, as under proposed § 201.100(d)(2). The dealer would also be required to explain why the historical data does not provide an accurate representation of future earnings. AMS is proposing this conditional requirement because there are situations in which historical data may not accurately reflect future projections. For example, changes in pay rates, pay systems, housing specifications, growout models, stocking densities, or number of annual placements are generally discretionary functions of the live poultry dealer. These decisions can directly impact grower payments. Live poultry dealers considering or undertaking actions related to the aforementioned functions would be obligated to provide grower payment projections to allow growers to determine the financial feasibility of the upgrades and make better informed business decisions. Standardized grower payment projections would include realistic expectations about future earnings. Nothing in the proposed provision would prohibit a live poultry dealer from providing grower payment projections even if they were not required to do so under § 201.100(d)(2).

Under proposed § 201.100(d)(4), the live poultry dealer would be required to provide a summary of any information the dealer collects or maintains pertaining to grower variable costs inherent to poultry production. A proposed conforming change to § 201.2 would add a definition for *grower variable costs* to mean those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance. Based on discussions with integrators and other in the industry, AMS has found that many integrators collect this data to inform grower pay rates. Thus, AMS believes that live poultry dealers routinely collect and maintain this information, and that providing such information to poultry growers considering a poultry growing arrangement would help growers make informed decisions about their participation in the poultry production business.

Finally, under proposed § 201.100(d)(5), the live poultry dealer would be required to supply the contact information for the State university extension service office or the county farm advisor's office that can provide relevant information to the current or prospective poultry grower about grower costs and poultry farm financial management in the grower's geographic area. AMS believes that growers can benefit from the expertise and

[59] Most dealers do not own or operate growout facilities, but they do own everything else around which the growout facilities are organized—*i.e.,* the complex. The complex commonly includes the processing plant and feed mill, and may include other production facilities. Growers produce for a particular local complex, even though the dealer may own more than one local complex and other complexes around the country. Depending on the technical needs for optimizing poultry growth for each product type, the dealer may have multiple different housing specifications for growers who produce different products for the complex. So, the required table would show average payments to growers in each of the different housing specifications at the complex.

[60] The word ''local'' in this discussion is used to differentiate between the complex with which the grower may be considering a contract, and all the other complexes a dealer may own.

experience, as well as the information publicly available, from these sources, if they choose to access it.

Proposed § 201.100(e)—Small live poultry dealer financial disclosures—would exempt live poultry dealers who, in conjunction with any or all of the parent or subsidiary companies, slaughter fewer than 2 million live pounds of poultry weekly (104 million pounds annually) from the requirement to provide the Disclosure Document under proposed § 201.100(a)(1). Eighty-nine live poultry dealers file annual reports with AMS, and that number includes non-integrated processors and integrators who do not use the contract production model. According to AMS data, of that number, 47 live poultry dealers could be exempt under certain circumstances from the requirement to provide the Disclosure Document because they slaughter fewer than 2 million pounds of poultry weekly or 104 million pounds annually. The exemption would apply only if the new, renewed, or replacement contract offered by one of these dealers does not include revisions to existing housing specifications that would require the grower to make new or additional capital investments. AMS is proposing this exemption in order to ease the burden on smaller live poultry dealers. Often smaller operators have a smaller pool of growers, and many of those growers are using facilities that have been in production for many years, and are unlikely to be required to make changes. AMS believes the risk and impact of deception is reduced in this context and may not justify the effort and expense to develop the Disclosure Document required of larger business entities.

AMS is proposing to add new § 201.100(f)—Governance and certification, which would require the live poultry dealer to establish, maintain, and enforce a governance framework that is reasonably designed to review and ensure the accuracy and completeness of the Disclosure Document, and ensure the live poultry dealer's compliance with all its obligations under the Act and the regulations. We believe a governance framework and anti-fraud protections would help ensure sufficiently high-level corporate attention and legal accountability. Under proposed § 201.100(f), the framework must include audits and testing, as well as reviews of an appropriate sampling of Live Poultry Dealer Disclosure Documents by the principal executive officer or officers. The principal executive officer, or a person performing similar functions, of the live poultry dealer's company would be required to certify that the company complies with the governance framework requirement and that the Disclosure Document is accurate and complete. Current civil and criminal actions [61] related to price fixing in the poultry industry, including admissions of guilt,[62] suggest the potential for a conspiracy of deception among live poultry dealers. AMS believes that an audit and testing requirement, combined with officer reviews and certification are appropriately tailored to ensure the procedures used to produce the Disclosure Document and the information contained therein are sound and accurate.[63] The framework retains flexibility to enable integrators to design a framework appropriate to manage the risks relating to the preparation of compete and accuracy disclosures. As explained earlier, AMS is proposing to develop and provide a disclosure form with standardized language, which live poultry dealers can download and print. The proposed form would include a certification statement the dealer must sign.

Under proposed § 201.100(g)—Receipt by growers—a live poultry dealer would be required to include in the Disclosure Document a signature page. The signature page would be required to include this statement: ''If the live poultry dealer does not deliver this disclosure document within the time frame specified herein, or if this disclosure document contains any false or misleading statement or a material omission (including any discrepancy with other oral or written statements made in connection with the poultry growing arrangement), a violation of federal and state law may have occurred. Violations of federal and state laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Packers and Stockyards Act, as amended. Allegations of such violations may be reported to the Packers and Stockyards Division of USDA's Agricultural Marketing Service.'' The live poultry dealer would further be required to obtain the current or prospective grower's dated signature on the signature page as evidence that the dealer provided the required documents according to specified timeframes. The dealer would be required to provide a copy of the dated signature page to the grower and would be required to retain a copy of the dated signature page in the dealer's records for three years following expiration, termination, or non-renewal of the poultry growing arrangement. AMS believes growers should be able to rely on the Disclosure Document for its intended purpose to further inform poultry growers of items related to their poultry growing arrangement. Growers should be aware that false or misleading statements and/or material omissions contained in the Disclosure Document may form a basis for legal action. AMS has an interest in ensuring poultry growers receive the Disclosure Document and accompanying documents in the appropriate timeframe, which would afford growers time to review all pertinent documents and information before they are required to sign binding contracts. Requiring live poultry dealers to collect and retain proof of compliance would ensure compliance with the proposed regulation.

In presenting this information to current and prospective growers, the disclosure document is expected to reduce information asymmetry and the risk of deception. AMS believes the proposed disclosure document would make growers better aware of risks related to the poultry growing arrangement and furnish growers with information that may currently be available only to dealers. The disclosure document would clarify for growers the high degree of control and influence the live poultry dealer exerts over critical production factors that affect the business success of growers' operations. Additionally, it would help prospective growers assess the degree to which their own skill and effort may or may not influence their pay.

AMS invites comments on various aspects of the proposal to require live poultry dealers to disclose specific information to prospective and current poultry growers in the Disclosure Document as described above. Please fully explain all views and alternative solutions or suggestions, supplying

[61] ''Four Executives and Company Charged with Price Fixing in Ongoing Investigation into Broiler Chicken Industry''. *Justice News*, U.S. Department of Justice Office of Public Affairs, July 29, 2021. Press Release. (referencing indictments against Koch Foods and former Pilgrim's Pride executives).

[62] Department of Justice Press Release No. 21–172. ''One of the Nation's Largest Chicken Producers Pleads Guilty to Price Fixing and is Sentenced to a $107 Million Criminal Fine''. February 23, 2021.

[63] Audits, testing, and executive review and certification of regulatory compliance requirements are found in several regulatory regimes involving important market compliance protocols. These include section 302 of the Sarbanes-Oxley Act (Pub. L. 107–204; 116 Stat. 745) and the Title XIII of the Bank Holding Company Act (12 U.S.C. 1851 *et seq.*) and regulations thereunder, commonly known as the Volcker Rule, including revisions designed to simplify the rule. See, ''Subpart D—Compliance Program Requirements'' (12 CFR 248.20, and discussion in 79 FR 556); ''Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in and Relationships With, Hedge Funds and Private Equity Funds'' (84 FR 61974).

examples and data or other information to support those views where possible. While comments on any aspect of the Disclosure Document are welcome, AMS specifically solicits comments on the following:

1. Would the amount and type of information required help poultry growers make informed business decisions and better understand the poultry growing arrangement, or otherwise better address deception risks that growers may face in the poultry contracting process and in the operation of a poultry growing arrangement?

2. What items might be added to or deleted from the proposed requirements to make the Disclosure Document most useful? Is any of the required information extraneous? Is any material information relevant to the poultry contracting process, including the terms in and risks of poultry growing arrangements, missing and should be added? Please explain what and why.

3. What specific challenges or burdens might dealers face in collecting and disseminating the information to be included in the Disclosure Document? Would this require dealers to modify their business model? What specific modifications would be required and why?

4. Do the proposed timelines for providing the Disclosure Document enable a grower to make an informed decision? Do these timelines create challenges for dealers or growers? If so, please explain why and suggest a more appropriate length of time.

5. Are there additional instances where a revision to the Disclosure Document would be appropriate? If so, please explain.

6. Is the wording of the proposed Disclosure Document and the disclosures that may be expected to arise under it readily understandable? If not, please suggest changes for improvement, including means to ensure that any disclosures in the Disclosure Document are readily understandable.

7. Are there circumstances in which the dealer should be required to provide the Disclosure Document in a language other than English? Are other business materials provided in other languages already? If so, please describe those circumstances and comment on the benefits and additional burden of such a requirement.

8. Are the proposed Disclosure Document statements regarding a poultry grower's right to read the Disclosure Document and to share the document and consult with certain other entities about the contents useful for growers? Or, for example, should growers be given additional notifications regarding where they can find out more about their legal rights under the Packers and Stockyards Act, such as a USDA summary of or a link to those rights? Or, would less information be appropriate? Why or why not?

9. Are there additional advisories to poultry growers that should be required in the Disclosure Document cover pages? If so, please explain why and suggest appropriate language for such notices.

10. Are there other risks inherent to poultry production about which growers should be informed prior to making major business decisions? If so, please explain and suggest appropriate language for such advisories.

11. Are the proposed disclosures regarding the financial health and integrity of the live poultry dealer adequate to enable growers to make sound business decisions? Why or why not?

12. Are there certain legal violations or other matters which could call into question the financial health or integrity of the live poultry dealer such that they should be disclosed?

13. Is the proposed disclosure regarding the dealer's policy on sale-of-farm circumstances adequate to ensure transparency and effective grower decision making?

14. Should we require dealers to disclose policies and procedures for determining whether disaster or sick flocks are caused by the integrator or grower and how growers will be compensated under each scenario? Or, where a dealer maintains policies that do not remove sick flocks from the tournament, should we require additional disclosures regarding sick flock risks to the grower? Why or why not?

15. Should we require dealers to disclose the contractual grounds for termination or suspension of the poultry growing arrangement? Why or why not?

16. Are there any other policies and procedures that dealers should be required to disclose? For example, should we require disclosure of policies and procedures around tournament groupings, compensation incentives of the dealers' representatives, or how growers may appeal or report determinations or actions?

17. Are the proposed disclosures relating to grower payment history and projections adequate to enable poultry growers to make sound business decisions, are the proposed metrics appropriate, and is the local complex the appropriate standard? What, if any, other information should be required, and why? If so, how should it be provided?

18. Is our estimation of the recordkeeping burden related to disclosing grower payment history appropriate? Why or why not?

19. Could certain types of financial disclosures facilitate harmful coordination by integrators? Why or why not? If so, how could the risk of harmful coordination be mitigated?

20. What effect, if any, would the required financial disclosures have on the lending system and on the provision of credit to growers?

21. Would the provision of information about grower variable costs benefit growers? Why or why not?

22. Have we listed the appropriate items regarding the grower variable costs dealers should enumerate and disclose to growers? For example, should we specify that dealers disclose information about costs related to compliance with environmental regulations, energy, water, and waste disposal? Are the timing of housing upgrades, including financing costs, reasonably predictable enough by dealers such that those costs should be considered part of grower variable costs during the poultry growing arrangement? Why or why not?

23. Is the estimated burden to dealers related to providing information about grower variable costs justified by the value to growers of having the information? Why or why not?

24. What types of information about grower variable costs do dealers currently collect? Are or how could dealers be incentivized to collect any information that they do not collect, or otherwise obtain such information in a reasonable manner?

25. How else can USDA refine and improve the disclosure regime outlined in this proposal? For example, would additional detail around the scope or definition of deception under the Packers & Stockyards Act be useful for implementing this disclosure regime—for example, a definition such as ''Deception shall mean a material representation, omission, or practice that is likely to mislead a reasonable livestock or poultry producer or grower''? Why or why not?

26. Is the proposed exemption from the Disclosure Document requirements for small businesses under certain circumstances appropriate? What risks or benefits are there in providing such exemptions? Are there other approaches—such as different thresholds—we should consider that could be appropriately tailored to small live poultry dealers?

27. Is the proposed governance structure appropriate and sufficient for ensuring the accuracy of information provided in the Disclosure Document? Why or why not?

28. Is the proposed governance structure appropriate for dealers? Please explain the burden and how it could be mitigated while providing sufficient accountability.

29. Are there other ways AMS could sufficiently ensure the completeness and accuracy of the Disclosure Document, and if so, should these replace or be added to any of the proposed provisions?

30. Should AMS specify the format (*e.g.,* electronic or machine-readable) in which disclosure records should be maintained? Why or why not?

31. Should AMS collect disclosure data, and if so, how might we use such data to enhance compliance and accuracy and monitor for possibly deceptive practices?

32. As proposed, the Disclosure Document requirement would apply to live poultry dealers in all segments of the poultry production industry. How appropriate are the proposed requirements for all types of poultry production? Should the requirement to provide the Disclosure Document be limited in application to broiler and turkey production, or is it appropriate to apply it to other types of poultry?

C. Contract Terms

Currently, § 201.100(c)—Contracts; contents—specifies certain information that must be included in a poultry growing arrangement. The live poultry dealer is required to specify the duration of the contract and conditions for termination of the contract by each of the parties, all terms relating to the poultry grower's payment, and information about a performance improvement plan for the grower, if one exists. As mentioned earlier in this document, AMS is proposing to redesignate current § 201.100(c) as § 201.100(i). Under this proposed rule, AMS would further revise new paragraph (i) by requiring the live poultry dealer to specify the minimum number of placements to be delivered to the poultry grower's farm annually in each year of the contract, and the minimum stocking density of each of those placements. As explained earlier, the minimum number of placements and the minimum stocking density of each placement under the poultry growing arrangement directly impact poultry grower revenues. Both figures are crucial to a current or prospective grower's ability to evaluate potential earnings under the contract and their ability to and meet financial obligations. AMS believes requiring live poultry dealers to include this information in poultry growing contracts would improve transparency and reduce the risk of deceptive inducement in the contracting process. As well, providing such information may allow lenders and insurers to better evaluate the desirability of poultry loans they are asked to consider.

AMS does not intend, in this rule, to restrict or influence the values provided under these mandatory provisions, but simply to require their transparent inclusion in production contracts. Knowing the minimum stocking density would allow the grower to predict baseline farm weight on a per flock basis. Using the baseline farm weight, the grower could calculate a baseline annual income based on the annual minimum number of flocks. We believe that requiring live poultry dealers to include these two terms in poultry growing arrangements would enable poultry growers to better estimate potential baseline returns from their operations and assess the expected value of the poultry growing arrangements overall, which could in turn foster improved debt management and cash flow. Having this information may also enable growers, as well as their lenders (private lending institutions and public entities that guarantee loans, including FSA), to better estimate and manage risks inherent in poultry production, including facilitating the acquisition of external insurance and risk management products.

Finally, AMS believes improving transparency in this regard would assist growers in better identifying and mitigating deception-related risks, including relationship frictions, conflicts of interest, and inappropriate conduct, including potential retaliation or discrimination. A grower's ability to estimate a contract's expected value and appropriately assess its financial feasibility is paramount to operational planning and risk management, including managing expectations and avoiding poor business decisions. Further, establishing a baseline against which to compare the integrator's performance under the contract would help growers identify deviations from contractual expectations. The rationale for such deviations might be contested. However, added transparency would reduce the risk that adverse actions by integrators against growers could be hidden and growers deceived about whether integrators are fulfilling their contractual obligations. Clearer contractual guarantees in particular would counter the ability for integrators to strategically reduce supply by limiting placements or cutting stocking densities and negatively impacting the earnings of growers without the growers being able to measure, in a reliable and effective manner, the harm they have in fact suffered. Transparency also would discourage the integrator from engaging in discriminatory or retaliatory conduct against growers because the adverse actions would no longer be hidden. Fortunately, as noted above, a more transparent baseline may provide a common floor against which both integrator and grower can work together to manage and mitigate meaningful market risks.

The remainder of redesignated § 201.100(i) would remain unchanged. As well, the text of redesignated paragraphs (j), (k), (l), and (m) of § 201.100 (currently § 201.100(d), (e), (g), and (h), respectively), would remain otherwise unchanged under this proposed rule.

AMS solicits comments on the proposal to require a live poultry dealer to specify in a poultry growing arrangement the minimum number of flocks to be placed with the grower each year under the contract and to specify the minimum stocking density of each flock. Please fully explain all views and alternative solutions or suggestions, supplying examples and data or other information to support those views where possible. While comments on any aspect of the revisions to contract terms are welcome, AMS specifically solicits comments on the following:

1. Do the proposed requirements to specify an annual minimum number of flocks and a minimum stocking density for each flock under the poultry growing arrangement adequately address the need for transparency to avoid deception in poultry growing arrangements? Why or why not?

2. Are there alternative solutions we should consider? For example, in relation to the guaranteed minimum number of flocks per year, would it be more useful to growers and simpler for integrators to express that value as a guaranteed number, or range, of days between flocks? Why or why not?

D. Poultry Grower Ranking Systems

To address concerns identified in the section on *Poultry Grower Ranking Systems* earlier in this document, AMS proposes to add a new § 201.214—Transparency in poultry grower ranking pay systems. The new section would specify the recordkeeping and disclosure requirements for live poultry dealers when they group or rank poultry growers delivering poultry to the dealer during a specified period for the

purpose of determining payment to poultry growers. Conforming changes would be made to § 201.2 to add definitions for terms used in new § 201.214.

Currently, live poultry dealers are required under the regulations at 9 CFR 201.100(d) to furnish poultry growers in poultry grower ranking systems with settlement sheets that show the grower's precise position in the ranking for that tournament. As explained earlier, under this proposed rule, that paragraph would be redesignated § 201.100(j), retaining the requirement to provide settlement sheets. AMS proposes to add a requirement in new § 201.214(a)—Poultry grower ranking system records—that would require a live poultry dealer who calculates payment under a poultry grower ranking system to produce and maintain records showing how certain inputs were distributed among participants. Further, the dealer would be required to maintain those records for five years. Maintaining records allows USDA or any other party with the proper legal authority to collect them for review in the course of an investigation or legal action. The term *poultry grower ranking system,* meaning a system where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period, would be added to § 201.2. The term *inputs,* would also be added to § 201.2 and would be defined as the various contributions to be made by the live poultry dealer and the poultry grower as agreed upon by both under a poultry growing arrangement. The proposed definition would further provide that such inputs may include, but are not limited to, animals, feed, veterinary services, medicines, labor, utilities, and fuel.

Proposed § 201.214(b) would require a live poultry dealer to provide certain information about the flock placed with the poultry grower within 24 hours of the placement on the grower's farm. Specifically, the dealer would be required to provide the flock's stocking density, expressed as the number of poultry per facility square foot; the ratios of breeds of the flock delivered; the ratios of male and female birds in the flock, if the sex of the poultry had been determined; the breeder facility identifier; the breeder flock age; information regarding any known health impairments of the breeder flock and of the poultry delivered to the poultry grower; and what, if any adjustments will be made to grower pay to reflect any of these inputs. As explained earlier in this document, each of these inputs may influence farm weight and feed conversion. In some cases, a poultry grower may adjust management practices in response to potential impacts of inputs on flock performance. This requirement is intended to equip the poultry grower with basic, accurate information at the outset of each growout period about the placement that may inform the grower's management decisions during growout. Growers armed with this information may be better able to efficiently allocate resources during flock growout and maximize their individual profitability.

As conforming changes, AMS proposes to add the following terms and their definitions to § 201.2. *Breeder facility identifier* would be defined to mean the identification a live poultry dealer assigns to distinguish among breeder facilities supplying eggs for the poultry placed in poultry growout operations. These identifiers should be permanent, remaining the same from one growout period to the next, so that growers can observe patterns, if any, related to the performance of flocks originating with different breeders. Live poultry dealers may assign alpha or numeric or some other identifier to each farm to keep the identity of individual breeder facilities private. *Breeder flock age* would be defined to mean the age of the egg-laying flock that is the source of poultry placed on the poultry grower's farm. Depending on the type and breed of poultry being raised, the age of the breeder flock producing the eggs from which poultry for growout are produced may influence the grower's production decisions.

Under proposed § 201.214(c)—Settlement documents—a live poultry dealer employing a poultry grower ranking system to calculate settlement payments for poultry growers would be required to provide every grower within the tournament ranking system settlement documents that show certain information about each grower's ranking within the system, as well as the inputs each poultry grower received, for each growout period. Proposed § 201.214(c)(1) would reflect language in current § 201.100(f) that requires the live poultry dealer to provide each poultry grower a copy of a grouping or ranking sheet that shows the grower's precise position in the grouping or ranking for that growout period. Additionally, the live poultry dealer would be required to show the housing specifications and the actual figures upon which the grouping or ranking is based for each grower grouped or ranked in the system during the specified growout period.

Under proposed § 201.214(c)(2), live poultry dealers would be required to make visible to all grower participants in the poultry grower ranking system the distribution of dealer-controlled inputs provided to all participants. Specifically, live poultry dealer would be required to disclose the stocking density at each grower's placement, expressed as the number of poultry per facility square foot. The dealer would be required to disclose the ratios of the breeds of poultry and the ratios of male and female poultry, if poultry are sexed, placed at each poultry grower's farm. The live poultry dealer would be required to indicate with the use of breeder facility identifiers the source of poultry placed at each poultry grower's facility. The dealer would be required to disclose the age of the egg laying breeder flock from which each poultry grower's placement is produced. The dealer would also be required to report the number of feed disruptions of 12 hours or more each grower experienced during the growout period. Finally, the live poultry dealer would be required to identify any growers' flocks that received any other inputs (such as medication) delivered or administered to the poultry on the participating growers' facilities during the growout period.

As mentioned above, live poultry dealers are currently required to provide settlement sheets showing each grower's ranking within the poultry grower ranking system and to show the actual figures used to rank poultry growers for settlement purposes. However, poultry growers have complained to USDA that the limited information they get does not allow them to effectively evaluate their performance compared to others because they don't know how the inputs they receive compare to the inputs other growers receive. Nor do they know how their performance relates to housing specifications. Further, some growers believe other growers within the same poultry grower ranking system receive superior inputs to their own.

AMS believes the settlement information provided under proposed § 201.214 would enable growers to make factual comparisons about their performance relative to other growers' performance within the poultry grower ranking system. As well, growers may begin to recognize patterns. For instance, a poultry grower might observe that those growers who experienced one or more lengthy feed disruptions ranked lower than growers without feed disruptions. Based on that observation, the grower might determine

to place feed orders with the live poultry dealer earlier than they have in the past to ensure future flocks have consistent feed supplies. Or perhaps growers may identify patterns in performance in relation to housing specifications, and make evaluations regarding the relative impact of skills and effort versus housing design and adjust their business strategies accordingly. Such evaluations and patterns would reduce deception risks such as those associated with misplaced efforts by growers or over- or underinvestment by growers in attempts to operate successfully within the tournament system as designed and managed by the integrator.

The disclosures in proposed § 201.214 could potentially affect the poultry grower's business decisions in various ways. For instance, poultry growers currently may have limited access to information about the poultry breeds, breeder stock age, stocking density, type and administration of veterinary medicines, and transportation or other integrator inputs provided to themselves and other growers in their tournament group. With disclosures under the proposed rule, growers may be able to adjust management practices to optimize growout performance if they know the poultry's breed or have information about the age and health of the breeder flock for their own placements. Additionally, if they have information about feed disruptions, different stocking densities, veterinary treatments, and other different inputs among all growers in the settlement group, poultry growers in tournament systems may be better able to recognize performance patterns and reallocate their resources to optimize their own growout performance. Poultry growers would still receive settlement sheets as currently provided under § 201.100(d), which helps growers verify accuracy of payments, but they would have the added advantage of being able to measure and manage risks and detect possible retaliation or discrimination.

AMS invites comments on the proposed addition of new § 201.214 to the regulations and on the proposed requirements to provide poultry growers in tournament systems with information about inputs both at the time of placement and at settlement. Please fully explain all views and alternative solutions or suggestions, supplying examples and data or other information to support those views where possible. While comments on any aspect of the proposed new section are welcome, AMS specifically solicits comments on the following:

1. Is the proposed period for maintaining records relating to the distribution of inputs to tournament participants appropriate?

2. How long such records should be maintained and why?

3. What burdens does this recordkeeping create for dealers?

4. How well does the proposed requirement to supply input information about each placement to growers at the time of placement respond to grower requests for such information?

5. Is the type or amount of information required appropriate, or should certain items be added to or deleted from the list, or otherwise modified? More particularly, should information about the contents and origin (or mix) of the feed supplied or the provision of veterinary services be disclosed to all tournament participants or not? Why or why not?

6. Is the required information useful to a grower's operations or not, including in managing risks and otherwise in preventing deception? Why or why not?

7. What benefits or costs may be associated with this requirement, and would those benefits or costs be justified?

8. What specific burdens or challenges might dealers encounter in collecting information for placement disclosures?

9. Would the requirement to provide placement disclosures affect dealers' business practices? If so, how?

10. How well does the requirement to provide input distribution information, along with settlement payment information, for all members of the tournament respond to grower requests to improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system?

11. Does the requirement to disclose the housing specifications along with settlement payment information improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system? Why or why not?

12. Would the proposed settlement information help growers evaluate and improve, if necessary, their performance, make informed business decisions, or mitigate risks? Why or why not?

13. Is there other information or another way of presenting the information that would be better?

14. Do growers face any obstacles to sharing or discussing placement or settlement information with others that should be addressed; if so, what are those obstacles and how should they be addressed? Should rights to discuss the terms of poultry growing arrangement offer apply to all the disclosures proposed by this rule? Why or why not?

15. What specific burdens or challenges would dealers encounter in implementing the settlement disclosure, and what strategies might help mitigate those burdens or challenges?

16. How would the proposed changes to settlement disclosures affect dealers' business practices?

17. Under existing regulation 201.100(f), live poultry dealers are not required to disclose the names of other growers on ranking sheets. Under 201.214 of this proposal live poultry dealers would disclose a breeder farm identifier in the settlement disclosures but would not be required to disclose the name of breeder farms. Should we reevaluate our position on this issue? Why or why not?

18. Currently, dealers are not required to disclose the names of all competing growers on ranking sheets. Should we require dealers to disclose the names of all competing growers in settlement documents? Why or why not?

19. Are there other ways of expressing grower identity information that would be useful to growers and balance privacy and confidentially concerns?

20. We propose to require dealers to disclose the number of feed disruptions each poultry grower endured during the growout period, where the grower was completely out of feed for 12 hours or more. Is this an appropriate length of disruption to trigger reporting? Should we require a shorter time, such as 6 hours? Please explain your views.

VI. Regulatory Analyses

A. Executive Order 12988—Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. Nothing in this proposed rule is intended to interfere with a person's right to enforce liability against any person subject to the Act under authority granted in section 308 of the Act.

B. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule may impact individual members of Indian tribes that operate as live poultry dealers or poultry growers; however, it would not have a direct effect on tribes or the relationship or distribution of power and responsibilities between the Federal Government and Indian tribes. Therefore, consultation under Executive Order 13175 is not required at this time. If a Tribe requests consultation, AMS will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress. AMS will also extend outreach to ensure tribe members are aware of the requirements and benefits under this proposed rule once final.

C. Civil Rights Impact Analysis

AMS has considered the potential civil rights implications of this proposed rule on members of protected groups to ensure that no person or group would be adversely or disproportionately at risk or discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, or protected genetic information. This rule does not contain any requirements related to eligibility, benefits, or services that would have the purpose or effect of excluding, limiting, or otherwise disadvantaging any individual, group, or class of persons on one or more prohibited bases. In fact, the proposed regulation would create means by which AMS may be able to address potential civil rights issues in violation of the Act.

In its review, AMS conducted a disparate impact analysis, using the required calculations, which resulted in a finding that Asian Americans, Pacific Islanders, and Native Hawaiians were disproportionately impacted. The proposed regulations would provide benefits to all poultry growers. AMS will institute enhance efforts to notify the groups found to be more significantly impacted of the regulations and their implications. AMS outreach will specifically target several organizations that regularly engage with or otherwise may represent the interests of these impacted groups.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS has requested OMB approval of new information collection and recordkeeping requirements related to this proposed rule. AMS invites comments on this new information collection. All comments received on this information collection will be summarized and included in the final request for OMB approval. Below is summary information on the burdens of these new information collection and recordkeeping requirements. Additional detail can be found in the Regulatory Impact Analysis (RIA). Comments on this section or the details in the RIA will be considered in the final rule analysis.

Title: Transparency in Poultry Grower Contracting and Tournaments.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of a New Information Collection.

Abstract: The information collection requirements in this request are essential to improve transparency and forestall deception in the use of poultry growing arrangements, in accordance with the purposes of the Packers and Stockyards Act, 1921. Proposed revisions to the Packers and Stockyards regulations would require live poultry dealers to provide certain disclosures to poultry growers in advance of entering into production contracts. Under the proposal, dealers would have the option of using the Live Poultry Dealer Disclosure Form provided by AMS to meet the requirements for the cover page that must accompany additional dealer-generated disclosure documents as required. Alternatively, dealers could develop their own cover page to meet the requirement, as long as all the required information is included. Poultry growers could use the disclosure information to evaluate the accuracy of proposed contracts and make informed business decisions regarding financial investments related to poultry production.

The proposed rule would also require live poultry dealers who group and rank poultry growers for settlement purposes to disclose essential information to poultry growers about the flocks placed with individual growers at the time of placement. Dealers would also be required to disclose information about the flocks and associated production inputs delivered to all growers in the settlement group, as well as each grower's ranking within the group, at the time of settlement. The estimates provided below apply only to live poultry dealers who would be required to provide the information to growers. Poultry growers would not be required to provide information, but would be able to use the information provided by live poultry dealers to improve flock management practices and evaluate grower treatment under poultry grower ranking systems.

Live Poultry Dealer Disclosure Document

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response (first year), 0.26 hours thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 89.

Estimated Number of Responses: 23,047.

Estimated Number of Responses per Respondent: 259.

Estimated Total Annual Burden on Respondents: 19,993 hours first year, 6,066 thereafter.

Poultry Grower Ranking System Records

Estimate of Burden: Public reporting burden for the collection of information is estimated to average 0.29 hours per response (first year), 0.10 hours thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 89.

Estimated Number of Responses: 32,011.

Estimated Number of Responses per Respondent: 360.

Estimated Total Annual Burden on Respondents: 9,253 hours first year, 3,201 thereafter.

Comments: Comments are invited on: (1) Whether the proposed collection of the 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

AMS estimates each of 89 live poultry dealers would develop an average of 259 Live Poultry Dealer Disclosure Documents for poultry growers relating to new, renewed, revised, or updated poultry growing arrangements, as required under proposed § 201.100. AMS arrived at its estimate of 259 developed Disclosure Documents per live poultry dealer from AMS records which show 89 live poultry dealers filed annual reports with AMS, and their reports indicate that they had 23,047 growing contracts with poultry growers during their fiscal year 2020. AMS divided the 23,047 growing contracts by the 89 live poultry dealers to arrive at 259 Disclosure Documents per live poultry dealer. Dealers with current contracts with poultry growers would not be required to provide the Disclosure Document to those growers unless the dealer is proposing modifications to the poultry housing specifications under the contract. AMS estimates first year development, production, and distribution of the Disclosure Documents, including management, legal, administrative, and information technology time, would require an average 0.87 hours each, while ongoing annual production and distribution of each Disclosure Document would take 0.26 hours. AMS arrived at the estimates of the number of hours on an annual basis to set up, produce, distribute, and maintain each Disclosure Document by dividing the annual number of responses for all live poultry dealers (23,047) by the number of hours to set up, produce, and distribute the disclosures (19,993 first year hours and 6,066 ongoing hours). AMS estimated the number of hours for all live poultry dealers to develop, produce, distribute, and maintain each Disclosure Document from the number of hours estimated and the expected cost estimates in Tables 1 and 2 in Appendix 1.

AMS estimates 89 live poultry dealers would each provide placement and settlement records to an average of 360 poultry growers under tournament ranking systems, as required under proposed § 201.214. AMS estimated the annual number of placement and settlement records by multiplying the number of slaughter plants in AMS records from the reports that live poultry dealers file with AMS (228) by the average number of tournaments at each plant per week from AMS subject matter experts (1.35) by 52 weeks. This product is then multiplied by two to account for both placement and settlement records. AMS then divided the estimated annual number of responses (32,011) by the number of live poultry dealers (89) to arrive at its estimate of 360 placement and settlement disclosure records for each live poultry dealer on an annual basis.

AMS estimates first year development, production, and distribution of the required placement and settlement records, as required under proposed § 201.214, including management, legal, administrative, and information technology time, would require approximately 0.29 hours. AMS estimates ongoing annual production and distribution of required tournament placement and settlement information would require an average of 0.10 hours. AMS arrived at the estimates of the number of hours to set up, produce, and distribute, and maintain each Disclosure Document on an annual basis by dividing the annual number of responses for all live poultry dealers (32,011) by the annual number of hours to set up, produce, distribute, and maintain the placement and settlement disclosures (19,993 first year hours and 6,066 ongoing hours). AMS estimated the number of hours for all live poultry dealers to develop, produce, and distribute each placement and settlement Disclosure Document from the number of hours estimated and the expected cost estimates in Tables 1 and 2 in Appendix 1.

Under proposed § 201.100(f), live poultry dealers would be required to certify as to the accuracy of the Disclosure Document and would be required to maintain records relating to the Disclosure Document for three years following expiration of the poultry growing arrangement. Under proposed § 201.214, live poultry dealers would be required to maintain records related to poultry grower tournament placements and settlement for five years.

The required disclosures under proposed 201.100 would include essential information about the contract, the live poultry dealer's business history, and financial projections the grower could use to evaluate entering into the contract. Under the proposal, live poultry dealers would be required to provide the Live Poultry Dealer Disclosure Document, which includes specified information and boilerplate grower notifications. AMS would make available a form—the Live Poultry Dealer Disclosure Form—dealers could download from the AMS website as the cover pages for Disclosure Document, or they could create their own cover pages, as long as all the required information is included. Live poultry dealers would be required to obtain grower signatures as evidence of compliance with the disclosure requirements, and would be required to retain the signature page for three years following contract expiration.

Proposed § 201.214 would also require live poultry dealers who group or rank poultry growers for settlement purposes to disclose information about each flock of poultry placed with growers for growout at the time of placement. Additionally, dealers would be required to provide to each poultry grower in the group, at the time of settlement, information about the flocks placed with every grower in the group, as well as each grower's performance ranking within the group. Growers could use placement disclosures to inform flock management decisions during growout, and could use settlement disclosures to evaluate their growout performance, potentially improve future performance, and evaluate whether group members are treated fairly. Live poultry dealers would be required to maintain records related to these disclosures for five years following settlement.

Costs of Proposed §§ 201.100 and 201.214

The combined costs to live poultry dealers for compliance with the reporting and recordkeeping requirements of proposed §§ 201.100 and 201.214 are expected to be $2,436,964 in the first year, and $733,609 in subsequent years. The total hours estimated for the live poultry dealers to create, produce, distribute, and maintain these documents are 29,246 in the first year, and 9,267 in subsequent years. Complete details showing how AMS arrived at these cost estimates appear in Tables 1 and 2 in Appendix 1.

E. E-Government Act

USDA is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

F. Executive Orders 12866 and 13563

AMS is issuing this proposed rule in conformance with Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review, which 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. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

In the development of this proposed rule, AMS considered several alternatives, which are described in the Regulatory Impact Analysis, below.

The proposed rule is not expected to provide, and AMS did not estimate, any environmental, public health, or safety benefits or impacts associated with the proposed rule. We request comment on potential environmental, public health, or safety impacts of the proposed rule as well as data sources and approaches to measure their economic implications.

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore has been reviewed by OMB. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

AMS is proposing to amend 9 CFR part 201 by adding new definitions to § 201.2, adding contract and disclosure requirements for live poultry dealers in § 201.100, and adding new § 201.214 regarding live poultry dealer responsibilities when they use poultry grower ranking systems to settle payments for poultry growers. Based on its familiarity with the industry, AMS's Packers and Stockyards Division (PSD) prepared an economic analysis of the proposed rule as part of the regulatory process. The economic analysis includes a cost-benefit analysis of the proposed rule. PSD then discusses the impact on small businesses.

G. Regulatory Impact Analysis

As a required part of the regulatory process, AMS prepared an economic analysis of the costs and benefits of the proposed §§ 201.100 and 201.214.

The poultry industry is highly vertically integrated. That is, a single entity owns or controls nearly all the steps of poultry production and distribution. Poultry production contracts reduce the costs for integrators of negotiation with individual growers over the purchase of individual flocks of poultry and relieve integrators from the burden and risks of owning and maintaining poultry houses. The growout portion of production is largely accomplished through contract growers, who bear these burdens and risks. Most poultry, and particularly broilers, are grown under production contracts.

The Agricultural Census reported that 96.3 percent of broilers and 69.5 percent of turkeys were raised and delivered under production contracts in 2017. Live poultry dealers place chicks in barns owned by contract growers. Typically, live poultry dealers provide young poultry, feed, medication, and harvest and transportation services to these poultry growers, who house, feed, and tend the growing birds.

In order to grow poultry on a commercial scale, a poultry grower must invest in housing. The investment is substantial. As discussed above, it may take $350,000 to $400,000 or more to build one grow house, and most farms have multiple houses. The total investment required can easily exceed $1 million. Also, the housing is built and equipped specifically for the purpose of growing poultry. The costs of adapting the housing for any other purpose can be prohibitive.[64] Because the integrators control most aspects of a grower's production, growers are dependent upon the actions of the integrators to recoup the grower's substantial and specific investment. This puts growers in a particularly precarious position where market concentration has led to there being only a small number of integrators with whom to do business—as is the case in almost all geographic markets.

The vertical integration of the industry leads to many risks borne by contract poultry growers. Some of these risks are discussed above. Notably, because of the large investment required of poultry growers, the financial risk of protecting that investment is substantial. Because integrators maintain such heavy influence over many aspects of growers' production, growers have significant exposure to liquidity risks, should flock placements and revenues fall.

Thus, contract poultry growers are subject to numerous risks associated with integrator control over specific aspects of their operations, such as the frequency and density of flock placements, and the related risks of not having control over the genetic quality or health of the chicks that are placed. Integrators control the scheduling of feed deliveries, which also can impact feed conversion and thus grower pay. Also, production variables such as target weights of birds and the growout periods of birds are determined by the integrator, further adding to the risks borne by contract poultry growers. Because integrators control most aspects of grower performance and compensation, that control could be used as a means of retaliation or discrimination. If, for example, a grower has made complaints against the integrator, the integrator may provide fewer or poorer quality inputs, resulting in lower pay.

Integrators benefit from poultry growing contracts by having control over the quality and supply of inputs (birds) into the processing plant while remaining free from many of the risks related to capital investments in growing capacity, where those costs and associated risks are borne by the growers. On the other hand, contracts shift other risks from the grower to the integrator. With integrators responsible for chick genetics, feed quality, and other inputs (with the possible exception of fuel), changes in input prices do not directly affect growers. Growers also do not bear the risks (or enjoy the benefits) of price changes in the value of live poultry or poultry meat, as they do not own the poultry or poultry meat and thus do not sell it. Research on poultry growing contracts in the broiler market has shown them to shift that variation in input costs and output prices, which comprises up to 84 percent of the variation in returns to broiler production.[65] [66]

The most common form of a poultry growing contract is a ''relative performance'' contract, also known as a ''tournament'' contract in the industry. Under tournament contracts, the integrator assigns each grower to a settlement pool, which consists of all the growers given flocks that the integrator processed in a given week. The integrator provides the grower with the production inputs of an initial supply of chicks and feed and veterinary support throughout the growing period; The grower provides the inputs of housing, water, electricity, labor and management. At the time of processing, the integrator collects the finished birds and calculates an average performance metric for the settlement pool, typically the feed-conversion ratio or similar metric. The grower's compensation under the tournament contract, is the sum of a base payment, which typically depends on the total liveweight of the finished birds (less feed and chick costs), and a payment or deduction based on the average

[64] For a discussion of the difficulty in adapting of broiler grow houses for other purposes, see Vukina and Leegomonchai 2006, Op. Cit.

[65] Knoeber, C.R. and W.N. Thurman. 1995. ''Don't Count Your Chicken. . . . : Risk and Risk Shifting in the Broiler Industry.'' *American Journal of Agricultural Economics* 77, 486–496.

[66] This research is regularly cited and reaffirmed in the current economics literature including Tsoulouhas and Vukina (2001) and McDonald (2014) that we cite elsewhere.

performance metric for the settlement pool. For most tournaments, the payment or deduction formula is the difference between the grower's performance metric and the settlement's average, subject to a scaling multiplier. Production periods for poultry are sufficiently short that a grower will typically be in several tournaments in a year. Tournament contracts can have advantages and disadvantages for both integrators and poultry growers.

Agricultural production is an inherently risky endeavor, and returns have some level of risk no matter the marketing channel or structural arrangement. However, researchers have noted that in addition to mitigating the risks of input cost and output price variation, the tournament system also helps insulate poultry growers from some aspects of what are known as common production risks. These are systematic risks common to all growers in a tournament such as weather or widespread disease, feed quality, or genetic strains. This academic research finds that since those risks are likely to affect all growers in a region, compensation is less likely to be adversely affected under a tournament contract than it would be on a simple price per unit of weight contract.[67] For example, if an unusual heat wave caused all growers in a tournament to experience poorer feed conversion, all tournament growers may require more feed and a longer grow period for their flocks to reach the target weight. They would receive the same pay for the weight produced, while not being penalized for the higher feed costs incurred to produce that weight.

As noted, no contract type will protect growers from all market risks, and tournament contracts still leave growers exposed to some common risks. For example, when plants had to reduce processing capacity due to the Covid pandemic, growers experienced reduced compensation to the extent that they received fewer or less dense placements from the integrators.

Tournament systems do not insulate growers from the other risks of contracts discussed above such as the financial risk, liquidity risk, the risk from incomplete contracts, and the lack of control over inputs and production variables. And tournaments introduce new categories of risks to growers: Group composition risk and added risks of settlement-related deception or fraud. The risks of deception or fraud as discussed above include the inability of growers to verify the accuracy of payments, and to detect discrimination or retaliation.

Group composition risk is the risk associated with the composition and performance of other growers in their settlement groups. A particular grower's pay is impacted by the performance of others in the tournament. Growers have no control over the other tournament members' effort and performance, nor over with which other growers they are grouped. An individual grower's effort and performance can be static, and yet that grower's payments could fluctuate based on the grower's relative position in the settlement group. Further, changes in payment may not be commensurate with the changes in grower's effort and performance. These characteristics of the tournament system can add to the variability of pay and affect the ability of growers to plan and measure their own effort and performance. On the other hand, the system is designed to incentivize participants to do their best in the hopes of gaining higher rewards.

The integrators also determine which growers are in each settlement group. While growers in a group must have similar flock finishing times, a live poultry dealer could move a grower into a different grouping by altering layout times to change the week that a grower's broilers are processed. An individual grower may perform consistently in an average performing pool, but if the integrator places that grower in a pool with more outstanding growers, those outstanding growers raise the group average and reduce the fees paid to the individual. At its discretion or per the poultry growing arrangement, an integrator may remove certain growers it considers to be outliers from a settlement pool. This would likely affect the average performance standard for the settlement and affect the remaining growers' pay. Group composition risk can be more relevant to some growers when a tournament's settlement group contains growers with different quality or ages of grow houses.

In addition, the current documentation of tournament terms provides little to no information on the expected variation between individual payments over time. Providing the settlement formula alone does not give growers a means by which they can predict total income over a meaningful period. More generally, an individual grower cannot estimate the variance in pay across periods with the same accuracy as the integrator with whom he or she contracts. Information that would be provided pursuant to this rule would address this issue. Also, growers do not currently receive information that allows them to understand the impact of many integrator decisions made during the growout period that may affect grower incomes. For example, integrators may switch the genetics of chicks supplied to growers or change a feed ration or supplier. Increased information required in settlement disclosure regarding inputs and other factors will make it easier for growers to assess the impacts of these decisions and improve their ability to protect themselves against any systematic issues related to those decisions.

Integrators benefit from tournaments systems, because they provide integrators more control and certainty of the total pay to all the growers in a settlement group. They also benefit from a system that disincentivizes shirking with respect to production efficiency. However, the incentive to avoid shirking can be imparted in a fixed performance standard contract as well.

There is asymmetry in the information available to live poultry dealers and the growers with whom they contract. Some of the information held by live poultry dealers would be valuable to growers because it influences grower compensation in tournament contracts and might help growers in negotiating contract terms and making decisions about capital investments and flock management.

The contracts themselves are often incomplete and exhibit asymmetry in the information available to live poultry dealers and contract growers. Because live poultry dealers supply most of the inputs, much of the production information is available only to the grower from the live poultry dealer. For example, the contract grower may not know precisely how much feed it used, or how much weight the flock gained under his or her care, unless the live poultry dealer provides the information.

Growers may lack negotiating leverage with integrators to demand transparency and completeness in contracts. Most growers have few live poultry dealers in their area with whom they can potentially contract. The table below shows the number of integrators that broiler growers have in their local areas by percent of total farms (number of growers), total birds produced (number of birds), and by total production (pounds of birds produced).

[67] See, for example, Tsoulouhas, Theofanis and Tomislav Vukina. ''Regulating Broiler Contracts: Tournaments Versus Fixed Performance Standards''. *American Journal of Agricultural Economics* 83 (2001): 1062–1073.

TABLE 1—INTEGRATOR CHOICE FOR BROILER GROWERS [68]

Integrators in grower's area[69]	Farms (percent of total)	Birds (percent of total)	Production (percent of total)	Can change to another integrator (percent of farms)
Number				
1	21.7	23.4	24.5	7
2	30.2	31.9	31.7	52
3	20.4	20.4	19.7	62
4	16.1	14.9	14.8	71
>4	7.8	6.7	6.6	77
No Response	3.8	2.7	2.7	Na

The data in the table show that 52 percent of broiler growers (Farms), accounting for 56 percent of total production and 55 percent of birds produced, report having only one or two integrators in their local areas. This limited integrator competition may accentuate the contract risks. Even where multiple growers are present, there are high costs to switching, owing to the differences in technical specifications that integrators require. To switch, the growers likely would need to invest in new equipment and learn to apply different operational techniques due to different breeds, target weights and growout cycles.

Live poultry dealers hold information on how individual poultry growers perform under a variety of contracts. The average number of contracts for the live poultry dealers filing annual reports [70] with AMS in 2020 was 251. The largest live poultry dealers contracted with several thousand growers. Because live poultry dealers provide most of the inputs to all the growers in each tournament, the live poultry dealers have information about the quality of the inputs, while each grower can know only what he or she can observe. Due to a lack of scales and tools to evaluate feed quality, a grower may not be able to weigh, measure or evaluate the inputs it received such as chicks and feed, and it almost certainly will not know about the inputs received by other growers. Live poultry dealers also have historical information concerning growers' production and income under many different circumstances for all the growers with which it contracts, while an individual grower, like most other producers, has information concerning only its own production and income.

New growers entering the industry may have little or no experience from which to draw information for forming expectations for future input and maintenance costs or for evaluating the value of initial capital expenditures. Experienced growers entering into new contracts are limited to their own past experience to draw upon. Live poultry dealers have information from all its contractors about performance, costs, and expenditures.

There are concerns that compensation based on relative performance when growers are not in control of many of the inputs of production creates opportunities for manipulation by integrators. It is also difficult, especially for new growers, to understand how compensation is likely to vary over time as a result of tournaments and other terms that may not currently be present in all contracts such as placement frequency and flock density. This problem of incomplete contracts, the core concepts of which were discussed in the preamble, is of particular concern due to the cost and lifespan of the capital required to be a poultry grower.

With incomplete contracts, at least one party will have discretionary latitude to deviate from expectations.[71] For example, poultry production contracts often do not guarantee the number of flocks a grower will receive even with long-term contracts, even though this is critical information for understanding the value of the contract to the grower.[72] The type and frequency of required upgrades to existing equipment and housing are often left to the discretion of the live poultry dealer.

Hold-up, discussed in the preamble, is a problem that occurs in poultry production contracts because the poultry grower's outlay of the significant capital requirements of growing chickens results in specialized equipment and facilities (that is, they have little value outside of growing chickens). As a result, growers entering the market are tied to growing chickens to pay off the financing of the capital investment. Growers might fear that they will be forced to accept unfavorable contract terms because they are tied to production to pay off lenders and have few, if any, alternative integrators with whom they can contract. This fear can lead to underinvestment in the capital necessary to grow broilers.

This fear is amplified by a historical lack of transparency and incomplete contracts in poultry contracting. It is particularly difficult for a grower making investment or contract decisions to develop a clear estimate of their expected returns because there are a number of important variables that are either not in the contract or difficult or impossible for a grower not already working with a particular integrator to evaluate. Besides not knowing the number of flocks and required capital upgrades as discussed above, it may also be difficult or impossible for a potential grower to determine how much their compensation is likely to vary based on the outcome of adjustments to compensation pursuant to the outcome of a tournament system and to capital improvements of peer growers. Making information that allows growers considering capital investments more readily available and easier to understand at the time important business decisions are made could help reduce the risks and level of concern related to hold-up and lead to better business decisions.

The current market structure and practices lead to a range of harms and risks to growers and to market

[68] MacDonald. (June 2014) Op. Cit.

[69] MacDonald. (June 2014) Op. Cit. (Percentages were determined from the USDA Agricultural Resource Management Survey (ARMS), 2011. ''Respondents were asked the number of integrators in their area, which was subjectively defined by each grower. They were also asked if they could change to another integrator if they stopped raising broilers for their current integrator.'' The 7 percent of those facing a single integrator assert that they could change, presumably through longer distance transportation to an integrator outside the area. Ibid. p. 29 and 30.)

[70] All live poultry dealers are required to annually file PSD form 3002 ''Annual Report of Live Poultry Dealers,'' OMB control number 0581–0308. The annual report form is available to public on the internet at *https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf.*

[71] Steven Y. Wu and James MacDonald, ''Economics of Agricultural Contract Grower Protection Legislation,'' *Choices,* Third Quarter, 2015, pp 1–6.

[72] MacDonald (June 2014) Op. Cit.

efficiency. Data and information available to AMS regarding the marketplace is imperfect and incomplete, which may in part reflect the structure of the market itself, as well as concerns regarding retaliation against growers and others for attempting to raise concerns.[73] However, as set out in detail in section II of the preamble, AMS notes a number of market impacts that underscore our concerns. While grower investment in assets, including housing and equipment, is substantial and growing, they are recruited to, or upgrade, poultry growing in reliance, substantially, on financial analyses and promises from integrators. Moreover, in part with the assistance from integrators, growers generally finance long-term assets against much shorter term production contracts, exposing them to heightened risks and uncertainty around debt repayment and the recoupment of their investments. Production contracts lack completeness around key terms needed to value those contracts, and operationally, the contracts lead to a wide range in grower payments. In many cases, returns to equity may be low. In particular, many growers have only one or two integrators in their local area from which to choose, limiting their market power to demand improved symmetry of information or changes to market practices. Indeed, decades of grower comments to USDA highlight concerns regarding persistent deception in poultry contracting and the operation of the tournament system, as well as ongoing fears of retaliation for speaking out about it. We also note that disclosure is commonly utilized across multiple markets, in particular where investment and risk exposure is taken by a party with substantially less power in a market or a transaction, such as consumer borrowers or franchisees.

AMS requests comment on impacts from current market practices and structures, including qualitative and quantitative data. Do impacts vary across different parts of the market or across different market participants? If so, how and why? Please also discuss implications for market efficiency, competition, supply chain resiliency, rural economies, or other general economic or community matters. We also invite comment on the impacts of disclosure when applied in other markets, and the relevance of those lessons for poultry markets.

AMS expects proposed §§ 201.100 and 201.214 to mitigate costs associated with asymmetric information by requiring live poultry dealers to disclose more and potentially valuable information to growers. Proposed § 201.100 would require live poultry dealers to make disclosures before entering into new contracts, renewing existing contracts, or requiring growers to make additional capital investments. Proposed § 201.214 would require live poultry dealers to disclose additional information at the placement and settlement of each flock.

AMS considered three alternatives to the proposed §§ 201.100 and 201.214. The first is ''do nothing'' or the *status quo.* All regulations under the Packers and Stockyards Act would remain unchanged. It forms the baseline against which the second alternative, proposed §§ 201.100 and 201.214 will be compared. The proposed rule would remove portions of the current § 201.100, which already requires disclosure from live poultry dealers, and replaces them with a more extensive set of disclosure requirements. Not all the disclosure requirements in proposed § 201.100 are new. Many of the provisions in the proposed § 201.100 are already required in the current § 201.100. Since the cost and benefit analysis will be compared to the cost and benefits to the *status quo,* costs and benefits estimated here will reflect only cost and benefits associated with the new requirements in § 201.100.

AMS considered a third alternative similar to proposed §§ 201.100 and 201.214. The alternative would leave all of the requirements in proposed §§ 201.100 and 201.214 the same, but entirely exempt live poultry dealers that process less than 2 million lbs. per week. This third alternative would exempt smaller live poultry dealers, some of which might not have sophisticated records. However, since larger growers do most of the contracting (as quantified later in this analysis), most poultry growers would still receive the disclosures. AMS then estimates and compares the costs and benefits of the alternatives and selects proposed §§ 201.100 and 201.214 as the preferred alternative.

Discussion of the Benefits of the Proposed Regulations

The primary purpose of the proposed rule is to make information available to growers when that information would be most important in decision-making. Currently, most production contracts are incomplete, and providing more information would likely lower the uncertainty the grower faces over their revenue and profit estimates. In addition, growers lack negotiating leverage with integrators to demand, among other things, transparency and completeness in contracts. A benefit of this proposed regulation would be that by providing prospective growers and those contemplating additional capital investments better information on expected returns, growers should be able to make more informed business decisions and can more readily avoid entering into contracts that are not financially sustainable. The proposed regulation would still retain the rights of poultry growers to discuss the terms of the poultry growing arrangement and the Live Poultry Dealer Disclosure Document with each other, advisors, and governmental agencies even if the poultry growing arrangement contains a confidentiality provision. This should facilitate better information sharing, decision making, and management of risk.

Better information on integrator commitments should reduce hold-up concerns that may stifle investment. Better information and transparency on placements and settlements could reduce grower concerns over integrator manipulation of inputs and reduces the potential for deception or fraud, and the high degree of control and influence that the live poultry dealer has over many, if not most, of the critical inputs that will determine the business success of the grower's operation.

Alternatively, the placement and settlement information could provide growers with concrete information they can use to support, individually or collectively, any grievances they might have with a particular integrator. At the same time, this proposed regulation provides growers a measure of protection against risks of retaliation or discrimination that may arise from disputes with integrators during the course of the poultry growing arrangement.

The proposed § 201.100 lays out the information that an integrator would be required to provide to growers contemplating a relationship with that integrator. The disclosure of information would be required whenever an integrator seeks to renew, revise, or replace an existing poultry growing arrangement. In addition, such disclosure would be required for any new contract as well as whenever an integrator is requiring an original capital investment or a change to existing housing specifications that would

[73] As recently as April 2022, retaliation against potential witnesses was raised in both House and Senate hearings on livestock market competition. Retaliation was also asserted to have followed the 2010 listening sessions regarding poultry and has been repeatedly raised by growers around the need for USDA Packers and Stockyards Act rulemakings. Fear of retaliation has even been asserted as adversely affecting data collection by USDA in the poultry markets and the ability for growers to work with the Extension service.

require an additional capital investment. These are the times when the information would be most useful in informing growers of the potential implications of entering into a contract with the integrator or contemplating additional investment in capital stock. This information should allow potential growers to make more informed and financially sustainable business decisions.

When a live poultry dealer requires capital investment, the dealer would be required to provide the grower with the capital specifications they are required to meet and with a letter of intent sufficient to seek financing, as well as a full disclosure of the terms of the agreement. This information would allow more informed investment decisions and help potential lenders accurately assess risk.

The Disclosure Document would provide information on the length of the contract, number of guaranteed placements, stocking density, and notification of certain risks inherent in the agreement. All this information should help in evaluating the longer-term viability of the investment and reduce hold-up fears.

Grower awareness of minimum flock placements and minimum stocking densities would enable growers to more accurately estimate the risks and returns associated with their operations, including debt management, cash flow, and other risks. It may enable growers, as well as financial institutions, to better estimate and manage risk, including potentially the acquisition of external insurance and risk management products.

In addition to information about the specific terms of the contract, information would be provided that informs growers about the integrator's financial history and history of grievances with growers with whom they have contracted. This information too should improve the ability of the grower to evaluate its decision and the potential for hold-up related concerns.

The Disclosure Document would include information on the level and distribution of payments made to growers under contract to the integrator. It describes past and expected future annual returns for similarly situated growers based on the complex and the integrator's other complexes on the particular housing specifications. This would make it much easier for potential growers to estimate their revenues from the contract because it presents returns at various levels of performance, as not all growers perform equally relative to the fixed cost of entry. The Disclosure Document would also provide insights into the variability of cash flow within any given year to enable the grower to improve business decision-making and manage risk. The increased information in the Disclosure Document on the expected levels and distributions of payments has the added benefit of lowering the uncertainty of revenue streams of contract poultry growers.

The reliability of these disclosures would be reinforced by a governance framework and anti-fraud protections. In presenting this information to growers, the Disclosure Document would dramatically reduce information asymmetry and the risk of fraud and deception. As a result, prospective growers and those contemplating additional capital investments would have more confidence in the integrity of the information and consequently in their ability to make sound decisions.

A live poultry dealer would be required to provide the Disclosure Document to growers prior to their entering into an agreement to allow time to discuss the terms of the agreement with advisors, lawyers, business associates, bankers, USDA, or other extension organizations to get assistance in evaluating the agreement.

The proposed § 201.214 would require additional ongoing disclosure of information related to poultry grower ranking pay systems (''tournaments''). This information would be focused on the actual distribution of inputs to growers at the time of placements and the outcomes of the ranking system. Some of this information would improve growers' ability to manage the flocks under their care, while other information helps growers to evaluate the factors affecting the outcome of the ranking system.

Lack of transparency in the tournament calculations has led to risks by growers relating to the potential for fraud and deception. These include the inability of growers to verify the accuracy of payments, the inability to measure and manage risks, and the inability to detect possible discrimination or retaliation for disputes arising under the poultry growing arrangement. The provision of additional transparency around tournament systems in this proposed regulation is designed to address those risks. Provision of information regarding consistency of inputs (both at the time of placement and at the time of settlement), and any adjustments to methods or formulas, would foster more transparent, accurate, reliable, and widely accepted tournaments, and greater ability to monitor and hold live poultry dealers accountable for divergences from high standards of market integrity.

Growers who participate in numerous tournaments over time would benefit from the added information they would receive at the time of placement and settlement, as they would gain valuable experience and knowledge useful in maximizing their growout performance. Because integrator-provided inputs may vary from flock-to-flock, grower knowledge may be enhanced and grower management practices and skills improved with access to input distribution information, particularly at the stage when the input is provided. The increased information in the settlement and placement disclosures would allow growers to assess the impacts of input variability on revenues over time, which would also serve to lower the uncertainty of revenue streams. Growers armed with this information may be better able to efficiently allocate resources, reduce uncertainty of revenue streams, and maximize their individual profitability.

Confidentiality restrictions have historically prevented broiler growers from releasing details of contract pay and performance, thus limiting the availability of comprehensive data with which to consider the effects of alternative regulatory and institutional structures on market performance.[74] Subsequently, the literature on these topics is insufficient to allow AMS to fully estimate the magnitude of the inefficiencies corrected by the proposed rule, nor the degree to which the proposed disclosure requirements and additional grower protections would address them. Though AMS is unable to completely quantify the benefits of the regulations, this analysis has explained numerous benefits derived from increased information, reduced information asymmetries, and reduction in risk of deception by live poultry dealers. Each of the disclosures required under §§ 201.100 and 201.214 of the proposal would provide information that should be useful to growers in making more informed decisions and reducing grower concerns resulting from lack of access to information.

AMS will estimate the industry benefits in two parts, one quantified and the other non-quantified. For the quantitative part, AMS will provide a minimum value of the benefit to poultry growers from the additional information in the disclosures required under

[74] For instance, the analysis of MacDonald (2014), MacDonald and Key (2014), and Vukina and Leegomanchai (2006) (Op. Cit.) relies on data from grower surveys. Knoeber and Thurman (1995) relies on contract settlement data from a single integrator.

§§ 201.100 and 201.214 and will refer to this minimum benefit as G_{min}.

The quantifiable minimum benefit of the financial, placement, and settlement disclosures, G_{min}, arises from the additional information available to growers that serves to lower the uncertainty in revenue streams of contract growers. Lower uncertainty in revenue streams results in a reduction in revenue risks to growers. According to economic principles, a risk averse grower will benefit economically from a reduction in revenue risk.[75] AMS quantifies the benefit to growers from the reduction in revenue risk by estimating the Risk Premium (RP) to contract poultry growers from reducing variability of their net revenues from the disclosures. AMS will then use RP as G_{min}, the quantifiable minimum benefit of the disclosures.

However, proposed §§ 201.100 and 201.214 have additional, other non-quantified benefits to growers and live poultry dealers, referred to as B_O.[76] The other benefits would arise from a reduction in risk of retaliation by allowing growers to share information even if the growing arrangement contains a confidentiality provision and reducing the potential for fraud and deception by live poultry dealers by providing better, more accurate, and verifiable information to growers. These other benefits may lead to an improved allocation of capital and labor resources (such as increased capital investment through the reduction in perceived hold-up risk, and more informed decisions on whether and with whom to enter into a growing arrangement), leading to improved efficiencies and an improved allocation of resources for poultry growers and live poultry dealers.

AMS refers to the total benefits to the industry as B_T, which is the sum of the quantified G_{min}, and the non-quantified B_O, benefits or, $B_T = G_{min} + B_O$. AMS is not able to fully quantify the total benefits, B_T, from improved grower information, more informed decision-making, reduced revenue uncertainty, grower risk reductions, and an improved allocation of resources. The benefits AMS was able to quantify exceed the costs AMS was able to quantify. AMS requests comment on important categories of costs or benefits that may have been left out of this analysis and on means of estimating their magnitude.

AMS expects that the effects on the industry from the proposed rules will be very small in relation to the total value of industry production. In other words, AMS expects the impacts on total industry supply to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

Estimation of Costs and Benefits of the Proposed Regulations

AMS estimates cost and benefits for two alternatives. The first is the proposed §§ 201.100 and 201.214, which is the preferred alternative. The second alternative is the same as proposed §§ 201.100 and 201.214 with a complete exemption for live poultry dealers that process fewer than 2 million pounds per week. Both are compared against a baseline of *status quo,* which has no costs or benefits.

The quantified costs of proposed §§ 201.100 and 201.214 primarily consist of the time required to gather the information and distribute it among the growers. The costs of the proposed rules would fall on live poultry dealers as they collect and disseminate the required information, and on poultry growers based on the value of the time they put into reviewing the disclosures. Though poultry growers are expected to incur costs in reviewing the information, they would be the primary beneficiaries of the information, which would be reflected in their ability to make more informed decisions. The growers must review the information in order to realize the benefits. This may result in a more efficient allocation of capital to the poultry growing industry.

There are 89 live poultry dealers that file annual reports with AMS, and their reports indicate that they had 23,047 contracts with poultry growers during their fiscal year 2020.

AMS expects the direct costs and benefits would be very small relative to overall production costs and would not measurably alter the poultry supply. AMS also expects that neither live poultry dealers nor poultry growers would measurably change any production practices that would impact the overall supply of poultry.

Expected costs are estimated as the value of the time required to produce and distribute the disclosures required by §§ 201.100 and 201.214 as well as the time required to create and maintain any necessary additional records. AMS believes most live poultry dealers already keep nearly all of the required records. Therefore, the added costs of creating the records are expected to be relatively small. AMS also estimates the amount of time that growers would take to review the information provided to them by live poultry dealers. Estimates of the amount of time required by live poultry dealers to create and distribute the disclosures and for growers to review the information were provided by AMS subject matter experts. These experts were supervisors and auditors with many years of experience in working with growers and with auditing live poultry dealers for compliance with the Packers and Stockyards Act. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2020.[77]

Costs of Proposed § 201.100

Proposed § 201.100 lists a number of disclosure and record keeping requirements for live poultry dealers, but not all of them are new. Many of the requirements are included in current § 201.100. Only the new requirements would create additional costs above the *status quo.*

The new provisions in proposed § 201.100 would require large live poultry dealers to disclose a true written copy of the growing agreement and a new Disclosure Document any time a live poultry dealer seeks to renew, revise, or replace an existing poultry growing arrangement that does not contemplate modifications to the existing housing specifications. Small live poultry dealers that process less than 2 million lbs. of poultry per week would be excluded from this disclosure requirement. Before a live poultry dealer enters a poultry growing arrangement that would require an original capital investment or requires modifications to existing housing, both large and small live poultry dealer must provide a copy of the growing agreement, the housing specifications, a letter of intent, and the new Disclosure Document.

The Disclosure Document would require live poultry dealers to disclose summaries of litigation with any poultry growers, bankruptcy filings, and the live poultry dealer's policy regarding a grower's sale of the farm or assignment of the contract.

Live poultry dealers would be required to disclose growers' variable costs if it collects the information. Live poultry dealers would be required to audit the information to ensure accuracy

[75] A risk averse grower prefers revenue streams with low uncertainty to revenue streams with high uncertainty when both have the same mean return.

[76] In the context of this analysis, ''non-quantified'' is defined to include measures which are quantitative in principle but in value which cannot be estimated at present.

[77] See U.S. Bureau of Labor Statistics, *May 2020 National Occupational Employment and Wage Estimates,* May 2020. *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

and obtain and file signed receipts certifying that the live poultry dealer provided the required Disclosure Document.

The Disclosure Document would require two separate financial disclosures to growers. The first disclosure would be a table showing average annual gross payments to poultry growers for the previous calendar year. The table should be organized by housing specification at each complex located in the United States that is owned or operated by the live poultry dealer and should express average payments on the basis of U.S. dollars per farm facility square foot. The second disclosure would be a set of tables showing average annual gross payments per farm facility square foot in each quintile to poultry growers for each of the five previous years, organized by housing specification at each complex.

AMS estimates the aggregate one-time costs of setting up the Disclosure Document would require 6,786 management hours, 3,115 legal hours, 2,042 administrative hours, and 1,984 information technology hours costing $1,231,679 in the first year for live poultry dealers to initially set up the Disclosure Document.[78] [79] A more detailed explanation of the one-time first-year costs associated with § 201.100 is in Table 1 in Appendix 1.

AMS expects the ongoing costs of updating and distributing the Disclosure Document to growers renewing or revising existing contracts, new growers entering into contracts, existing growers required to make additional capital investments to require in aggregate 3,230 management hours, 534 legal hours, 1,121 administrative hours, and 1,181 information technology hours to produce and distribute to growers the gross payment disclosure information annually for an aggregate annual cost of $503,771. AMS expects the total cost of producing the annual gross payment disclosure information to consist of $1,231,679 in the first year to set up the systems and controls, plus $503,771 in costs the first year and annually thereafter to compile, distribute, and maintain the disclosure data and documents. Thus, the first-year aggregate total costs of proposed § 201.100 are expected to be $1,735,450 and then $503,771 annually on an ongoing basis. A more detailed explanation of the ongoing costs associated with § 201.100 is in Table 2 in Appendix 1.

With the exception of signing a receipt, the proposed rule would not impose any requirement on poultry growers to review the information provided by live poultry dealers, but to benefit from the Disclosure Document, growers would need to review the information provided. Based on AMS subject matter experts, poultry growers would spend the most time reviewing the Disclosure Document the first time they review them in order to understand the information and then spend less time reviewing subsequent disclosures. For § 201.100 (a)(1), AMS expects that growers would take about one hour to review the documents each time documents are disclosed to them in the first year. Live poultry dealers processing fewer than an average of 2,000,000 pounds of poultry weekly would be exempt from the reporting requirements, but large live poultry dealers would be required to provide disclosures to growers for each of 22,312 [80] contracts that come up for renewal in the first year. AMS expects that 74.71 percent of the contracts will require renewal in the first year. This includes all flock-to-flock contract, one-year contracts, and the portion of the longer-term contracts that will expire in the first year. At a wage of $70.94, AMS expects the requirements associated with § 201.100 (a)(1) will cost about $1,182,607 [81] in the aggregate in the first year. After the first year, as growers get familiar with the disclosures, AMS expects growers to spend less time reviewing the documents. AMS expects growers to take about five minutes reviewing each disclosure document for an aggregate cost of $98,551 [82] per year.

For the remaining contracts that will not be renewed in the first year, AMS expects that 5 percent of the contracts will be renewed in each of the next five years. At for a yearly cost of $79,136.[83]

Section 201.100 (a)(2) and (3) would only apply to growers that are new entrants and to growers making significant upgrades to poultry. AMS expects that each of these groups of growers will account for 5 percent of the 23,047 [84] contracts live poultry dealers reported in their annual reports to AMS. If growers, require one hour at $70.94 per hour, growers' aggregate costs would be $81,714 [85] for reviewing documents required in § 201.100 (a)(2) and an additional $81,714 [86] for reviewing documents required in § 201.100 (a)(3) in the first year and in each successive year.

AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with proposed § 201.100 to be $1,588,714 in the initial year, $341,172 through year five, and then $262,036 in each succeeding year.[87] The costs would decline after year five because AMS expects that all contracts would have been renewed by the end of year five and that all growers would have reviewed the Disclosure Document at least one time by year six. The Agricultural Census reports that there were 16,524 contract poultry growers in the United States in 2017.

The ten-year total costs of proposed § 201.100 to all 89 live poultry dealers are estimated to be $6,269,387 and the present value (PV) of the ten-year total costs to be $5,493,072 discounted at a 3 percent rate and $4,689,377 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $643,956 and $667,662 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.100 to poultry growers are estimated to be $4,263,582 and the present value of the ten-year total costs to be $3,808,846 discounted at a 3 percent rate and $3,330,831 at a 7 percent rate. The annualized costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $446,513 and $474,235 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.100 to live poultry dealers and poultry growers are estimated to be $10,532,969 and the present value of the ten-year total costs

[78] Average hourly wage rates used to estimate dealer costs include a 41.56% markup for benefits and are as follows: Management—$93.20, Legal—$113.80, Administrative—$39.69, and Information Technology—$82.50.

[79] The one-time set-up costs are not equal to the first-year costs of proposed § 201.100 because the first-year costs include the one-time set-up costs and the ongoing costs that would be incurred in the first year as contracts are renewed or revised.

[80] Live poultry dealers processing an average of more than 2,000,000 pounds of poultry per week, reported a combined 22,312 poultry contracts in their annual reports to AMS.

[81] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $1,182,607.

[82] 1/12 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $1,182,607.

[83] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 5 percent of the contracts renewed per year = $79,136 per year.

[84] Live poultry dealers reported a combined total of 23,047 contracts for their fiscal year 2020. Smaller live poultry dealers would not be exempt from reporting requirements in § 201.100 (a)(2) or (3).

[85] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that are new entrants = $81,743.

[86] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that require significant housing upgrades = $81,743.

[87] The average hourly wage rate used to estimate poultry grower costs includes a 41.56% markup for benefits and is as follows: Management—$70.94.

to be $9,301,918 discounted at a 3 percent rate and $8,020,209 at a 7 percent rate. The annualized costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $1,090,469 and $1,141,897 discounted at a 7 percent rate. aggregate

Costs of Proposed § 201.214

Disclosures that would be required in proposed § 201.214 are associated with tournament or relative performance contracts. At the time of placement, proposed § 201.214 would require live poultry dealers to provide specific information concerning the inputs, including feed, chicks, medication, etc., that the live poultry dealer provided to the grower. At the time of settlement, it would require the live poultry to provide specific information about inputs provided to every other grower in the tournament or ranking pool within 24 hours of flock delivery. Similar information on inputs must also be disclosed at settlement.

AMS estimates that the live poultry dealers' one-time aggregate costs of developing the placement and settlement disclosure documents would require 1,335 management hours, 979 administrative hours, and 3,738 information technology hours costing $471,675 in the first year to initially set up the disclosure documents required by § 201.214.[88] A more detailed explanation of the one-time first-year costs associated with proposed § 201.100 is in Table 3 in Appendix 1.

AMS expects the § 201.214 disclosure documents would require an additional 3,201 hours divided evenly among management, administrative, and information technology staff to produce, distribute, and maintain the disclosure documents each year on an ongoing basis for an aggregate annual cost of $229,838. A more detailed explanation of the ongoing costs associated with proposed § 201.214 is in Table 4 in Appendix 1.

AMS expects the aggregate cost of producing the proposed § 201.214 pre-flock placement and settlement disclosure documents to consist of $471,675, in the first year to set up the systems and controls, plus $229,838 in costs the first year and annually thereafter to compile, distribute, and maintain the placement and settlement disclosure documents. Thus, the aggregate first-year total costs to live poultry dealers of proposed § 201.214 are expected to be $701,513 and then $229,838 annually on an ongoing basis.

Proposed § 201.214 (a) concerns disclosures of inputs to growers in tournament settlement systems. Live poultry dealers would be required to disclose information about inputs, such as feed, medication, chick, etc. for each flock placed with a grower. AMS expects that for the first time a grower receives the disclosure document, he or she would require about 10 minutes to review each of the disclosure documents. At $70.94 per hour, the first disclosure document would cost growers $156,286.[89] After the reviewing the documents the first time, AMS expects that growers would need only 5 minutes to review successive disclosures. Since growers average 4.5 flocks per year, AMS expects that reviewing the disclosure documents concerning inputs would cost in the aggregate an additional $273,500[90] for the remaining 3.5 flocks in the first year and $351,000[91] for the 4.5 flocks in each successive year.

Proposed § 201.214 (c) concerns disclosures of about the group of growers in settlement groups in tournament settlement systems. Live poultry dealers would be required to disclose information about growers in each tournament for each flock settled in tournament system. AMS expects that the cost to growers associated with proposed § 201.214 (c) will be identical to the costs of reviewing the disclosures required in proposed § 201.214 (a). Aggregate costs would be $156,286[92] for the disclosures reviewed. AMS expects that reviewing the disclosure documents would cost an additional $273,500[93] for the remaining 3.5 flocks in the first year and $351,000[94] for the 4.5 flocks in each successive year.

AMS estimates growers' aggregate costs for reviewing disclosures associated with proposed § 201.214 to be $859,571 in the first year and $703,285 in each subsequent year. AMS expects that poultry growers would spend the most time reviewing the placement and settlement disclosures the first time in order to understand the information and then spend less time for each subsequent review.

The ten-year aggregate total costs of proposed § 201.214 to live poultry dealers are estimated to be $2,770,055 and the present value of the ten-year total costs to be $2,418,502 discounted at a 3 percent rate and $2,055,104 at a 7 percent rate. The annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $283,522 and $292,601 discounted at a 7 percent rate.

The ten-year aggregated total costs of proposed § 201.214 to poultry growers are estimated to be $7,189,136 and the present value of the ten-year total costs to be $6,150,898 discounted at a 3 percent rate and $5,085,641 at a 7 percent rate. The annualized costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $721,073 and $724,081 discounted at a 7 percent rate.

The costs from proposed § 201.214 would be higher for poultry growers than for live poultry dealers. There are two reasons for this. First, there are only 89 live poultry dealers while there 16,524 poultry growers. Secondly, the primary costs to the live poultry dealers are the development of the placement and settlement disclosures, while the ongoing costs to distribute and maintain them are relatively small. Each poultry grower would receive and review both a placement and settlement disclosure for each flock placed and then settled in each tournament. Thus, there are many poultry growers who would receive and review the placement and settlement disclosure with each flock every year, which explains the higher cost relative to live poultry dealers. The relative higher cost to the poultry growers would be compensated for by the benefits of the extra information they can use to make financial business decisions. The benefits will be discussed in a later section.

The ten-year aggregate total costs of proposed § 201.214 to live poultry dealers and poultry growers are estimated to be $9,959,191 and the present value of the ten-year total costs to be $8,569,399 discounted at a 3 percent rate and $7,140,745 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $1,004,595 and $1,016,681 discounted at a 7 percent rate. aggregate

[88] IT staff will be required to modify integrator information systems to compile information from past settlements to calculate the information required to be disclosed to growers.

[89] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems = $156,286.

[90] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first year × 80 percent of poultry raised in tournament systems = $273,500.

[91] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry raised in tournament systems = $351,000 per year.

[92] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems = $156,286.

[93] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first year × 80 percent of poultry raised in tournament systems = $273,500.

[94] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry raised in tournament systems = $351,000 per year.

Combined Costs of Proposed §§ 201.100 and 201.214

Combined costs to live poultry dealers for proposed §§ 201.100 and 201.214 are expected to be $2,436,964 million in the first year, and $733,609 in subsequent years. These combined costs are also reported above the Paperwork Reduction Act section as the combined costs to live poultry dealers for compliance with the reporting and recordkeeping requirements of proposed §§ 201.100 and 201.214. The combined costs for non-exempt poultry growers are expected to be $2,448,284 in the first year, $1,044,457 in years two through five, and $965,231 after year five on an ongoing basis.

The ten-year aggregate combined costs of proposed §§ 201.100 and 201.214 to live poultry dealers are estimated to be $9,039,442 and the present value of the ten-year total costs to be $7,911,574 discounted at a 3 percent rate and $6,744,481 at a 7 percent rate. The annualized aggregate combined costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $927,478 and $960,262 discounted at a 7 percent rate.

The ten-year aggregate combined costs of proposed §§ 201.100 and 201.214 to poultry growers are estimated to be $11,452,718 and the present value of the ten-year total costs to be $9,959,744 discounted at a 3 percent rate and $8,416,473 at a 7 percent rate. The annualized aggregate combined costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $1,167,586 and $1,198,316 discounted at a 7 percent rate. The costs to poultry growers from proposed §§ 201.100 and 201.214 would be higher for poultry growers than live poultry dealers for the reasons discussed above.

The ten-year aggregate combined costs of proposed §§ 201.100 and 201.214 to live poultry dealers and poultry growers are estimated to be $20,492,160 and the present value of the ten-year aggregate combined costs to be $17,871,317 discounted at a 3 percent rate and $15,160,954 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $2,095,064 and $2,158,579 discounted at a 7 percent rate. aggregate

Additionally, there may be costs associated with providing this information (such as decreases in profitability or increased risks to integrators).[95] We request comment on whether there may be unintended adverse consequences of the expanded disclosure requirements and what data and methods might be available to estimate the magnitude of such costs.

Benefits of Proposed §§ 201.100 and 201.214

As discussed above, AMS will estimate the industry benefits from proposed §§ 201.100 and 201.214 in two parts, one quantified and the other non-quantified. For the quantified part, AMS will provide a minimum value of the combined benefit to poultry growers from the additional information in the disclosures required under proposed §§ 201.100 and 201.214 and will refer to this minimum benefit as G_{min}. AMS first estimates G_{min} and then discusses the non-quantified benefits of the proposed rules.

AMS estimates G_{min} as the combined benefits to growers of proposed §§ 201.100 and 201.214 from the reduction in profit uncertainty. AMS expects the majority of the benefits of reduced profit uncertainty will result from additional information in the financial disclosures under proposed § 201.100 as these disclosures provide revenue projections at different performance percentiles over different housing types. AMS expects that the additional information received in placement and settlement disclosures under proposed § 201.214 regarding the effects of input variability on revenue variability will also result in reduced profit uncertainty, though to a lesser extent than the financial disclosures. AMS was not able to allocate the benefits between proposed §§ 201.100 and 201.214 and presents just the total combined minimum quantifiable benefits of both proposed rules.

A potential benefit of the contract disclosure rules providing increased transparency is that doing so could lower the uncertainty in a contract grower's revenue stream. According to economic principles, a risk averse producer will benefit economically from a reduction in revenue uncertainty. Given assumptions about the level of risk aversion of the producer, the distribution of a contract grower's revenue, and the grower's utility function,[96] it is possible to calculate a grower's benefits of decreased revenue uncertainty associated with greater transparency. AMS relied on an empirical approach to estimate the minimum benefits, defined as a Risk Premium (RP), to contract poultry growers of a range of reductions in the variability of their net revenue.[97]

The following table presents the G_{min} benefit estimates based on RP estimates for the first year for several scenarios of reduction in the variability of net revenue and two assumptions for a risk aversion premium (RAP) and two assumptions for how risk aversion changes with wealth. For the latter, constant absolute risk aversion (CARA) assumes that the grower's risk aversion does not change as wealth increases. Decreasing absolute risk aversion (DARA) assumes the grower's risk aversion increases as wealth decreases. Another possibility is that the grower's risk aversion is increasing in wealth (IARA). While no evidence exists one way or another for how the risk preference of poultry contract growers changes with wealth, the agricultural economics literature generally assumes DARA over IARA.

Grower risk aversion (Risk aversion premium [a])	Reduction in coefficient of variation of net revenue [b]			
	1%	2%	5%	10%
	One year value			
CARA, Moderate (20%)	$1,588,000	$3,158,000	$7,758,000	$15,057,000
CARA, High (40%)	$3,760,000	$7,480,000	$18,410,000	$35,820,000
DARA, High/Moderate	$2,002,000	$3,977,000	$9,751,000	$18,866,000

[95] Knoeber and Thurman (1995) note that integrators experience relatively ''small risk-bearing costs,'' and we request comment on: (1) whether other analyses, including any using more recent data, reach similar conclusions and (b) how to quantify ''small'' for purposes of this regulatory impact analysis.

[96] A utility function is an economic concept that measures an individual's preferences over a set of goods and services.

[97] AMS prepared a technical appendix (Appendix 2) that provides an explanation of the empirical approach used to estimate the Risk Premium and is included at the end of this document.

Grower risk aversion (Risk aversion premium [a])	Reduction in coefficient of variation of net revenue [b]			
	1%	2%	5%	10%
	PV over 10 years discounted at 3%			
Moderate (20%)	$13,545,962	$26,938,381	$66,177,314	$128,439,264
High (40%)	$32,073,563	$63,805,917	$157,041,034	$305,551,866
	PV over 10 years discounted at 7%			
Moderate (20%)	$11,153,447	$22,180,471	$54,488,946	$105,754,067
High (40%)	$26,408,667	$52,536,390	$129,304,136	$251,584,691

[a] The risk aversion premium (RAP) varies between 0 and 100 percent of the potential lost revenue, with higher values reflecting higher risk aversion. A value of 20 percent is considered a reasonable reflection of moderate aversion to risk and 40 percent being reflection of high-risk aversion.

[b] The coefficient of variation of net revenue is a standardized measure of variability, and is defined as the standard deviation of net revenue divided by its mean.

The RAP varies between 0 and 100 percent of the potential lost revenue, with higher values reflecting higher risk aversion. The RP estimates assume that mean net returns are unchanged, *i.e.,* this exercise is solely valuing the reduction in grower revenue uncertainty. AMS estimates benefits under two CARA scenarios, one where the growers have moderate risk aversion, with one with a RAP of 20 percent and a high RAP of 40 percent, using contract producer revenue data for 2020. The parameters used for the DARA scenario are chosen such that the grower has a RAP of 40 percent when wealth is zero, and a RAP of 20 percent at mean wealth.

As the above table shows, one-year benefits range from $1.6 million with a 1 percent reduction in the variability of net revenue when moderate risk aversion is assumed to $36 million with a 10 percent reduction in the variability of net revenue when high risk aversion is assumed. AMS assumes growers will receive the same benefit of reduced variability of net revenue every year in which they contract. Discounting these annual values over ten years leads to a range in benefit estimates from $11 million to $306 million depending on the combination of risk aversion assumption, reduction in variability in net returns, and the discount rate.

With assumptions of moderate risk aversion and that the proposed rules would lead to a two percent reduction in the coefficient of variation in net revenue, the benefit estimate is $22 million with a discount rate of seven percent PV. The analysis summarized in Table 2 assumes that the grower maximizes an absolute risk aversion (ARA) utility function, whether CARA or DARA. The alternative to an ARA function is a relative risk aversion function (RRA) (see Appendix 2 for a discussion of ARA and RRA). We request comment on the additional data/information needed to calculate the risk premia using CRRA preferences likely to be pertinent to contract poultry growers.

AMS now discusses the non-quantified benefits of the proposed rules that increase the benefits to growers above the minimum quantifiable benefit of G_{min}, which is estimated by RP in the above table.

As discussed above, proposed §§ 201.100 and 201.214 have additional, other non-quantified benefits to the industry, referred to as B_O. First, if growers did not expect to receive at least as much in benefits as it takes in time to review the disclosures, they would not review them. Some of these benefits are captured in the quantitative estimates of the value of reduction in revenue uncertainty, but there are others benefits the growers would likely expect from these disclosures. The other benefits would arise from a reduction in risk of retaliation and the potential for fraud and deception by live poultry dealers. The additional information to growers may lead to a more optimal allocation of capital and labor resources (such as increased capital investment through the reduction in perceived hold-up risk, and more informed decisions on whether and with whom to enter into a growing arrangement), leading to improved efficiencies across the entire industry. We request comment that would facilitate both quantification of the magnitude of benefits of a more optimal allocation of capital and labor resources and tracking of whether any such efficiency gains would be captured by growers, live poultry dealers (while also noting the as-yet-unquantified costs to dealers, as mentioned elsewhere in this analysis), or others in society.

The combined minimum benefits for poultry growers, G_{min}, from reduced revenue uncertainty are expected to be $3,158,000 in the first year and on an ongoing basis.[98] The ten-year total minimum benefits of proposed §§ 201.100 and 201.214 to poultry growers are estimated to be $31,580,000 and the present value of the ten-year total minimum benefits to be $29,938,381 discounted at a 3 percent rate and $22,180,471 at a 7 percent rate. The annualized PV of ten-year minimum benefits to poultry growers discounted at 3 and 7 percent rates are expected to be $3,158,000. The total benefits to the industry, B_T, from proposed §§ 201.100 and 201.214 would be the sum of the minimum benefits to all growers, G_{min}, and the other non-quantified benefits to the industry from growers' risk reductions and a more efficient allocation of labor and capital, B_O. The values appear in Table 3 in the next section. AMS expects the total benefits to the industry from the proposed rules—as is the case for total costs, noted above—will be very small in relation to the total value of industry production.

Broiler chicken sales in the U.S. for 2019 were approximately $58.6 billion. total quantified cost of proposed §§ 201.100 and 201.214 is estimated to be greatest in the first year at $4.9 million, or .00836 percent of revenues. A relatively small improvement in efficiency from improved allocation of capital and labor resources in the industry would more than outweigh the cost of this proposed rule.

Total Quantified Combined Costs and Benefits of Proposed §§ 201.100 and 201.214

[98] All benefits estimates assume a moderate (20 percent) RAP and a 2 percent reduction in coefficient of variation of net revenue.

The cost and benefit estimates of proposed §§ 201.100 and 201.214 presented above appear in the following table.

TABLE 3—ESTIMATED COSTS AND BENEFITS [99] OF PROPOSED §§ 201.100 AND 201.214

Preferred alternative	Cost			Benefits	
	Live poultry dealer °Dealers	Poultry growers	Industry total	Individual grower (G_{min}) *	Total industry (B_T)
§ 201.100					
First-Year	$1,735,450	$1,588,714	$3,324,164	G_{min}	$G_{min} + B_O$
Ten-Year Total	6,269,387	4,263,582	10,532,969	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	5,493,072	3,808,846	9,301,918	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	4,689,377	3,330,831	8,020,209	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	643,956	446,513	1,090,469	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	667,662	474,235	1,141,897	G_{min}	$G_{min} + B_O$
§ 201.214					
First-Year	701,513	859,571	1,561,084	G_{min}	$G_{min} + B_O$
Ten-Year Total	2,770,055	7,189,136	9,959,191	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	2,418,502	6,150,898	8,569,399	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	2,055,104	5,085,641	7,140,745	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	283,522	721,073	1,004,595	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	292,601	724,081	1,016,681	G_{min}	$G_{min} + B_O$
§§ 201.100 and 201.214					
First-Year	2,436,964	2,448,284	4,885,248	3,158,000	$G_{min} + B_O$
Ten-Year Total	9,039,442	11,452,718	20,492,160	31,580,000	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	7,911,574	9,959,744	17,871,317	26,938,381	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	6,744,481	8,416,473	15,160,954	22,180,471	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	927,478	1,167,586	2,095,064	3,158,000	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	960,262	1,198,316	2,158,579	3,158,000	$G_{min} + B_O$

* AMS estimates G_{min} as the combined benefits to growers of proposed §§ 201.100 and 201.214.
° Estimates do not include unquantified costs of risk increases.

The quantified costs and minimum quantifiable benefits to the industry in the first year are $4.885 million and $3.158 million, respectively. However, the minimum quantifiable benefits exceed the quantified costs in the ten-year total, the PVs on the ten-year totals, the annualized PV of ten-year totals. This is a function of quantified costs being higher at the beginning of the program and falling off over time while the quantified benefits remain constant over the entire estimation period. Thus, AMS concludes that the quantified benefits to growers from proposed §§ 201.100 and 201.214 exceed the quantified costs of proposed §§ 201.100 and 201.214. AMS requests additional information (including data and quantification methods) that could support or refute this conclusion.

AMS expects that the net benefits to the industry from proposed §§ 201.100 and 201.214 will be very small in relation to the total value of industry production. Thus, AMS expects the impacts of the net benefits on total industry supply to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

[99] Ibid.

Costs and Benefits of the Small Business Exemption Alternative

AMS estimated costs and benefits for an alternative to the preferred option for the proposed rule. It would be the same as proposed §§ 201.100 and 201.214, with the exception that the alternative would exempt live poultry dealers that process less than 2 million pounds of poultry per week from all provisions of the two proposed rules. In the preferred alternative, small businesses would be exempt from the disclosure requirements in proposed § 201.100(a)(1) only. The rest of the provisions of proposed §§ 201.100 and 201.214 would still apply.

The costs associated with this alternative are similar, but smaller than the preferred option. According to PSD records, small live poultry dealers make up 52.8 percent of all live poultry dealers, but have only 3.2 percent of poultry growing contracts. The estimation of the costs and benefits of the small business exemption alternative will follow the same format as the preferred alternative.

Costs of Proposed § 201.100—Small Business Exemption Alternative

AMS estimates the one-time costs for live poultry dealers of setting up the Disclosure Document for the small business exemption alternative would require 3,801 management hours, 1,470 attorney hours, 1,124 administrative hours, and 1,376 information technology hours costing $679,627 in the first year for live poultry dealers to set up the Disclosure Document.[100] A more detailed explanation of the one-time first-year costs associated with the alternative § 201.100 is in Table 1 in Appendix 3.

AMS expects the ongoing costs for live poultry dealers for the small business exemption alternative of updating and distributing the Disclosure Document to growers renewing or revising existing contracts, new growers entering into contracts, existing growers required to make additional capital investments to require 2,100 management hours, 252 legal hours, 865 administrative hours, and 954 information technology hours to produce, distribute to growers, and maintain the gross payment disclosure information annually for an annual cost of $337,420. A more detailed explanation of the ongoing costs associated with the alternative § 201.100 is in Table 2 in Appendix 3.

[100] As discussed previously, the one-time set-up costs are not equal to the first-year costs of proposed § 201.100 because the first-year costs include the one-time set-up costs and the ongoing costs that would be incurred in the first year as contracts are renewed or revised.

AMS expects the total cost of producing the annual gross payment disclosure information to consist of $679,627 in the first year to set up the systems and controls, plus $337,420 in costs the first year and annually thereafter to compile and distribute the disclosure data and documents. Thus, the first-year total costs of proposed § 201.100 for live poultry dealers are expected to be $1,017,047 for the small business exemption alternative and then $337,420 annually on an ongoing basis.

For alternative § 201.100 (a)(1), AMS expects that growers would take about one hour to review the documents each time documents are disclosed to them in the first year. The alternative would exempt live poultry dealers processing fewer than an average of 2,000,000 pounds of poultry weekly would be exempt from the reporting requirements, but large live poultry dealers would be required to provide disclosures to growers for each of 22,312 [101] contracts that come up for renewal in the first year. AMS expects that 74.71 percent of the contracts will require renewal in the first year. This includes all flock-to-flock contract, one-year contracts, and the portion of the longer-term contracts that will expire in the first year. At a wage of $70.94, AMS expects the requirements associated with § 201.100 (a)(1) will cost about $1,182,607 [102] in the first year in the aggregate. After the first year, as growers get familiar with the disclosures, AMS expects growers to spend less time reviewing the documents. AMS expects growers to take about five minutes reviewing each disclosure document for an aggregate cost of $98,551 [103] per year.

For the remaining contracts that will not be renewed in the first year, AMS expects that 5 percent of the contracts will be renewed in each of the next five years. At for a yearly cost of $79,136.[104]

Section 201.100 (a)(2) and (3) would only apply to growers that are new entrants and to growers making significant upgrades to poultry. AMS expects that each of these groups of growers will account for 5 percent of the 22,312 contracts live poultry dealers reported in their annual reports to AMS. If growers, require one hour at $70.94 per hour, growers' aggregate costs would be $79,136 [105] for reviewing documents required in § 201.100 (a)(2) and an additional $79,136 [106] for reviewing documents required in § 201.100 (a)(3) in the first year and in each successive year.

AMS estimates growers' aggregate costs for reviewing the Disclosure Document associated with proposed § 201.100 for the small business exemption alternative to be $1,578,286 in the initial year, $335,958 through year five, and then $256,822 in each succeeding year.

The ten-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for the to live poultry dealers are estimated to be $4,053,825. The present value of the ten-year aggregate total costs of proposed § 201.100 to live poultry dealers are estimated to be $3,538,092 discounted at a 3 percent rate and $3,005,061 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $414,772 and $427,853 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for poultry growers are estimated to be $4,206,231. The present value of the ten-year total costs of § 201.100 to poultry growers are estimated to be $3,759,309 discounted at a 3 percent rate and $3,289,339 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $440,706 and $468,328 discounted at a 7 percent rate. The first-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for poultry growers and live poultry dealers are estimated to be $2,595,333 and the ten-year aggregate total costs of proposed § 201.100 for the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $8,260,056. The present value of the ten-year aggregate total costs of § 201.100 to live poultry dealers and poultry growers are estimated to be $7,297,401 discounted at a 3 percent rate and $6,294,400 at a 7 percent rate. The annualized costs of the PV of ten-year aggregate costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $855,478 and $896,181 discounted at a 7 percent rate.

Costs of § 201.214—Small Business Exemption Alternative

AMS estimates that the aggregate one-time costs of developing the placement and settlement disclosure documents for live poultry dealers under the small business exemption alternative would require 630 management hours, 462 administrative hours, and 1,764 information technology hours costing $222,588 in the first year to initially set up the placement and settlement disclosure documents. A more detailed explanation of the one-time first-year costs associated with the alternative § 201.214 is in Table 3 in Appendix 3.

AMS expects the disclosure document to require an additional 1,512 hours divided evenly among management, administrative, and information technology staff to produce, distribute, and maintain the disclosure documents each year on an ongoing basis for an annual cost of $108,463. Thus, the aggregate first-year costs are estimated to be $331,051, including the one-time set up costs and the costs of producing and distributing the placement and settlement disclosures. A more detailed explanation of the ongoing costs associated with the alternative § 201.100 is in Table 4 in Appendix 3.

For the alternative § 201.214 (a) live poultry dealers would be required to disclose information about inputs, such as feed, medication, chick, etc. for each flock placed with a grower. AMS expects that for the first time a grower receives the disclosure document, he or she would require about 10 minutes to review each of the disclosure documents. At $70.94 per hour, the first disclosure document would cost growers $73,753 in the aggregate.[107] After the reviewing the documents the first time, AMS expects that growers would only need 5 minutes to review successive disclosures. Since growers average 4.5 flocks per year, AMS expects that reviewing the disclosure documents concerning inputs would cost an additional $129,067 [108] for the remaining 3.5 flocks in the first year and $165,944 [109] for the 4.5 flocks in each successive year.

[101] Live poultry dealers processing an average of more than 2,000,000 pounds of poultry per week, reported a combined 22,312 poultry contracts in their annual reports to AMS.

[102] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $1,182,607.

[103] 1/12 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 74.71 percent of the contracts renewed in the first year = $98,551.

[104] 1 hour to review each disclosure × $70.94 per hour × 22,312 contracts × 5 percent of the contracts renewed per year = $79,136 per year.

[105] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that are new entrants = $81,743.

[106] 1 hour to review each disclosure × $70.94 per hour × 23,047 contracts × 5 percent of growers that require significant housing upgrades = $81,743.

[107] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $73,753.

[108] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first-year × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $129,067.

[109] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry

Alternative § 201.214 (c) concerns disclosures of about the group of growers in settlement groups in tournament settlement systems. Live poultry dealers would be required to disclose information about growers in each tournament for each flock settled in tournament system. AMS expects that the cost to growers associated with proposed § 201.214 (c) will be identical to the costs of reviewing the disclosures required in proposed § 201.214 (a). Aggregate costs would be $73,753.[110] for the disclosures reviewed. AMS expects that reviewing the disclosure documents would cost, in the aggregate, an additional $129,067 [111] for the remaining 3.5 flocks in the first year and $165,944 [112] for the 4.5 flocks in each successive year.

AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with proposed § 201.214 under the small business exemption alternative to be $405,640 in the first year and $331,887 in each subsequent year. As discussed previously, AMS expects that poultry growers would spend the most time reviewing the placement and settlement disclosures the first time in order to understand the information and then spend less time for each subsequent review.

The ten-year aggregate total costs of proposed § 201.214 under the small business exemption alternative for live poultry dealers are estimated to be $1,307,217. The present value of the aggregate ten-year total costs of proposed § 201.214 to live poultry dealers are estimated to be $1,141,315 discounted at a 3 percent rate and $969,824 at a 7 percent rate. The annualized costs of the PV of aggregate ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $133,797 and $138,081 discounted at a 7 percent rate.

The ten-year aggregate total costs of proposed § 201.214 for the small business exemption alternative for poultry growers are estimated to be $3,392,626. The present value of the aggregate ten-year total costs of proposed § 201.214 to poultry growers are estimated to be $2,902,671 discounted at a 3 percent rate and $2,399,966 at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $340,282, and $341,701 discounted at a 7 percent rate.

The first-year aggregate total costs of proposed § 201.214 under the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $736,691 and the ten-year aggregate total costs are estimated to be $4,699,843. The present value of the ten-year aggregate total costs of proposed § 201.214 to live poultry dealers and poultry growers are estimated to be $4,043,986 discounted at a 3 percent rate and $3,369,790 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $474,079 and $479,782 discounted at a 7 percent rate.

Combined Costs of Proposed §§ 201.100 and 201.214—Small Business Exemption Alternative

Aggregate combined costs to live poultry dealers for proposed §§ 201.100 and 201.214 for the small business exemption alternative are expected to be $1,348,098 million in the first year, and $445,883 in subsequent years. The combined costs for poultry growers are expected to be $1,983,926 in the first year, $667,846 in years two through five, and $588,710 after year five on an ongoing basis.

The aggregate ten-year combined quantified costs of proposed §§ 201.100 and 201.214 for the small business exemption alternative for live poultry dealers are estimated to be $5,361,042 and the present value of the ten-year combined costs $4,679,407 discounted at a 3 percent rate and $3,974,885 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be $548,569 and $565,934 discounted at a 7 percent rate.

The aggregate ten-year combined costs of proposed §§ 201.100 and 201.214 for the small business exemption alternative for poultry growers are estimated to be $7,598,857 and the present value of the ten-year combined costs are estimated to be $6,661,980 discounted at a 3 percent rate and $5,689,305 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to poultry growers discounted at a 3 percent rate are expected to be $780,987 and $810,029 discounted at a 7 percent rate. As under the preferred alternative, the costs to poultry growers from proposed §§ 201.100 and 201.214 under the small business exemption alternative would be higher for poultry growers than live poultry dealers for the reasons discussed above.

The first-year aggregate combined costs of proposed §§ 201.100 and 201.214 under the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $3,332,024 and $1,113,728 in years two through five and $1,034,592 in years six and beyond. The aggregate ten-year combined costs of proposed §§ 201.100 and 201.214 for the small business exemption alternative for live poultry dealers and poultry growers are estimated to be $12,959,899 and the present value of the ten-year combined costs are estimated to be $11,341,387 discounted at a 3 percent rate and $9,664,190 at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers and poultry growers discounted at a 3 percent rate are expected to be $1,329,557 and $1,375,963 discounted at a 7 percent rate.

Additionally, there may be costs of bearing increased risk that AMS has not estimated of increasing transparency in poultry grower contracting and tournaments, which would have different effects on more or less diversified integrators. We request comment on distinguishing between large, highly diversified integrators and those that process less volume and are less diversified, for purposes of quantifying any such costs for these participants in the supply chain. Please include any comments on whether, and if so, how, a localized monopsony or oligopsony position of the integrators may also affect the ability of the integrator to control information, bear or manage risks, or shift those risks to other parties, and what implications that may have on any other costs and benefits that may be quantified or otherwise considered.

Combined Benefits of Proposed §§ 201.100 and 201.214—Small Business Exemption Alternative

According to PSD records, only 3.2 percent of poultry growing contracts are between small live poultry dealers and poultry growers. Thus, 96.8 percent of all poultry growers will receive the benefits of proposed §§ 201.100 and 201.214 under the small business exemption alternative. To estimate the

raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $165,944 per year.

[110] 1/6 hours × $70.94 per hour × 16,924 poultry growers × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week= $73,753.

[111] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 3.5 additional flocks in the first-year × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $129,067.

[112] 1/12 hours × $70.94 per hour × 16,924 poultry growers × 4.5 flocks per year × 80 percent of poultry raised in tournament systems × 47.2 percent of live poultry dealers that process more than 2,000,000 head per week = $165,944 per year.

minimum quantified benefits to poultry growers, G_{min}, under the small business exemption alternative, AMS multiplied the minimum quantified benefits under the preferred alternative in Table 3 by 96.8 percent.

AMS estimates the aggregate minimum benefits to growers, G_{min}, from proposed §§ 201.100 and 201.214 under the small business exemption alternative from reduced profit uncertainty to be $3,057,287 in the first year and on an ongoing basis.[113] The ten-year total minimum benefits of proposed §§ 201.100 and 201.214 to poultry growers are estimated to be $30,572,871 and the present value of the ten-year total minimum benefits to be $26,079,279 discounted at a 3 percent rate and $21,473,105 at a 7 percent rate. The annualized PV of ten-year minimum benefits to poultry growers discounted at 3 and 7 percent rates are expected to be $3,057,287.

The total benefits to the industry, B_T, from proposed §§ 201.100 and 201.214, under the small business exemption alternative, would be the sum of the minimum benefits to all growers, G_{min}, and the other benefits to the industry from growers' risk reductions and a more efficient allocation of labor and capital, B_O. The values of the estimated benefits appear in Table 4 in the next section. AMS expects the quantified minimum benefits to growers from proposed §§ 201.100 and 201.214, combined with the other non-quantified benefits to growers, to exceed the costs of proposed §§ 201.100 and 201.214 under the small business exemption alternative.

Combined Costs and Benefits of Proposed §§ 201.100 and 201.214

The aggregate cost and benefit estimates of proposed §§ 201.100 and 201.214 under the small business exemption alternative presented above appear in the following table. The quantified costs and minimum quantifiable benefits to the industry in the first year under the small business exemption alternative are $3.332 million and $3.057 million, respectively.

As with the preferred option, AMS expects that the net benefits to the industry from proposed §§ 201.100 and 201.214 under the small business exemption alternative will be very small in relation to the total value of industry production. Thus, AMS expects the impacts of the net benefits on total industry supply under the small business exemption alternative to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

TABLE 4—ESTIMATED COSTS AND BENEFITS OF PROPOSED §§ 201.100 AND 201.214—SMALL BUSINESS EXEMPTION

Small business exemption alternative	Cost			Benefits	
	Live poultry dealer°	Poultry growers	Industry total	Individual grower (G_{min})*	Total Industry (B_T)
§ 201.100					
First-Year	$1,017,047	$1,578,286	$2,595,333	G_{min}	$G_{min} + B_O$
Ten-Year Total	4,053,825	4,206,231	8,260,056	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	3,538,092	3,759,309	7,297,401	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	3,005,061	3,289,339	6,294,400	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	414,772	440,706	855,478	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	427,853	468,328	896,181	G_{min}	$G_{min} + B_O$
§ 201.214					
First-Year	331,051	405,640	736,691	G_{min}	$G_{min} + B_O$
Ten-Year Total	1,307,217	3,392,626	4,699,843	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	1,141,315	2,902,671	4,043,986	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	969,824	2,399,966	3,369,790	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	133,797	340,282	474,079	G_{min}	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	138,081	341,701	479,782	G_{min}	$G_{min} + B_O$
§§ 201.100 and 201.214					
First-Year	1,348,098	1,983,926	3,332,024	3,057,287	$G_{min} + B_O$
Ten-Year Total	5,361,042	7,598,857	12,959,899	30,572,871	$G_{min} + B_O$
NV of Ten-Year Discounted at 3 Percent	4,679,407	6,661,980	11,341,387	26,079,279	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	3,974,885	5,689,305	9,664,190	21,473,105	$G_{min} + B_O$
Ten-Year Annualized at 3 Percent	548,569	780,987	1,329,557	3,057,287	$G_{min} + B_O$
Ten-Year Annualized at 7 Percent	565,934	810,029	1,375,963	3,057,287	$G_{min} + B_O$

* AMS estimates Gmin as the combined benefits to growers of proposed §§ 201.100 and 201.214.
° Estimates do not include unquantified cost of risk increases.

Though the small business exemption alternative would reduce costs to the industry, this alternative would deny the benefits offered by proposed §§ 201.100 and 201.214 to poultry growers who contract with small live poultry dealers. While most poultry grown and are contracted with large business, there are many small growers who would be exempt from the proposed rules under the small business exemption alternative. Under the small business exemption alternative, these poultry growers would continue to be exposed to the informational asymmetries and associated costs discussed above. AMS considered all three regulatory alternatives and believes that the preferred alternative is the best alternative as the benefits of the regulations will be captured by all poultry growers, regardless of the size of the live poultry dealer with which they contract.

H. Regulatory Flexibility Analysis

AMS is proposing amending § 201.100 and adding new § 201.214 to the regulations under the Packers and Stockyards Act. The proposed amended § 201.100 would require live poultry

[113] All benefits estimates assume a moderate (20 percent) RAP and a 2 percent reduction in coefficient of variation of net revenue.

dealers to make disclosures before entering into new contracts or renewing existing contracts. Proposed § 201.214 would require live poultry dealers to disclose information at the settlement of each flock.

Proposed § 201.100 lists a number of disclosure and record keeping requirements for live poultry dealers, but not all of them are new. Many of the requirements are included in current § 201.100. Only the new requirements would create additional costs above the *status quo.*

The new provisions in proposed § 201.100 would require large live poultry dealers to disclose a true written copy of the growing agreement and a new Disclosure Document any time a live poultry dealer seeks to renew, revise, or replace an existing poultry growing arrangement that does not contemplate modifications to the existing housing specifications. Small live poultry dealers that process less than 2 million lbs. of poultry per week would be excluded from this disclosure requirement. Before a live poultry dealer enters a poultry growing arrangement that would require an original capital investment or requires modifications to existing housing, both large and small live poultry dealer must provide a copy of the growing agreement, the housing specifications, a letter of intent, and the new Disclosure Document.

The Disclosure Document would require live poultry dealers to disclose summaries of litigation with any poultry growers, bankruptcy filings, and the live poultry dealer's policy regarding a grower's sale of the farm or assignment of the contract.

Live poultry dealers would be required to disclose growers' variable costs if it collects the information. Live poultry dealers would be required to audit the information to ensure accuracy and obtain and file signed receipts certifying that the live poultry dealer provided the required Disclosure Document.

The Disclosure Document would require two separate financial disclosures to growers. The first disclosure would be a table indicating average annual gross payments to poultry growers for the previous calendar year. The table would be organized by housing specification at each complex located in the United States that is owned or operated by the live poultry dealer and should express average payments on the basis of U.S. dollars per farm facility square foot. The second disclosure would be a set of tables with the average annual gross payments per farm facility square foot in each quintile to poultry growers for each of the five previous years, organized by housing specification at each complex.

Disclosures that would be required in proposed § 201.214 are associated with tournament or relative performance contracts. At the time of placement, proposed § 201.214 would require live poultry dealers to provide specific information concerning the inputs, including feed, chicks, medication, etc., that the live poultry dealer provided to the grower. At the time of settlement, it would require the live poultry to provide specific information about inputs provided to every other grower in the tournament or ranking pool within 24 hours of flock delivery. Similar information on inputs would also be disclosed at settlement.

AMS expects the disclosure requirements in §§ 201.100 and 201.214 would mitigate effects associated with asymmetric information between poultry growers and live poultry dealers. Some of the information held by live poultry dealers would be valuable to growers because it influences grower compensation in tournament contracts and might help growers in negotiating contract terms and making decisions about capital investments.

The contracts themselves are often incomplete and exhibit asymmetry in the information available to live poultry dealers and contract growers. Because live poultry dealers supply most of the inputs, much of the production information is available only to the grower from the live poultry dealer. For example, the contract grower may not know precisely how much feed it used, or how much weight the flock gained under his or her care, unless the live poultry dealer provides the information.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).[114] SBA considers broiler and turkey producers small if sales are less than $1,000,000 per year. Live poultry dealers, NAICS 311615, are considered small businesses if they have fewer than 1,250 employees.

AMS maintains data on live poultry dealers from the annual reports these firms file with PSD. Currently, 89 live poultry dealers would be subject to the proposed regulation. Fifty-Four of the live poultry dealers would be small businesses according to the SBA standard. In their fiscal year 2020, live poultry dealers reported that they had 23,054 production contracts with poultry growers. Small live poultry dealers accounted for 1,218 contracts (5 percent).

Annual reports from live poultry dealers indicate they had 23,054 contracts, but a poultry grower can have more than one contract. The 2017 Census of Agriculture indicated that there were 16,524 poultry growers in the United States.[115] AMS has no record of the number of poultry growers that qualify as small businesses but expects that nearly all of them are small businesses.

Costs of proposed §§ 201.100 and 201.214 to live poultry dealers would primarily consist of the time required to gather the information and distribute it among the growers. Proposed §§ 201.100 and 201.214 would also cost poultry growers the value of the time they put into reviewing and acknowledging receipt of the disclosures.

Expected costs are estimated as the total value of the time required to produce and distribute the disclosures that would be required by proposed §§ 201.100 and 201.214 as well as the time to create and maintain any necessary additional records, although live poultry dealers already keep nearly all of the required records. Estimates of the amount of time required to create and distribute the disclosure documents were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Packers and Stockyards Act. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2020.[116] AMS marked up the wages 41.56 percent to account for benefits.

AMS estimated proposed §§ 201.100 and 201.214 combined would require a one-time first year investment of 3,616 hours of management time at $93.20 per hour costing $337,000, 1,890 hours of attorney time at $113.80 per hour costing $215,000, 1,270 hours of administrative time at $39.69 per hour costing $50,000, and 843 hours of information technology staff time at $82.50 per hour costing $70,000.

[114] U.S. Small Business Administration. *Table of Small Business Size Standards Matched to North American Industry Classification System Codes. effective August 19, 2019. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf.*

[115] USDA, NASS. *2017 Census of Agriculture: United States Summary and State Data.* Volume 1, Part 51. Issued April 2019. p. 56. *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[116] See U.S. Bureau of Labor Statistics, *May 2020 National Occupational Employment and Wage Estimates,* May 2020. *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

Aggregate total first-year setup costs are expected to be $672,000. AMS expects proposed § 201.100 would annually require an additional aggregate 1,402 hours of management time at $93.20 per hour costing $131,000, 312 hours of attorney time at $113.80 per hour costing $35,000, 493 hours of administrative time at $39.69 per hour costing $20,000, and 312 hours of information technology staff hours at $82.50 per hour costing $26,000 to keep and maintain records and produce and distribute the disclosures. Total aggregate first-year costs to small live poultry dealers for proposed § 201.100 are expected to be $883,000. After the first year AMS expects aggregate cost to small live poultry dealers to be $211,000 annually.

AMS estimated proposed § 201.214 would require a one-time first year aggregate investment of 810 hours of management time at $93.20 per hour costing $75,000, 594 hours of administrative time at $39.69 per hour costing $24,000, and 2,268 hours of information technology staff time at $82.50 per hour costing $187,000. Total aggregate first-year setup costs are expected to be $286,000. AMS expects proposed § 201.214 would annually require an aggregate additional 1,295 hours distributed evenly across management, administrative, and information technology staff at $93.30, $39.60, and $82.50 per hour, respectively, costing $60,000, $26,000, and $53,000 respectively to keep and maintain records and produce and distribute the disclosures. Total aggregate first-year costs to small live poultry dealers for proposed § 201.214 are expected to be $426,000. After the first year, aggregate costs are expected to be $139,000 annually.

The proposed rule would regulate live poultry dealers' contracts. AMS expects that costs per live poultry dealer would be correlated with number of contracts. All expected costs of proposed § 201.100 are associated with maintaining records and producing and distributing disclosure documents among contract growers. AMS expects that firms that contract with few growers will have lower costs. Larger live poultry dealers will tend to have more contracts and will likely have more costs. Proposed § 201.214 only concerns relative performance or tournament contracts. Smaller live poultry dealers that do not have tournament contracts will not have any of the costs associated with proposed § 201.214, and some live poultry dealers have few contracts with poultry growers and raise poultry in their own facilities. Those dealers will have relatively lower costs.

AMS does not regulate poultry growers, and, with the exception of signing a receipt, the proposed rule has no requirements of poultry growers. To benefit from the disclosures, they would need to review the information provided. Growers are not required to review the disclosure information in proposed §§ 201.100 and 201.214, and growers that do not expect a benefit from reviewing the disclosure information likely would not review it.

AMS estimates aggregate growers' costs for reviewing disclosures associated with proposed §§ 201.100 and 201.214 combined to be $608,000 in the initial year. After poultry growers become familiar with the disclosures, they would likely require less time to review the documents, and AMS expects annual aggregate costs to growers would be $445,000 for years two through five and $440,000 each year thereafter. This amounts to $508 per grower in the first year. The table below summarizes costs of proposed §§ 201.100 and 201.214 to small live poultry dealers and small poultry growers.

TABLE 5—ESTIMATED COSTS TO SMALL BUSINESSES OF PROPOSED §§ 201.100 AND 201.214

Type of cost	Regulated live poultry dealers (dollars)	Unregulated growers (dollars)	Total (dollars)
Proposed § 201.100			
First-year Cost	883,000	86,000	970,000
First-year Cost per Firm	16,000	99	NA
NPV of Ten-year Cost Discounted at 3 Percent	2,456,000	205,000	2,661,000
NPV of Ten-year Cost Discounted at 7 Percent	2,113,000	180,000	2,293,000
Ten-year Cost Annualized at 3 Percent	288,000	24,000	312,000
Ten-year Cost Annualized at 7 Percent	301,000	26,000	326,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	5,300	28	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	5,600	29	NA
			123
			217
Proposed § 201.214			
First-year Cost	426,000	522,000	947,000
First-year Cost per Firm	8,000	489	NA
NPV of Ten-year Cost Discounted at 3 Percent	1,467,000	3,732,000	5,199,000
NPV of Ten-year Cost Discounted at 7 Percent	1,247,000	3,086,000	4,333,000
Ten-year Cost Annualized at 3 Percent	172,000	438,000	610,000
Ten-year Cost Annualized at 7 Percent	178,000	439,000	617,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	3,200	501	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	3,300	503	NA
Proposed §§ 201.100 and 201.214			
First-year Cost	1,309,000	608,000	1,917,000
First-year Cost per Firm	24,000	505	NA
NPV of Ten-year Cost Discounted at 3 Percent	3,923,000	3,937,000	7,861,000
NPV of Ten-year Cost Discounted at 7 Percent	3,360,000	3,265,000	6,625,000
Ten-year Cost Annualized at 3 Percent	460,000	462,000	922,000
Ten-year Cost Annualized at 7 Percent	478,000	465,000	943,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	8,500	529	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	8,900	532	NA
			387
			662

Live poultry dealers report net sales in annual reports to AMS. Table 6 below groups small live poultry dealers' net sales into quartiles, reports the average net sales in each quartile, and compares average net sales to average expected first-year costs per firm for each of proposed § 201.100 and proposed § 201.214 and total first-year costs. Estimated first-year costs are higher than 10-year annualized costs, and for the threshold analysis, first-year costs will be higher than annualized costs as percentage of net sales. Correspondingly, the ratio of ten-year annualized costs to net sales is lower than their corresponding first-year cost ratios listed in Table 6. If estimated costs meet the threshold in the first-year, they will in the following years as well.

Estimated first-year costs per firm are less than 1 percent of average net sales in the three largest quartiles. Percentage of net sales are about 2.2 percent in the smallest quartile. However, average first year cost per entity in Table 6 is the average cost of all of the small businesses. Costs for the live poultry dealers in smallest quartile will likely be less than the average for small businesses.

Live poultry dealers do not report to AMS whether any of their contracts are tournament style contracts, but evaluating the number contracts that live poultry dealers listed in their annual reports to AMS, few of the live poultry dealers in smallest quartile contracted with a sufficient number of growers to implement tournament contracts. It is unlikely that any of the live poultry dealers in the smallest quartiles had any tournament contracts. It is unlikely that several of the smaller live poultry dealers in the second quartile had any tournament contracts either. AMS encourages comments concerning whether small live poultry dealers make tournament-style contracts with growers, and AMS encourages comments concerning a minimum number of contracts necessary for a live poultry dealer to make tournament contracts with growers.

Since proposed § 201.214 only applies to tournament contracts, none of the live poultry dealers in the smallest quartile are likely to incur any costs from proposed § 201.214. Their costs are likely only costs associated with proposed § 201.100, which, as percentage of net sales would be 1.6 percent. Because the smallest live poultry dealers have fewer contracts than the other small live poultry dealers, their costs associated with proposed § 201.100 are also likely less than average.

TABLE 6—COMPARISON OF SMALL LIVE POULTRY DEALERS' NET SALES TO EXPECTED ANNUALIZED COSTS OF PROPOSED §§ 201.100 AND 201.214

Quartile	Average net sales (dollars)	First year costs related to § 201.100 as a percent of net sales (percent)	First year costs related to § 201.214 as a percent of net sales (percent)	Total first year costs as a percent of net sales (percent)
0 to 25 percent	1,101,680	1.452	0.726	2.178
25 to 50 percent	7,544,954	0.212	0.106	0.318
50 to 75 percent	33,855,515	0.047	0.024	0.071
75 to 100 percent	160,414,027	0.010	0.005	0.015

AMS also estimated costs of an alternative proposal that would exempt most small live poultry dealers from the requirements of the proposed regulations. The alternative would exempt all live poultry dealers that process less than 2 million pounds of poultry per week from all reporting requirements. The alternative would exempt all but 7 of the firms that qualify as small businesses by the SBA standard.

AMS estimated the alternative to proposed § 201.100 would require a one-time first year aggregate investment of 634 hours of management time at $93.20 per hour costing $59,000, 245 hours of attorney time at $113.80 per hour costing $28,000, 200 hours of administrative time at $39.69 per hour costing $8,000, and 163 hours of information technology staff time at $82.50 per hour costing $13,000. Aggregate total first-year setup costs are expected to be $108,000. AMS expects the alternative proposal for § 201.100 would annually require an additional aggregate 283 hours of management time at $93.20 per hour costing $26,000, 42 hours of attorney time at $113.80 per hour costing $5,000, 77 hours of administrative time at $39.69 per hour costing $3,000, and 56 hours of information technology staff hours at $82.50 per hour costing $5,000 to keep and maintain records and produce and distribute the disclosures. Aggregate total first-year costs to small live poultry dealers for proposed § 201.100 are expected to be $147,000. After the first year AMS expects aggregate costs to small live poultry dealers to be $39,000 annually.

AMS estimated proposed alternative § 201.214 would require a one-time first year aggregate investment of 630 hours of management time at $93.20 per hour costing $59,000, 462 hours of administrative time at $39.69 per hour costing $18,000, and 98 hours of information technology staff time at $82.50 per hour costing $8,000. Aggregate total first-year setup costs are expected to be $85,000. AMS expects proposed alternative § 201.214 would annually require an additional aggregate 98 hours distributed evenly across management, administrative, and information technology staff at $93.30, $39.60, and $82.50 per hour, respectively, costing $3,000, $1,300, and $2,700 respectively to keep and maintain records and produce and distribute the disclosures. Aggregate total first-year costs to small live poultry dealers for proposed alternative § 201.214 are expected to be $92,000. After the first year, costs are expected to be $7,000 annually.

The proposed alternative would have a relatively small effect on costs to poultry growers on a per grower basis, and growers will only review the disclosures if they perceive that they are beneficial. AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with proposed §§ 201.100 and 201.214 to be $34,000 in the initial year. AMS expects annual aggregate costs to growers would be $63,000 for years two through five and $61,000 each year thereafter. Table 7 below summarizes aggregate costs of proposed alternative §§ 201.100 and 201.214 combined to small live poultry dealers and small poultry growers.

TABLE 7—ESTIMATED COSTS TO SMALL BUSINESSES OF PROPOSED ALTERNATIVE §§ 201.100 AND 201.214

Type of cost	Regulated live poultry dealers (dollars)	Unregulated growers (dollars)	Total (dollars)
Alternative § 201.100			
First-year Cost	147,000	34,000	181,000
First Year-Cost Per Firm	21,000	99	NA
NPV of Ten-year Cost Discounted at 3 Percent	436,000	81,000	518,000
NPV of Ten-year Cost Discounted at 7 Percent	374,000	71,000	445,000
Ten-year Cost Annualized at 3 Percent	51,000	10,000	61,000
Ten-year Cost Annualized at 7 Percent	53,000	10,000	63,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	7,300	28	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	7,600	29	NA
			24
			42
Alternative § 201.214			
First-year Cost	92,000	68,000	160,000
First Year-Cost Per Firm	8,000	99	NA
NPV of Ten-year Cost Discounted at 3 Percent	143,000	484,000	627,000
NPV of Ten-year Cost Discounted at 7 Percent	129,000	400,000	529,000
Ten-year Cost Annualized at 3 Percent	17,000	57,000	73,000
Ten-year Cost Annualized at 7 Percent	18,000	57,000	75,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	2,400	164	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	2,600	164	NA
			31
			53
Alternative §§ 201.100 and 201.214			
First-year Cost	239,000	102,000	341,000
First Year-Cost Per Firm	24,000	295	NA
NPV of Ten-year Cost Discounted at 3 Percent	579,000	565,000	1,144,000
NPV of Ten-year Cost Discounted at 7 Percent	503,000	471,000	974,000
Ten-year Cost Annualized at 3 Percent	68,000	66,000	134,000
Ten-year Cost Annualized at 7 Percent	72,000	67,000	139,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	9,700	191	.....
Average Ten-Year Cost per Firm Annualized at 7 Percent	10,300	194	NA
			55
			95

Net sales for small live poultry dealers that would be required to make disclosure under proposed alternative §§ 201.100 and 201.214 averaged $159 million for their fiscal year 2020. Expected first-year cost per live poultry dealer would be well below 0.1 percent. Clearly, exempting live poultry dealers that process less than 2 million pounds of poultry per week would reduce cost to small live poultry dealers, but the benefits of the rule would also be less. AMS prefers §§ 201.100 and 201.214 as it proposed them because it considers the information in the disclosures to be important for poultry growers for making investment and production decisions and necessary for the efficient functioning of the market.

AMS made considerations for small live poultry dealers in drafting proposed §§ 201.100 and 201.214. Proposed § 201.100 makes several exemptions for live poultry dealers producing less than 2 million pounds of poultry per week. Many of the smallest live poultry dealers that do not participate in tournament style contracts would be unaffected by proposed § 201.214.

Although cost would be smaller with the alternative, the costs associated with proposed §§ 201.100 and 201.214 are relatively small. The rule seeks only to require live poultry dealers to provide its contract growers with information relevant to their operations, and AMS made every effort to limit the disclosures to information that live poultry dealer already possessed. While proposed §§ 201.100 and 201.214 would have an effect on a substantial number (54) of small businesses, the economic impact would be significant for only few, if any, live poultry dealers.

Costs to growers would be limited to the time required to review and acknowledge receipt of the disclosures. AMS expects that proposed §§ 201.100 and 201.214 would have effects on a substantial number of growers however, the costs would not be significant for any of them. Because AMS does not regulate poultry growers, AMS does not have information regarding the business sizes of poultry growers similar to the information it has concerning live poultry dealers. AMS invites comments concerning the sizes of poultry growing businesses and whether the costs associated with proposed §§ 201.100 and 201.214 would have a significant effect on any of them. Based on the above analyses regarding proposed §§ 201.100 and 201.214, this proposed rule is not expected to have a significant economic impact on a substantial number of small business entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While confident in this assertion, AMS acknowledges that individual businesses may have relevant data to supplement our analysis. We would encourage small stakeholders to submit any relevant data during the comment period.

VII. Request for Comments

AMS invites comments on this proposed rule. Comments must be submitted through the e-rulemaking portal at *www.regulations.gov.* Comments submitted on or before August 8, 2022 will be considered. Comments should reference Docket No. AMS–FTPP–21–0044 and the date and page number of this issue of the **Federal Register**.

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

For the reasons set forth in the preamble, AMS proposes to amend 9 CFR part 201 as follows:

PART 201—ADMINISTERING THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for 9 CFR part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Revise § 201.2 to read as follows:

§ 201.2 Terms defined.

The definitions of terms contained in the Act shall apply to such terms when used in Administering the Packers and Stockyards Act, 9 CFR part 201; Rules of Practice Governing Proceedings Under the Packers and Stockyards Act, 9 CFR part 202; and Statements of General Policy Under the Packers and Stockyards Act, 9 CFR part 203. In addition, the following terms used in these parts shall be construed to mean:

Act means the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*).

Additional capital investment means a combined amount of $12,500 or more per structure paid by a poultry grower or swine production contract grower over the life of the poultry growing arrangement or swine production contract beyond the initial investment for facilities used to grow, raise, and care for poultry or swine. Such term includes the total cost of upgrades to the structure, upgrades of equipment located in and around each structure, and goods and professional services that are directly attributable to the additional capital investment. The term does not include costs of maintenance or repair.

Administrator or *agency head* means the Administrator of the Agricultural Marketing Service or any person authorized to act for the Administrator.

Agency means the Agricultural Marketing Service of the United States Department of Agriculture.

Breeder facility identifier means the identification that a live poultry dealer permanently assigns to distinguish among breeder facilities supplying eggs for the poultry placed at the poultry grower's facility.

Breeder flock age means the age in weeks of the egg-laying flock that is the source of poultry placed at the poultry grower's facility.

Commerce means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

Complex means a group of local facilities under the common management of a live poultry dealer. A complex may include, but not be limited to, one or more hatcheries, feed mills, slaughtering facilities, or poultry processing facilities.

Custom feedlot means any facility which is used in its entirety or in part for the purpose of feeding livestock for the accounts of others, but does not include feeding incidental to the sale or transportation of livestock.

Department means the United States Department of Agriculture.

Grower variable costs means those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance.

Growout means the process of raising and caring for livestock or poultry in anticipation of slaughter.

Growout period means the period of time between placement of livestock or poultry at a grower's facility and the harvest or delivery of such animals for slaughter, during which the feeding and care of such livestock or poultry are under the control of the grower.

Housing specifications means a description of—or a document relating to—a list of equipment, products, systems, and other technical poultry housing components required by a live poultry dealer for the production of live poultry.

Inputs means the various contributions to be made by the live poultry dealer and the poultry grower as agreed upon by both under a poultry growing arrangement. Such inputs may include, but are not limited to, animals, feed, veterinary services, medicines, labor, utilities, and fuel.

Live poultry dealer means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce.

Letter of intent means a document that expresses a preliminary commitment from a live poultry dealer to engage in a business relationship with a prospective poultry grower and that includes the chief terms of the agreement.

Live Poultry Dealer Disclosure Document means the complete set of disclosures and statements that the live poultry dealer must provide to the poultry grower.

Minimum number of placements means the least number of flocks of poultry the live poultry dealer will deliver to the grower for growout annually under the terms of the poultry growing arrangement.

Minimum stocking density means the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

Number of placements means the number of flocks of poultry the live poultry dealer will deliver to the grower for growout during each year of the poultry growing arrangement period.

Original capital investment means the initial financial investment for facilities used to grow, raise, and care for poultry or swine.

Packers and Stockyards Division (PSD) means the Packers and Stockyards Division of the Fair Trade Practices Program (FTPP), Agricultural Marketing Service.

Person means individuals, partnerships, corporations, and associations.

Placement means delivery of a poultry flock to the poultry grower for growout in accordance with the terms of a poultry growing arrangement.

Poultry grower means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry.

Poultry grower ranking system means a system where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period.

Poultry growing arrangement means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares for live poultry for delivery, in accord with another's instructions, for slaughter.

Principal part of performance means the raising of and caring for livestock or poultry, when used in connection with a livestock or poultry production contract.

Prospective poultry grower means a person or entity with whom the live poultry dealer is considering entering into a poultry growing arrangement.

Regional director means the regional director of the Packers and Stockyards Division (PSD) for a given region or any

person authorized to act for the regional director.

Registrant means any person registered pursuant to the provisions of the Act and the regulations in this part.

Schedule means a tariff of rates and charges filed by stockyard owners and market agencies.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department authorized to act for the Secretary.

Stocking density means the ratio that reflects the number of birds in a placement, expressed as the number of poultry per facility square foot.

Stockyard means a livestock market which has received notice under section 302(b) of the Act that it has been determined by the Secretary to come within the definition of ''stockyard'' under section 302(a) of the Act.

3. Amend § 201.100 by,

a. Revising the heading and paragraph (a);

b. Redesignating paragraphs (b) through (e) as paragraphs (h) through (k), respectively;

c. Removing paragraph (f);

d. Redesignating paragraphs (g) and (h) as paragraphs (l) and (m), respectively;

e. Adding new paragraphs (b) through (g);

f. Revising redesignated paragraph (h) introductory paragraph; and

g. Redesignating paragraphs (i)(2) and (3) as paragraphs (i)(3) and (4) and adding new paragraph (i)(2).

The revisions and additions to read as follows:

§ 201.100 Disclosures and records to be furnished poultry growers and sellers.

(a) *Obligation to furnish information and documents.* A live poultry dealer must provide the documents described in this paragraph (a) to a prospective or current poultry grower.

(1) Except as provided in paragraph (e) of this section, when a live poultry dealer seeks to renew, revise, or replace an existing poultry growing arrangement, or to establish a new poultry growing arrangement that does not contemplate modifications to the existing housing specifications, the live poultry dealer must provide the following documents at least seven days before the live poultry dealer executes the poultry growing arrangement:

(i) A true, written copy of the renewed, revised, replacement, or new poultry growing arrangement; and

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section.

(2) When a live poultry dealer seeks to enter a poultry growing arrangement with a poultry grower or prospective poultry grower that will require an original capital investment, the live poultry dealer must provide the following to the poultry grower or prospective poultry grower simultaneously with the housing specifications:

(i) A copy of the poultry growing arrangement that is affiliated with the current housing specifications,

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section, and

(iii) A letter of intent that can be relied upon to obtain financing for the original capital investment.

(3) When a live poultry dealer seeks to offer or impose modifications to existing housing specifications that could reasonably require a poultry grower or prospective poultry grower to make an additional capital investment, the live poultry dealer must provide the following to the poultry grower or prospective poultry grower simultaneously with the modified housing specifications:

(i) A copy of the poultry growing arrangement that is affiliated with the modified housing specifications,

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section, and

(iii) A letter of intent that can be relied upon to obtain financing for the additional capital investment.

(b) *Prominent Disclosures.* The Live Poultry Dealer Disclosure Document must include a cover page followed by additional disclosures as required in paragraphs (c) and (d) of this section. The order, form, and content of the cover page shall be and include:

(1) The title ''LIVE POULTRY DEALER DISCLOSURE DOCUMENT'' in capital letters and bold type;

(2) The live poultry dealer's name, type of business organization, principal business address, telephone number, email address, and, if applicable, primary internet web page address;

(3) The length of the term of the poultry growing arrangement;

(4) The following statement: ''The income from your poultry farm may be significantly affected by the number of flocks the poultry company places on your farm each year, the density or number of birds placed with each flock, and the target weight at which poultry is caught. The poultry company may have full discretion and control over these and other factors. Please carefully review the information in this document.''

(5) The following:

(i) The minimum number of placements on the poultry grower's farm annually under the terms of the poultry growing arrangement, and

(ii) The minimum stocking density for each flock to be placed on the poultry grower's farm under the terms of the poultry growing arrangement.

(6) The applicable of the following two statements:

(i) ''This disclosure document summarizes certain provisions of your poultry growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. At least seven calendar days before the live poultry dealer executes the poultry growing arrangement, the poultry company is required to provide you with: (1) this disclosure document, and (2) a copy of the poultry growing arrangement.'' OR

(ii) ''This disclosure document summarizes certain provisions of your poultry growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. The live poultry dealer is required to provide this disclosure document to you simultaneously with (a) a copy of the poultry growing arrangement, (b) any new or modified housing specifications that would require you to make an original or additional capital investment, and (c) a letter of intent.''

(7) This statement: ''Even if the poultry growing arrangement contains a confidentiality provision, by law you still retain the right to discuss the terms of the poultry growing arrangement and the Live Poultry Dealer Disclosure Document with a Federal or State agency, your financial advisor or lender, your legal advisor, your accounting services representative, other growers for the same live poultry dealer, and your immediate family or business associates. A business associate is a person not employed by you, but with whom you have a valid business reason for consulting when entering into or operating under a poultry growing arrangement.'' and

(8) The following sentence in bold type: ''Note that USDA has not verified the information contained in this document. If this disclosure by the live poultry dealer contains any false or misleading statement or a material omission, a violation of federal and/or state law may have occurred.

(c) *Required disclosures following the cover page.* The live poultry dealer shall disclose, in the Live Poultry Dealer Disclosure Document following the cover page, the following information:

(1) A summary of litigation over the prior six years between the live poultry dealer and any poultry grower;

including the nature of the litigation, its location, the initiating party, a brief description of the controversy, and any resolution.

(2) A summary of all bankruptcy filings in the prior six years by the live poultry dealer and any parent, subsidiary, or related entity of the live poultry dealer; and

(3) A statement that describes the live poultry dealer's policies and procedures regarding the potential sale of the poultry grower's facility or assignment of the poultry growing arrangement to another party, including the circumstances under which the live poultry dealer will offer the successive buyer a poultry growing agreement.

(d) *Financial Disclosures.* The live poultry dealer must include in the Live Poultry Dealer Disclosure Document the following information:

(1) A table showing average annual gross payments to poultry growers for the previous calendar year for all complexes owned or operated by the live poultry dealer, organized by housing specification, and expressing average payments on the basis of U.S. dollars per farm facility square foot.

(2) Tables showing average annual gross payments to poultry growers at the local complex for each of the five previous years. The tables should express average payments on the basis of U.S. dollars per farm facility square foot. The tables should be organized by year, housing specification tier (lowest to highest), and quintile (lowest to highest). The step-by-step process for calculating table values is:

(i) Group growers according to the housing specification affiliated with their poultry growing arrangement;

(A) Include all growers under contract for a complete calendar year and growers under flock-to-flock poultry growing arrangements during that year, and

(B) Exclude growers whose housing specifications changed during the calendar year from the calculation for that year.

(ii) Sum all payments to each grower during the calendar year to determine each grower's total annual payments;

(iii) Divide each grower's total annual payments by the square footage of the grower's farm facility to normalize annual payments to reflect dollars per farm facility square foot;

(iv) Sort normalized annual payments into quintiles (smallest to largest); and

(v) Sum all normalized annual payments within each quintile and divide the result by the number of growers in the quintile to determine an average annual gross payment to poultry growers for that quintile.

(3) If poultry housing specifications for poultry growers under contract with the complex are modified such that an additional capital investment may be required, or if the five-year averages provided under paragraph (2) do not accurately represent projected grower gross annual payments under the terms of the applicable poultry growing arrangement for any reason, the live poultry dealer must provide the following additional information:

(i) Tables providing projections of average annual gross payments to growers under contract with the complex with the same housing specifications for the term of the poultry growing arrangement at five quintile levels expressed as dollars per farm facility square foot, and

(ii) An explanation of why the annual gross payment averages for the previous five years, as provided under (2), do not provide an accurate representation of projected future payments, including the basic assumptions underlying the projections provided under (i) of this paragraph.

(4) A summary of information the live poultry dealer collects or maintains relating to grower variable costs inherent in poultry production.

(5) Current contact information for the State university extension service office or the county farm advisor's office that can provide relevant information about poultry grower costs and poultry farm financial management in the poultry grower's geographic area.

(e) *Small Live Poultry Dealer Financial Disclosures.* A live poultry dealer, including all parent and subsidiary companies, slaughtering fewer than 2 million live pounds of poultry weekly (104 million pounds annually) is exempt from the requirements in paragraph (a)(1) of this section.

(f) *Governance and Certification.*

(1) The live poultry dealer must establish, maintain, and enforce a governance framework that is reasonably designed to—

(i) audit the accuracy and completeness of the disclosures required under (a), which shall include audits and testing, and which shall include reviews of an appropriate sampling of Live Poultry Dealer Disclosure Documents by the principal executive officer or officers;

(ii) ensure compliance with all obligations under the Packers and Stockyards Act and regulations thereunder.

(2) The principal executive officer or officers, or persons performing similar functions, shall certify in the Live Poultry Dealer Disclosure Document that the live poultry dealer has established, maintains, and enforces the governance framework and that based on the officer's knowledge, the Live Poultry Dealer Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact which would render it misleading.

(g) *Receipt by growers.*

(1) The Live Poultry Dealer Disclosure Document must include a poultry grower's signature page that contains the following statement: ''If the live poultry dealer does not deliver this disclosure document within the time frame specified herein, or if this disclosure document contains any false or misleading statement or a material omission (including any discrepancy with other oral or written statements made in connection with the poultry growing arrangement), a violation of federal and state law may have occurred. Violations of federal and state laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Packers and Stockyards Act, as amended. Allegations of such violations may be reported to the Packers and Stockyards Division of USDA's Agricultural Marketing Service.''

(2) The live poultry dealer must obtain the poultry grower's or prospective poultry grower's dated signature on the poultry grower's signature page in paragraph (1) as evidence of receipt. The live poultry dealer must provide a copy of the dated signature page to the poultry grower or prospective poultry grower and must retain a copy of the dated signature page in the dealer's records for three years following expiration, termination, or non-renewal of the poultry growing arrangement.

(h) *Right to discuss the terms of poultry growing arrangement offer.* A live poultry dealer, notwithstanding any confidentiality provision in the poultry growing arrangement, may not prohibit a poultry grower or prospective poultry grower from discussing the terms of a poultry growing arrangement offer or the accompanying Live Poultry Dealer Disclosure Document with:

* * * * *

(i) * * *

(2) The following variables controlled by the live poultry dealer:

(i) The minimum number of placements of poultry at the poultry grower's facility annually, and

(ii) The minimum stocking density for each flock placed with the poultry grower under the poultry growing arrangement.

* * * * *

■ 4. In subpart N, add § 201.214 to read as follows:

§ 201.214 Transparency in poultry grower ranking pay systems.

(a) *Poultry grower ranking system records.* If a live poultry dealer uses a poultry grower ranking system to calculate grower payments, the live poultry dealer must produce records in accordance with paragraphs (b) and (c) of this section. The live poultry dealer must maintain such records for a period of five years.

(b) *Placement Disclosure.* Within 24 hours of flock delivery to a poultry grower's facility, a live poultry dealer must provide the following information to the grower regarding the placement:

(1) The stocking density of the placement;

(2) Names and all ratios of breeds of the poultry delivered;

(3) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered;

(4) The breeder facility identifier;

(5) The breeder flock age;

(6) Information regarding any known health impairments of the breeder flock or of the poultry delivered; and

(7) Adjustments, if any, that the live poultry dealer may make to the calculation of the grower's pay based on the inputs in (1) through (6) of this paragraph.

(c) *Poultry grower ranking system settlement documents.* A live poultry dealer must provide ranking system settlement documents that include the following information:

(1) *Grouping, ranking, or comparison sheets.* The live poultry dealer must furnish the poultry grower, at the time of settlement, a copy of a grouping or ranking sheet that shows the grower's precise position in the grouping, ranking, or comparison sheet for that period. The grouping or ranking sheet need not show the names of other growers, but must show their housing specification and the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period.

(2) *Distribution of inputs.* The distribution of inputs among participants must be reported to all poultry grower ranking system participants. The grouping or ranking sheets required in paragraph (1) must disclose the following information relating to live poultry dealer-controlled inputs provided to each grower participant:

(i) The stocking density for each placement;

(ii) The names and all ratios of breeds of the poultry delivered to each poultry grower's facility;

(iii) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered to each poultry grower's facility;

(iv) All breeder facility identifiers;

(v) The breeder flock age(s); and

(vi) The number of feed disruptions each poultry grower endured during the growout period, where the grower was completely out of feed for 12 hours or more.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1. Details of the Estimated One-Time, First-Year Costs and On-Going Annual Costs of Providing Disclosure Documents Required in Proposed §§ 201.100 and 201.214 Under the Preferred Alternative

Table 1 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.100. AMS expects that the direct costs will consist entirely of the value of the time required to produce and distribute the disclosures and maintain proper records. The number of hours the second column were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Packers and Stockyards Act. They provided estimates of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. A blank value in the Adjustment column indicates that no adjustments were made to the costs. Each adjustment is different and described in the relevant footnote. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.100.

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs	Adjustment (percent)	Expected cost ($)
201.100(b)(1)–(8)	1	Manager	93	89		8,295
	4	Lawyer	114	89		40,513
201.100(c)(1)–(3)	10	Manager	93	89		82,951
	5	Administrative	40	89		17,664
	10	Lawyer	114	89		101,282
201.100(d)(1)(2)(i)	30	Manager	93	[1] 42	[2] 90	105,692
	8	Administrative	40	[1] 42	[2] 90	12,003
	22	Information Tech	83	[1] 42	[2] 90	68,608
201.100(d)(1)(2)(ii)–(v)	30	Manager	93	89	[3] 5	12,443
	8	Administrative	40	89	[3] 5	1,413
	22	Information Tech	83	89	[3] 5	8,077
201.100(d)(1)(2)(vi)	30	Manager	93	89	[4] 5	12,443
	8	Administrative	40	89	[4] 5	1,413
	22	Information Tech	83	89	[4] 5	8,077
201.100(d)(3)	20	Manager	93	89	[5] 5	8,295
	5	Administrative	40	89	[5] 5	883
	15	Information Tech	83	89	[5] 5	5,507
201.100(d)(4)	6	Manager	93	89		49,770
	2	Administrative	40	89		7,065
201.100(d)(5)	0.5	Manager	93	89		4,148
	0.5	Administrative	40	89		1,766
201.100(f)(1)(2)	40	Manager	93	89		331,803

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100—Continued

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs	Adjustment (percent)	Expected cost ($)
	20	Lawyer	114	89		202,564
	10	Administrative	40	89		35,327
	10	Information Tech	83	89		73,426
201.100(g)(1)(2)	1	Manager	93	89		8,295
	1	Administrative	40	89		3,533
201.100(i)(2)	1	Manager	93	89		8,295
	1	Lawyer	114	89		10,128
Total Cost						1,231,679

[1] 201.100(d)(1)(i) exempts live poultry dealers that process less than 2 million pounds of poultry per week.
[2] Reduces estimated costs by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[3] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.
[4] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[5] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.

Table 2 provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.100. Table 2 is laid out the same as Table 1. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected costs for producing and distributing the disclosure documents associated with proposed § 201.100 on an ongoing basis.

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost ($)
201.100(A)(a1)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[2] 74.72	99,750
201.100(A)(a2)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	23,047	[3] 5	6,895
201.100(A)(a3)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	23,047	[4] 5	6,895
201.100(b)(1)–(8)	0.5	Manager	93.20	89		4,148
	0.5	Administrative	39.69	89		1,766
201.100(c)(1)–(3)	1	Manager	93.20	89		8,295
	1	Administrative	39.69	89		3,533
	1	Lawyer	113.80	89		10,128
201.100(d)(1)(2)(i)	15	Manager	93.20	[5] 42	[6] 90	52,846
	3	Administrative	39.69	[5] 42	[6] 90	4,501
	6	Information Tech	82.50	[5] 42	[6] 90	18,711
201.100(d)(1)(2)(ii)–(v)	15	Manager	93.20	89	[7] 5	6,221
	3	Administrative	39.69	89	[7] 5	530
	6	Information Tech	82.50	89	[7] 5	2,203
201.100(d)(1)(2)(vi)	15	Manager	93.20	89	[8] 5	6,221
	3	Administrative	39.69	89	[8] 5	530
	6	Information Tech	82.50	89	[8] 5	2,203
201.100(d)(3)	10	Manager	93.20	89	[9] 5	4,148
	2	Administrative	39.69	89	[9] 5	353
	4	Information Tech	82.50	89	[9] 5	1,469
201.100(d)(4)	0.25	Manager	93.20	89		2,074
	0.25	Administrative	39.69	89		883
201.100(d)(5)	0.25	Manager	93.20	89		2,074
	0.25	Administrative	39.69	89		883

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100—Continued

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost ($)
201.100(f)(1)(2)	20	Manager	93.20	89		165,902
	5	Lawyer	113.80	89		50,641
	3	Administrative	39.69	89		10,598
	4	Information Tech	82.50	89		29,370
Total Cost						503,771

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.
[2] 74.72 is the percentage of the existing poultry grower contracts that are expected to come up for renewal each year. It includes all flock-to-flock and single year contracts as well as longer term contracts that are expected to expire within a year.
[3] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.
[4] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[5] 201.100(d)(1)(i) exempts live poultry dealers that process less than 2 million pounds of poultry per week.
[6] Reduces estimated cost by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[7] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.
[8] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[9] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

Table 3 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.214. Like the previous tables, AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Values in the ''Expected Wage'' column are taken from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. The number of LPD*s* is the number of live poultry dealers that filed annual reports with AMS for their 2020 fiscal years. ''Expected Cost'' is the estimate of the cost of each ''Regulatory Requirement.'' Summing the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.214.

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Number of hours per LPD	Profession	Expected wage ($)	Number of LPDs	Expected cost ($)
201.214(a)	2	Manager	93.20	89	16,590
	4	Administrative	39.69	89	14,131
	2	Information Technology	82.50	89	14,685
201.214(b)	5	Manager	93.20	89	41,475
	2	Administrative	39.69	89	7,065
	18	Information Technology	82.50	89	132,167
201.214(c)	8	Manager	93.20	89	66,361
	5	Administrative	39.69	89	17,664
	22	Information Technology	82.50	89	161,537
Total Cost					471,675

Table 3 below provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.214. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. They also provided the expected number of tournaments per plant. The number of poultry processing plants was tallied from the annual reports that live poultry dealers file with AMS. Values in the ''Expected Wage'' column were found in U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. Wage estimates are marked up 41.56 percent to account for benefits. Multiplying across the row provides the ''Cost'' for each ''Regulatory Requirement,'' and summing the ''Cost'' column provides the total expected costs for producing and distributing the disclosure documents associated with proposed § 201.214 on an ongoing basis.

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage ($)	Cost ($)
201.214(b)	0.1	Evenly distributed among management, administrative, and information tech.	228	1.35	52	[1] 71.80	114,919

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH PROPOSED § 201.214—Continued

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage ($)	Cost ($)
201.214(c)	0.1	Evenly distributed among management, administrative, and information tech.	228	1.35	52	[1] 71.80	114,919
Total Cost.	.....	.....	.....	.....	.....	.....	229,838

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.

Appendix 2. Technical Overview of Estimates of the Economic Benefits of Reduction in Profit Uncertainty to Contract Growers With Rule Changes Promoting Greater Transparency in Returns

A potential benefit of the contract disclosure rules providing increased transparency would be that doing so could lower the uncertainty in the contract grower's profit stream. According to economic principles, a risk averse producer will benefit economically from a reduction in profit risk, a component of the proposed rule's benefits, discussed above.

Given assumptions about the level of risk aversion of the producer, the distribution of contract grower profit, and the grower's utility function (an economic concept that in this case measures the grower's preferences over a set of goods), it is possible to calculate the range of economic benefits to contract growers of decreased profit uncertainty associated with greater transparency. For this analysis, we assume that the producer maximizes an absolute risk aversion (ARA) utility function. The alternative to an absolute risk aversion (RRA) function is a relative risk aversion function. For the former, the coefficient of risk aversion is the negative of the ratio of the second to first derivatives of the utility function with respect to the good (*e.g.,* wealth or consumption) while the latter multiples this ratio times the level of the good. We could find only two papers that used either RRA or ARA for examining North American poultry contract growers. Hu (2015) and Hegde and Vukina (2003) assume CARA for U.S. broiler contract growers. The former is an econometric exercise that does not provide sufficient information to obtain a risk aversion parameter for use in a scenario analysis and the latter is simply a simulation exercise of a wide range of arbitrary parameter values for the absolute risk aversion parameters without referring them to a given range of risk aversion premium (RAP) levels to provide context.

A benefit of relative risk aversion is that the relative risk aversion parameter is scale free, which represents a convenience for analysis. We assume that one reason for the greater use of relative risk aversion compared to absolute risk aversion is that it saves the researcher the work of having to solve the nonlinear equations necessary to scale the risk parameters to the size of the risky bet. A nice property of the absolute risk aversion is that the preferences for risk aversion are directly reflective of where the researcher wants risk preferences to be on a 0%–100% percentage of the standard deviation of the gamble that a risk averter would pay to avoid the gamble altogether. With relative risk aversion in contrast, the researcher instead refers to say, ''typical'' values of the relative risk aversion coefficient. Relative risk aversion measure is sensitive to what is included or excluded when defining or measuring the outcome variable, *e.g.,* whether wealth or profits (Meyer and Meyer, 2005). When the focus is on representing and measuring the risk preferences of the decision maker, as it is in the analysis of poultry growers, either relative or absolute risk aversion is sufficient as the basis for the analysis, and since simple arithmetic allows one to go from model to the other, only one of these approaches is needed (ibid.).

Another decision to be made is how the producer's risk aversion changes with wealth. Under constant absolute risk aversion (CARA), the grower's risk aversion does not change as wealth increases. Decreasing absolute risk aversion (DARA) assumes that the grower's risk aversion increases as wealth increases. Another possibility is that the grower's risk aversion is increasing in wealth (IARA). While no evidence exists one way or another for the how risk preferences of poultry contract growers change with wealth, the agricultural economics literature generally assumes DARA over IARA. We have no information one way or another on how the risk aversion of contract growers changes with wealth, and hence, we use both CARA and DARA.

First, we assume that the grower has constant absolute risk aversion (CARA) and makes management decisions to maximize the expected value of a negative exponential utility function over N simulated returns, or

$$U(w) = (1 - e^{-\lambda w})$$

where λ is the grower's absolute risk aversion coefficient and w is the grower's wealth that proxies for a set of goods and services. The higher is λ, the higher the grower's aversion variability in w. Wealth w is a stochastic variable defined as the grower's initial (fixed) wealth w_0 plus the stochastic net returns. A negative exponential utility function conforms to the hypothesis that growers prefer less risk to more given the same expected, or average, return.

The specific functional form in the equation above also assumes that growers view the riskiness of profit variability the same without regard for their level of wealth, *i.e.,* CARA (*e.g.,* Goodwin, 2009). A risk averse grower will be willing to accept lower mean net returns in exchange for lower variability in returns w. Let U_0 be the grower's current utility and U_1 be the grower's utility with the new contract rules and their associated lower variability of w. Assuming mean w is constant between states, for the risk averse grower, $U_1 > U_0$. The question then becomes how to translate the benefit $U_1 - U_0$ into a dollar value. We define the Risk Premium (*RP*), or the dollar benefit to growers of decreased profit risk, as the amount of mean profit they would be willing to give up such that $U_1 = U_0$, *i.e.,* such that they are indifferent between the two states (*e.g.,* Sproul *et al.* 2013; Schnitkey *et al.,* 2003).[117]

The first step is to construct an empirical distribution of poultry grower profit or net revenue. Without much loss in generality for this exercise, broilers and turkey production are aggregated together. The market value of contracted share of broilers and turkey in 2020 was $24.5 billion given NASS data on their total value of production and the 96.3 and 69.5 percent shares, respectively, that are contract. Eleven percent of this value goes to contract growers, based on the ratio of the USDA's Livestock Indemnity Program (LIP) payment rate for contract growers divided by the rate for livestock owners, leading to a mean gross revenue of $2.7 billion for broiler and turkey growers. Variable and fixed costs are assumed to be non-stochastic and are set at 24 and 19 percent of the 2020 mean gross revenue, based on the proportions from Table 1 in Maples *et al.* (2020), and net revenue is the gross revenue less the variable and fixed costs. Initial (non-stochastic) wealth w_0 is set equal to 2020 mean net revenue.[118] Grower net revenue is assumed to follow a normal distribution. A normal distribution of net revenue will approximate the distribution in

[117] This Risk Premium may be considered a special case of the compensating variation concept in economics. With the proposed rule changes leading to greater transparency in returns, the grower would be getting a decrease in revenue variability but would not have to pay to get this. Hence the Risk Premium is a measure of benefit to the grower of being under the new contract rules.

[118] The academic literature tends to be vague as to setting w_0, with it either set at $0 or some unspecified amount. In principle, it could be set at the producer's net equity going into the year, but if one wants initial wealth for the proposes of utility analysis to be relative liquid assets, net equity maybe too high a value.

cumulative distribution function of net revenue in Figure 1 of Maples et al. (2020) with a coefficient of variation of revenue of 0.16.[119] Given this estimate of the coefficient of variation of net revenue, and the mean net revenue of $1.56 billion for broiler and turkey contract grower net revenue, the standard deviation can be simply found as the coefficient of variation of net revenue times this mean.

The associated absolute risk aversion coefficient λ is associated with a grower's risk aversion premium (RAP), a value that varies between 0 and 100 percent (of the potential loss) and reflects the amount the grower is willing to pay to avoid the potential loss, with higher values reflecting higher risk aversion. The λ is linked to the RAP on a theoretical basis outlined in Babcock, Choi, and Feinerman (1993). The associated absolute risk aversion coefficient λ is scaled to the standard deviation of net revenue using the approach in Babcock, Choi, and Feinerman (1993). Note that since λ is scaled to the standard deviation of net revenue, the calculation of the total Risk Premium across all growers, or $RP = \Sigma_i RP_i$, $i = 1 . . . , G$ equal size growers is invariant to assumptions about the total number of growers *G,* whether set to an arbitrary value or to the 16,524 contract poultry growers per the 2017 Agricultural Census. The estimated value of λ is 9.66E–10, 9.66E–07, and 9.37E–07 for *G*=1, 1,000, and 10,000 equal sized growers, respectively, with an RAP of 20 percent.[120] A von Neumann-Morgenstern expected utility is estimated over N = 1,000 draws of w_j where EU_0 is

$$EU_0(w) = \frac{1}{N}\sum_{j=1}^{N}\left[1 - e^{-\lambda w_j}\right],$$

and EU_1 is

$$EU_1(w_1) = \frac{1}{N}\sum_{j=1}^{N}\left[1 - e^{-\lambda(w_{1j}-RP)}\right],$$

where w_{1j} are draws from the normal distribution given an assumption for a lower coefficient of variation of gross revenue with the new rules, but with the same initial wealth, costs, and mean gross revenue as in the base case. The risk premium *RP* that solves $EU_1(w_1) = EU_0(w)$ is found using a numerical search routine.

For the DARA scenario, we follow Hennessy (1998), and the CARA utility function becomes

$U(w) = (1 - e^{-\lambda w}) + \beta w$

where β is greater than zero. Let ρ(*w*) be the risk aversion coefficient under DARA, *i.e.,* ρ(w) is decreasing in *w.* Hennessy (ibid.) shows that ρ(*w*) is a function of λ and β as

$$\rho(w) = \frac{\lambda_1^2 e^{-w\lambda_1}}{\beta + \lambda_1 e^{-w\lambda_1}}$$

Per Hennessy (ibid.), we solve for the values of λ and β to simultaneously satisfy a ρ(*w=0*) associated with a RAP of 40 percent and a ρ($w=\bar{w}$) associated with a RAP of 20 percent. Like Hennessy (ibid.), we assume that the Babcock, Choi, and Feinerman approach to relate the risk coefficient to the RAP level holds approximately for DARA preferences. The rest of the approach for finding the risk premium *RP* that solves $EU_1(w_1) = EU_0(w)$ is the same as for the CARA scenarios. Appendix Table A1 summarizes the parameters and risk attitudes used in the analysis, with the RAP value denoted as θ.

APPENDIX TABLE A1—NATURE OF CHOSEN UTILITY FUNCTIONS

Parameters and risk attitudes	Low and CARA	High and CARA	DARA
λ	9.37259E–06	2.05321E–05	2.0533761e–05
β	0	0	3.9580000e–09
θ[$w = 0$]	0.20	0.40	0.40
θ[$w = \bar{w}$]	0.20	0.40	0.20
ρ[$w = 0$]	9.37259E–06	2.05321E–05	2.0529804e–05
ρ[$w = \bar{w}$]	9.37259E–06	2.05321E–05	9.3707108e–06

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[119] To put this coefficient of variation of broiler revenue of 0.16 in perspective, note that the lower-end estimate of the coefficient of variation of farm level revenue for major row crops is considerably higher one might expect, at 0.25 even with crop insurance (Cooper 2010; Belasco, Cooper, and Smith, 2019).

[120] For estimation, G = 10,000 is used to allow for a larger λ and reduce the potential for machine error in rounding.

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Appendix 3. Details of the Estimated One-Time, First-Year Costs and On-Going Annual Costs of Providing Disclosure Documents Required in Proposed §§ 201.100 and 201.214 Under the Small Business Exemption Alternative

Costs for the alternative that would exempt live poultry dealers that produced and average of less than 2 million pounds of poultry per week were estimated similarly to cost for the proposed §§ 201.100 and 201.214. AMS subject matter experts provided estimates of the average amount of time that would be necessary for each live to comply with each new requirements in §§ 201.100 and 201.214 and the hours were multiplied by wage estimates to arrive at an expected cost for each regulatory element. The tables are set up the same as before. Multiplying across row for each regulatory element provides the expected aggregate cost for the element. Summing the expected costs for element provides the total industry cost.

Table 1 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.100. AMS expects that the direct costs will consist entirely of the value of the time required to produce and distribute the disclosures and maintain proper records. The number of hours the second column were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Packers and Stockyards Act. They provided estimates of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimates released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. A blank value in the Adjustment column indicates that no adjustments were made to the costs. Each adjustment is different and described in the relevant footnote. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.100.

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs [1]	Adjustment (percent)	Expected cost ($)
201.100(b)(1)–(8)	1	Manager	93	42		3,915
	4	Lawyer	114	42		19,118
201.100(c)(1)–(3)	10	Manager	93	42		39,145
	5	Administrative	40	42		8,336
	10	Lawyer	114	42		47,796
201.100(d)(1)(2)(i)	30	Manager	93	42	[2] 90	105,692
	8	Administrative	40	42	[2] 90	12,003
	22	Information Tech	83	42	[2] 90	68,608
201.100(d)(1)(2)(ii)–(v)	60	Manager	93	42	[3] 5	11,744
	16	Administrative	40	42	[3] 5	1,334
	44	Information Tech	83	42	[3] 5	7,624
201.100(d)(3)	20	Manager	93	42	[4] 5	3,915
	5	Administrative	40	42	[4] 5	417
	15	Information Tech	83	42	[4] 5	2,599
201.100(d)(4)	6	Manager	93	42		23,487
	2	Administrative	40	42		3,334
201.100(d)(5)	0.5	Manager	93	42		1,957
	0.5	Administrative	40	42		834
201.100(f)(1)(2)	40	Manager	93	42		156,581
	20	Lawyer	114	42		95,592
	10	Administrative	40	42		16,671
	10	Information Tech	83	42		34,650
201.100(g)(1)(2)	1	Manager	93	42		3,915
	1	Administrative	40	42		1,667
201.100(i)(2)	1	Manager	93	42		3,915
	1	Lawyer	114	42		4,780
Total cost						679,627

[1] Annual reports filed by live poultry dealers indicated 42 processed an average of more than 2 million pounds of poultry per week.
[2] Reduces estimated costs by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[3] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.
[4] Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.

Table 2 provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.100. Table 2 is laid out the same as Table 1. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Estimates for the value of the time are from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. The ''Adjustment'' column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected costs for producing and distributing

the disclosure documents associated with proposed § 201.100 on an ongoing basis.

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.100

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage ($)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost ($)
201.100(A) ..... (a1)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[2] 74.72	99,750
201.100(A)(a2)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[3] 5	6,675
201.100(A)(a3)	0.08	Evenly distributed among management, administrative, and information tech.	[1] 71.80	22,312	[4] 5	6,675
201.100(b)	0.5	Manager	93.20	42	.....	1,957
(1)–(8)	0.5	Administrative	39.69	42	.....	834
201.100(c)(1)–(3) ...	1	Manager	93.20	42	.....	3,915
	1	Administrative	39.69	42	.....	1,667
	1	Lawyer	113.80	42	.....	4,780
201.100(d)(1)(2)(i)	15	Manager	93.20	42	[5] 90	52,846
	3	Administrative	39.69	42	[5] 90	4,501
	6	Information Tech.	82.50	42	[5] 90	18,711
201.100(d)(1)(2)(ii)–(v).	30	Manager	93.20	42	[6] 5	5,872
	6	Administrative	39.69	42	[6] 5	500
	12	Information Tech.	82.50	42	[6] 5	2,080
201.100(d)(3)	10	Manager	93.20	42	[7] 5	1,957
	2	Administrative	39.69	42	[7] 5	167
	4	Information Tech.	82.50	42	[7] 5	693
201.100(d)(4)	0.25	Manager	93.20	42	.....	979
	0.25	Administrative	39.69	42	.....	417
201.100(d)(5)	0.25	Manager	93.20	42	.....	979
	0.25	Administrative	39.69	42	.....	417
201.100(f)(1)(2)	20	Manager	93.20	42	.....	78,291
	5	Lawyer	113.80	42	.....	23,898
	3	Administrative	39.69	42	.....	5,001
	4	Information Tech.	82.50	42	.....	13,860
Total Cost	.....	.....	.....	.....	.....	337,420

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.
[2] 74.72 is the percentage of the existing poultry grower contracts that are expected to come up for renewal each year. It includes all flock-to-flock and single year contracts as well as longer term contracts that are expected to expire within a year.
[3] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.
[4] Estimates costs for only the 5 percent of growers that that enter contract for the first time.
[5] Reduces estimated cost by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.
[6] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.
[7] Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

Table 3 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in proposed § 201.214. Like the previous tables, AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. Values in the ''Expected Wage'' column are taken from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. The number of LPD*s* is the number of live poultry dealers that filed annual reports with AMS for their 2020 fiscal years. ''Expected Cost'' is the estimate of the cost of each ''Regulatory Requirement.'' Summing the ''Expected Cost'' column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with proposed § 201.214.

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Number of hours per LPD	Profession	Expected wage ($)	Number of LPDs	Expected cost ($)
201.214(a)	2	Manager	93.20	42	7,829
	4	Administrative	39.69	42	6,668
	2	Information Technology	82.50	42	6,930
	5	Manager	93.20	42	19,573
201.214(b)	2	Administrative	39.69	42	3,334
	18	Information Technology	82.50	42	62,371

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.214—Continued

Regulatory requirement	Number of hours per LPD	Profession	Expected wage ($)	Number of LPDs	Expected cost ($)
201.214(c)	8	Manager	93.20	42	31,316
	5	Administrative	39.69	42	8,336
	22	Information Technology	82.50	42	7,829
Total Cost					76,231

Table 4 below provides the details of the estimated ongoing costs of providing disclosure documents required in proposed § 201.214. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the ''Regulatory Requirements'' column. They also provided the expected number of tournaments per plant. The number of poultry processing plants was tallied from the annual reports that live poultry dealers file with AMS. Values in the ''Expected Wage'' column were found in U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2020. The wage estimates are marked up 41.56 percent to account for benefits. Multiplying across the row provides the ''Cost'' for each ''Regulatory Requirement,'' and summing the ''Cost'' column provides the total expected costs for producing and distributing the disclosure documents associated with proposed § 201.214 on an ongoing basis.

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH PROPOSED § 201.214

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage ($)	Cost ($)
201.214(b)	0.1	Evenly distributed among management, administrative, and information tech.	108	1.35	52	[1] 71.80	54,231
201.214(c)	0.1	Evenly distributed among management, administrative, and information tech.	108	1.35	52	[1] 71.80	54,231
Total Cost							108,463

[1] $71.80 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at $93.20, $39.69, and $82.50 respectively.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliates; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95020; File No. SR–NYSECHX–2022–10]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliates

June 1, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 20, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, and to make certain conforming and technical changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, and to make certain conforming and technical changes.

Background and General Description of Proposed Rule Change

Beginning in 2013, each of the Exchange's affiliates have adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority (''FINRA'').[4] To facilitate rule harmonization among self-regulatory organizations (''SROs''), the Exchange proposes the NYSE Chicago Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series, with certain changes, as described below.

The Exchange notes that all but five Participants [5] are already subject to similar rules by virtue of their membership in the NYSE, NYSE American, NYSE National, NYSE Arca, FINRA and/or the NASDAQ Stock Market LLC (''NASDAQ''), whose disciplinary rules are similar to FINRA's rules. The overwhelming majority of Exchange's Participant and Participant Firms are thus already subject to rules similar to the proposed rules described herein.

Set forth below are (1) a description of the Exchange's current disciplinary rules (current Article 12, Rules 1–10, and Article 13); (2) a description of the proposed rule change and transition; (3) a more detailed description of the proposed rules with a comparison to the current rules; (4) a description of technical and conforming amendments; and (5) a description of current rules that will not be carried over into the proposed rule set and the reason(s) therefor.

Description of Current NYSE Chicago Article 12

The Exchange's current rules governing disciplinary proceedings and appeals are set forth in Article 12 (Disciplinary Matters and Trial Proceedings Investigation and Charges) in Rules 1 through 10.

Article 12, Rule 1 (Investigation and Charges)

Article 12, Rule 1 concerns investigations and the commencement of disciplinary actions by the Exchange.

Article 12, Rule 1(a) governs investigations and the written report of investigative findings. Under Article 12, Rule 1(a), the staff of the Market Regulation Department has the authority to conduct investigations of any possible violation of any Exchange rule or any provision of the federal securities laws (or any rule thereunder) by any Participant, associated person [6] thereof or any other person or organization subject to the jurisdiction of the Exchange. Except in emergency situations, Article 12, Rule 1(a) requires staff to prepare a written report of such investigation whenever seeking to institute a proceeding pursuant to Article 12, Rule 1(b)(1) to be presented to the Chief Regulatory Officer (''CRO'').

Article 12, Rule 1(b)(1)–(2) govern written charges. Under Article 12, Rule 1(b)(1), if in the CRO's judgment it appears from the written investigative report that any Participant, Associated Person thereof or any other person or organization subject to the Exchange's jurisdiction (the ''Respondent'') is violating or has violated any provision of the Bylaws, Exchange rules or of the federal securities laws or the regulations thereunder, the CRO shall direct staff to prepare and present written charges

[4] In 2013, the Commission approved the New York Stock Exchange LLC's (''NYSE'') adoption of FINRA's disciplinary rules. *See* Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02). In 2016, NYSE American LLC (''NYSE American'') adopted its Rule 8000 and Rule 9000 Series based on the NYSE and FINRA Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30). In 2018, the Commission approved NYSE National, Inc.'s (''NYSE National'') adoption of the NYSE National Rule 10.8000 and Rule 10.9000 Series based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR–NYSENat–2018–02). In 2019, NYSE Arca, Inc. (''NYSE Arca'') adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (''NYSE Arca Notice'').

[5] There are currently 66 Participants on the Exchange. The term ''Participant'' is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be considered a ''member'' of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm, but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm. For the avoidance of doubt, this rule filing and the proposed disciplinary rules will use the phrase Participant and/or Participant Firm.

[6] ''Associated Person'' has the meaning set forth in Section 3(a)(21) of the Exchange Act. *See* Article 1, Rule 1(d). The term is sometimes capitalized in the Exchange's rules and will be capitalized herein.

against the Respondent, except as otherwise provided in the Exchange's rules. The written charges must identify each Respondent and specifically state each Exchange rule or provision of the federal securities laws (or any rule thereunder) alleged to have been violated. Charges must be served upon a Respondent and filed with the Secretary of the Exchange (the ''Secretary'').

Article 12, Rule 1(b)(2) provides that, in addition to the process set out in paragraph (1) above, the Board of Directors (the ''Board'') and the Executive Committee each have the authority to direct the CRO to authorize the institution of a disciplinary proceeding when, on information and belief, either the Board or the Committee is of the opinion that any Participant, Associated Person thereof or any other person or organization subject to the jurisdiction of the Exchange is violating or has violated any provision of the Bylaws or rules of the Exchange or of the federal securities laws or the regulations thereunder.

Article 12, Rule 1(c) governs service of charges, orders, notices or any instrument on Respondents and provides that these may be served upon the Respondent either personally or by leaving same at his or its place of business during office hours or by deposit in the United States post office, postage prepaid via registered or certified mail with return receipt requested, addressed to the Respondent at the last business address given by the Respondent to the Exchange.

The settlement procedure is set forth in Article 12, Rule 1(d). A Respondent can settle a proceeding instituted pursuant to Article 12, Rule 1, at any time by entering into a settlement agreement with the Exchange without admitting or denying the charges, except as to jurisdiction, which must be admitted. Under the rule, settlement agreements must include a waiver by the Respondent of all rights of appeal to the Executive Committee, the Board, Securities and Exchange Commission (the ''Commission''), and United States Court of Appeals or to otherwise challenge or contest the validity of the decision if the offer of settlement is accepted. The rule also requires settlement agreements to contain a proposed penalty to be imposed which must be reasonable under the circumstances and consistent with the seriousness of the alleged violations.

All settlement agreements require CRO approval. Where the CRO rejects an offer of settlement, the offer of settlement is deemed withdrawn and will not be given consideration in the determination of the issues involved in the disciplinary proceeding. Moreover, the Respondent will be granted an additional 10-day period from the time of receipt of the non-acceptance of the offer to file any response required under Article 12, Rule 5(b), described below.

Supplementary Material .01 to Article 12, Rule 1 provides that prior to making a report pursuant to paragraph (a) of Rule 1, the staff may notify the person(s) who is (are) the subject of the report of the general nature of the allegations and of the specific provisions of the Act, rules and regulations promulgated thereunder or constitutional provisions, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. Under the rule, the subject(s) may, within the time frame set forth in the notice from the staff, submit a written statement to the Exchange setting forth their interests and position in regard to the subject matter of the investigation. To assist a subject in preparing such a written statement he or she shall, upon request, have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or her or his or her agents to the Exchange.

Article 12, Rule 2 (Summary Procedure)

Article 12, Rule 2 sets forth the Exchange's summary procedure rules.

Under Article 12, Rule 2(a), if in the CRO's judgment it appears from the investigation and report provided for in Article 12, Rule 1(a) that the Respondent committed a minor infraction of the Bylaws or Rules of the Exchange, the CRO may summarily censure the Respondent or impose a fine not in excess of $500 or both.

Any fine imposed pursuant to subsection (a) of Article 12, Rule 2 and not contested shall not be publicly reported, except as may be required by Rule 19d–1 under the Act, and as may be required by any other regulatory authority.

Any contested fine will be publicly reported to the same extent that Exchange disciplinary proceedings will be publicly reported. In any action taken by the Exchange pursuant to Article 12, Rule 2, the person against whom a fine is imposed shall be served (as provided in Article 12, Rule 1(c)) with a written statement signed by the CRO or his designee, setting forth the

(1) rule(s) or policy(ies) alleged to have been violated;

(2) act or omission constituting each such violation;

(3) fine imposed for each such violation;

(4) date on which such action is taken; and

(5) date on which such determination becomes final and such fine becomes due and payable to the Exchange, or on which such action must be contested as provided below.

Any person against whom a minor fine is imposed under the Rule may contest the Exchange's determination by filing with the Secretary not later than 30 days after the service of the Notice of Fines, a written response meeting the requirements of an Answer as provided in Article 12, Rule 4(b) at which point the matter shall become a ''Disciplinary Proceeding'' subject to the provisions of Article 12 applicable to disciplinary proceedings.

Article 12, Rule 2(b)(1) governs collateral proceedings involving a Participant, partner, officer, registered employee or Associated Person that is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member or member organization of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities. In those circumstances, the CRO may suspend or expel such person or organization as a Participant, partner, officer, registered employee or Associated Person. Pursuant to the Rule, no such suspension by the CRO may commence before or expire after the suspension imposed by such other exchange, association or agency, and no such expulsion may be imposed by the CRO unless such person or organization has been expelled or barred by such other exchange, association or agency. Finally, Article 12, Rule 2(b) does not preclude any proceeding against any Participant, partner, officer, registered employee or Associated Person under any other Rule of the Exchange.

Under Article 12, Rule 2(b)(2), the procedure required by Article 12, Rule 1 is inapplicable to contested proceedings under Article 12, Rule 2(b). A Respondent in a collateral proceeding, however, must be given not less than ten days' notice in writing that the Chief Executive Officer (''CEO'') will appoint a Hearing Officer pursuant to the provisions of Article 12, Rule 5 to conduct a hearing to determine whether or not to suspend or expel the Respondent as provided in Article 12, Rule 2(b).

At such hearing, the respondent Participant or any respondent partner, officer, registered employee or associated person of a Participant Firm

shall be afforded an opportunity to explain why it would be inappropriate for the Hearing Officer to accept the finding of such other exchange, association or agency or to suspend or expel the Respondent notwithstanding the suspension, expulsion or bar by such other exchange, association or agency. In the event that the Hearing Officer determines not to accept the finding by such other exchange, association or agency, he may order a proceeding under any other Rule of Article 12. In the event that the Respondent fails or refuses to appear before the Hearing Officer, the Hearing Officer may nevertheless determine the matter and suspend or expel the Respondent as provided in Article 12, Rule 2(b). A written notice of the result shall be served upon the Respondent in a manner provided by Article 12, Rule 1(c) and a copy shall be sent to each member of the Board.

Any action by the Hearing Officer pursuant to Article 12, Rule 2(b) can be reviewed in accordance with the procedure specified in Article 12, Rule 6. In the event no request for review is filed within 15 days after the Respondent is notified of the determination of the Hearing Officer, such determination shall become final and not subject to appeal at the Exchange.

Under Article 12, Rule 2(b)(3), a Participant, partner, officer, registered employee or Associated Person may consent to the penalty or suspension or expulsion from the Exchange solely by reason of the imposition of the suspension, expulsion or bar by such other exchange, association or agency, and without either the separate determination of the Hearing Officer as provided above in Article 12, Rule 2(b)(2) or the procedure provided by Article 12, Rule 1. The required consent takes effect immediately and must be in writing, signed by the Respondent, and delivered to the Exchange not later than two business days after the Exchange gives the Respondent with written notice of a proceeding under Article 12, Rule 2(b).

Article 12, Rule 3 (Admission of Charges by Respondent)

Article 12, Rule 3 governs admission of charges by a Respondent.

Under Article 12, Rule 3(a), where a respondent makes a written admission of charges prepared and presented pursuant to Article 12 and waives his or its right to be heard on the penalty to be imposed, the CRO may determine and impose the penalty. The CRO's determination is final.

Under Article 12, Rule 3(b), if a Respondent makes written admission of the charges and also makes a written request for a hearing on the penalty to be imposed, the CRO shall promptly order a hearing be conducted pursuant to the procedures set forth in Article 12, Rule 5 that would be limited to such matters as are in extenuation or aggravation of the circumstances or as shall have material bearing on the penalty only. Under the Rule, the Respondent and the staff who investigated the charges shall be given an opportunity to be heard at such hearing conducted for the purpose of determining the penalty. A written notice of the result shall be served upon the Respondent in a manner provided by Rule 1(c) of this Article. Any penalty imposed under this paragraph may be reviewed pursuant to Rule 6 of this Article.

Article 12, Rule 4 (Hearing Procedure)

Article 12, Rule 4 sets forth hearing procedures.

Article 12, Rule 4(a) provides that, in the absence of a written admission by the Respondent or other settlement of charges pursuant to Article 12, Rule 1(d), a hearing of the charges before a Hearing Officer appointed by the CEO for the purpose of conducting the particular hearing shall be held.

Subsection (b) governs the answer to charges, and provides that a written answer to the charges shall be filed by the Respondent with the Secretary (with copies to the Market Regulation Department) within 30 days from the date of service of the charges or within such further time as the Hearing Officer may grant. The answer to the charges must specifically admit or deny each charge, and any charge not specifically denied is deemed to be admitted. Affirmative defenses must be asserted in the answer or deemed waived. If a Respondent fails to file an answer within the required timeframe, the allegations of the charging document are deemed admitted, and the Hearing Officer will hold a hearing to determine the appropriate sanctions.

Subsection (c) sets forth prehearing procedure. Article 12, Rule 4(c)(1) provides that the parties must exchange witness lists for the hearing no less than 30 days prior to the hearing. No person who is not identified on a witness list will be permitted to give evidence at the hearing, unless the party requesting the testimony of such witness shows good cause for failing to have previously included the person on the witness list and the party requesting the testimony of such witness can show that the failure to permit such testimony would result in undue hardship.

Subsection (c)(2) provides that any party may request production of all or some of the documents [7] that its adversary intends to introduce as evidence either in support of or to counter the charges Production requests for some of the documents to be introduced as evidence must reasonably specify which documents are to be produced, and the party making the request shall do so at least 45 days prior to the hearing and be responsible for paying all reasonable costs associated with the production of such documents.

Further, the rule provides that all documents must be produced at least 30 days prior to the hearing. If a request is made to produce all or some of the documents that are intended to be introduced as evidence at the hearing, the party responding to the request will be precluded from introducing at the hearing any documents that were not produced in response to the request, unless (1) there is good cause shown for failing to produce the document(s) 30 days prior to the hearing, and (2) failure to permit introduction of such evidence would result in undue hardship.

Upon request of any party, the Hearing Officer may shorten or lengthen the time periods for the exchange of witness lists or the production of documents.

Subsection (d) governs the conduct of the hearing. Under Article 12, Rule 4(d), the Hearing Officer must schedule the time and place at which the Hearing shall be held within 30 days of the filing of an answer by the Respondent.

The rule further provides that formal rules of evidence do not apply in any part of any disciplinary proceedings, although the parties may stipulate as to the rules relating to the introduction of evidence at the hearing. Such stipulations must be in writing and filed with the Hearing Officer and the Secretary no less than 5 days prior to the scheduled date for the commencement of the hearing.

The Respondent has the right to be present at the hearing and be permitted to examine and cross-examine all witnesses produced by the Exchange, and also to present testimony, defense or explanation. The rule affords the Market Regulation Department the right to produce witnesses and other evidence in support of the charges, cross-examine all witnesses produced

[7] For purposes of Article 12, Rule 4(c), the term ''documents'' means a writing, drawing, graph, report, table, chart, photograph, video or audio recording, or any other data compilation, including data stored by computer, from which information can be obtained.

by the Respondent, and introduce additional witnesses and evidence solely in rebuttal to the Respondent's evidence. The Respondent in turn has the right to cross-examine any rebuttal witnesses and enter additional evidence to counter any rebuttal evidence entered by the Exchange staff. Both parties have the right to make opening and closing oral arguments. The Market Regulation Department has the right to make a rebuttal oral argument after Respondent's opening and closing argument. Finally, Article 12, Rule 4(d) requires that a transcript of the testimony at the proceedings be made.

Article 12, Rule 4(e) governs appointment of the Hearing Officer and requires that the Hearing Officer for each particular matter be selected by the CEO. Under the rule, prospective Hearing Officers must disclose to the Exchange their employment history for the past 10 years, any past or current material business or other financial relationships with the Exchange or any members of the Exchange, and any other information deemed relevant by the Exchange. Disclosures relating to the particular Hearing Officer selected by the CEO must be provided to a Respondent upon request after the selection of the Hearing Officer. In selecting a Hearing Officer for a particular matter, the CEO should give reasonable consideration to the prospective Hearing Officer's professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, the absence of bias and any actual or perceived conflict of interest, and any other relevant factors.

Article 12, Rule 4(f) governs the decision of the Hearing Officer. After considering the entire record, a Hearing Officer must prepare a written Order setting forth the determination as to whether the Respondent committed the violations alleged in the charging document or otherwise established at the Hearing and, if so, the sanction(s) to be imposed. The Hearing Officer must sign two copies of the written Order and deliver one signed copy to the Respondent and file the other with the Secretary (with copies to the Market Regulation Department).

The rule requires the Order to make specific findings as to each charge brought by the Exchange and, where a violation is found, impose appropriate sanctions, including expulsion or suspension of a Participant's Trading Permit, the imposition of limitations on the activities, privileges, functions, and/or operations of a Participant or person associated with a Participant, the imposition of fine(s), censure, suspending or barring a person or organization from being associated with a Participant or any other fitting sanction. Absent the granting of an extension of time by either the Board or the Executive Committee for good cause shown, the Hearing Officer shall issue an Order within 90 days of the conclusion of the hearing.

Article 12, Rule 4(g) governs a Respondent's right to counsel. Under Article 12, Rule 4(g), Respondent shall have the right to be represented by legal or other counsel at the Respondent's own expense except in the case of summary procedure under Article 12, Rule 2(a), Rule 3 or Rule 4(a), and under the Minor Rules Violation Plan (''MRVP'') of Article 12, Rule 8.[8] The rule also provides that preparation of the charges and the presentation of evidence in support of charges is the responsibility of the Market Regulation Department and that Exchange counsel shall be counsel to the Hearing Officer. Pursuant to Article 12, Rule 4(g), Exchange counsel must not be an employee in the Market Regulation Department and must not have directly participated in any examination, investigation or decision associated with the initiation or conduct of the particular proceeding.

Article 12, Rule 4(h) governs the impartiality of Hearing Officer. The rule requires that when a Hearing Officer considers a disciplinary matter, he or she is expected to function impartially and independently of the staff members who prepared and prosecuted the charges. Under the rule, Exchange counsel may assist the Hearing Officer in preparing his written recommendations or judgments.

Within 15 days of the appointment of the Hearing Officer, a Respondent may move for disqualification of the Hearing Officer based upon bias or conflict of interest. Motions to disqualify a Hearing Officer must be in writing, state with specificity the facts and circumstances giving rise to the alleged bias or conflict of interest, and filed with the Hearing Officer and the Secretary (with copies to the Market Regulation Department). The Exchange may file a brief in opposition to the Respondent's motion within 15 days of service. Article 12, Rule 4(h) requires the Hearing Officer to rule on such motions no later than 30 days from filing by the Respondent. Prior adverse rulings against the Respondent or his attorney in other matters do not, in and of themselves, constitute grounds for disqualification. If a Hearing Officer believes the Respondent has provided satisfactory evidence in support of the motion to disqualify, the Hearing Officer shall remove himself or herself and request the CEO to reassign the hearing to another Hearing Officer. If the Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, the Hearing Office must deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing. The Hearing Officer will thereupon proceed with the hearing. Ruling by the Hearing Officer on motions to disqualify are not subject to interlocutory review.

Article 12, Rule 5 (Review)

Article 12, Rule 5 governs review of penalties and decisions.

Subsection (a) of Article 12, Rule 5 provides for review by the Judiciary Committee. The Judiciary Committee is governed by Article 2, Rule 3, which provides that whenever, in accordance with the Rules, a disciplinary matter is to be reviewed by a Judiciary Committee, the CEO shall appoint five disinterested Participants of the Exchange and/or general partners or officers of Participant Firms as a Judiciary Committee, for that purpose. A new Judiciary Committee is appointed to consider and determine each such matter. In the event of a vacancy on a Judiciary Committee after it has begun its proceedings, the remaining members appointed by the CEO shall complete consideration and disposition of the matter. Once a Judiciary Committee has determined the matter for which it was appointed and has notified the Secretary in writing of its decision, it shall be dissolved automatically.

Under Article 12, Rule 5(a), a Respondent has 15 days from the date of service of notice of a penalty imposed under Article 12, Rule 2(b), Rule 4(b) or Rule 5 to demand a review of the penalty imposed. The Exchange in turn has 15 days from the date of service of notice of an Order under Article 12, Rule 2(b), Rule 4(b)[9] or Rule 5 containing a decision with a finding that the Respondent did not commit any of the violations as alleged in the charging document or imposing a penalty that Exchange staff deems inadequate to demand a review thereof.

Demand for review shall be made in writing and filed with the Secretary, with copies to the opposing party. In the

[8] Article 12, Rule 4(g) mistakenly refers to the MRVP as being in Article 12, Rule 9 which, as noted below, is marked ''Reserved.'' *See* note 12 [sic], *infra.*

[9] Article 12, Rule 5(a) mistakenly refers to an Order under Article 12, Rule 4(b). As discussed, Article 12, Rule 4(b) governs answers to charges. The Hearing Officer's decision is governed by subsection (f).

event no request for review is filed within 15 days after the parties are notified of the Hearing Officer's determination, such determination becomes final and conclusive.

Under Article 12, Rule 5(a), a Judiciary Committee appointed by the Board or the Executive Committee will review the terms of an Order under Article 12, Rule 2(b), Rule 4(b) or Rule 5. Under Article 12, Rule 5, the Judiciary Committee may not reverse, or modify, in whole or in part, the decision of the Hearing Officer under Article 12, Rule 2(c), Rule 4(b) or Rule 5 if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. Modifications may include an increase or decrease of the penalty imposed. Unless the Judiciary Committee decides to open the record for the introduction of evidence to hear argument, such review shall be upon the factual record as certified to the Judiciary Committee by the Secretary.

Under Article 12, Rule 5(a), both the Respondent and the Exchange staff have the right to file memoranda (not to exceed 25 pages, inclusive of attachments). The appellant must file its memorandum with the Secretary within 45 days of service of the notice of appeal, or within such other time as directed by the Executive Committee. The appellee must file its memorandum within 30 days of the filing of the appellant's memorandum, or within such other time as directed by the Executive Committee. In its sole discretion, the Judiciary Committee may hear oral argument by the parties. The decision of the Judiciary Committee must be in writing and address the principal arguments forwarded by the appellant and appellee. The decision of the Judiciary Committee will be the final decision of the Exchange, except as provided in Article 12, Rule 5(b), described below.

Article 12, Rule 5(b) provides a process for review by the Board of matters subject to Judiciary Committee review under Rule 5(a). Article 12, Rule 5(b) provides that, notwithstanding Article 12, Rule 5 (a), if the Judiciary Committee determines that a matter presented to it for review involves an issue of sufficient importance, it may request that the Board, rather than the Judiciary Committee, conduct the review. The Board may in its discretion determine to review any decision of the Judiciary Committee. Under Article 12, Rule 5(b), any review by the Board shall be upon the record as certified to the Board by the Secretary, and the Board may not reverse or modify any decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board may also consider any memoranda submitted by the Respondent or Exchange staff to the Judiciary Committee pursuant to Article 12, Rule 5(a). The Board may, in its sole discretion, hear oral argument by the parties. Under the rule, modifications may include an increase or decrease of the penalty imposed on the Respondent. Any decision by the Board shall be the final decision of the Exchange.

Article 12, Rule 6 (Effective Date of Judgment)

Article 12, Rule 6 governs the effective date of judgments. The rule provides that enforcement of any Orders or penalties imposed under Article 12 shall be stayed upon the filing of a notice of appeal under Article 12, Rule 6(a) pending the outcome of final review by a Judiciary Committee or the Board as provided for in Article 12 or until the decision otherwise becomes final, subject, however, to the power of the Hearing Officer to impose such limitations on the Respondent as are necessary or desirable, in the Hearing Officer's judgment, for the protection of the Respondent's customers, creditors or the Exchange or for the maintenance of just and equitable principles of trade.

Article 12, Rule 7 (Disciplinary Jurisdiction)

Article 12, Rule 7 describes the Exchange's disciplinary jurisdiction.

Article 12, Rule 7(a) provides that a Participant or a person associated with a Participant alleged to have violated or aided and abetted a violation of any provision of the Act, the rules and regulations promulgated thereunder, or any constitutional provisions by-law or rule of the Exchange or any interpretation thereof or resolution of the Board of the Exchange regulating the conduct of business on the Exchange is subject to the disciplinary jurisdiction of the Exchange and, after notice and opportunity for a hearing, may be appropriately disciplined by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a Participant or any other fitting sanction, in accordance with the provisions of these Rules.

Subsection (b) of Article 12, Rule 7 provides that any Participant or person associated with a Participant shall continue to be subject to the disciplinary jurisdiction of the Exchange following such person's termination of their Trading Permit or association with a Participant with respect to any matter that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Participant or Associated Person within one year of receipt by the Exchange of written notice of the termination of such person's status as a Participant or person associated with a Participant.

Rule 8 (Minor Rule Violations)

Article 12, Rule 8 sets forth the Exchange's MRVP.[10] Under Article 12, Rule 8, in lieu of commencing a ''disciplinary proceeding'' as that term is used in Article 12 of the Exchange's rules, the Exchange may, subject to the requirements set forth in this Rule, impose a censure or fine, not to exceed $5,000,[11] on any Participant, Associated Person, or registered or non-registered employee of a Participant, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature.[12] For

[10] The Exchange adopted its current MRVP in 1996. *See* Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (SR–CHX–95–25) (Order). The original procedure authorizing the Exchange, in lieu of commencing disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, associated person or registered or nonregistered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature was contained in Article 12, Rule 9, now Article 12, Rule 8. The recommended dollar amounts for the first, second, third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor rule violation was contained in a separate Recommended Fine Schedule in the Fee Schedule. *See id.,* 61 FR at 28918–19 & n. 10.

In 2011, the Exchange increased the maximum fine pursuant to the MRVP from $2,500 to $5,000 and also increased the recommended fines from $100/$500/$1000 for 1st, 2nd and 3rd tier fines, respectively, to $250/$750/$1500. The Exchange also recommended fines of $500/$1000/$2500 for other, more serious trading rule violations (*i.e.,* ones involving the potential for customer harm), as well as violations of the obligation to establish, maintain and enforce written supervisory procedures, and to provide information to the Exchange in connection with regulatory inquiries or other matters. Recommended fines of $1000/$2500/$5000 were reserved for Trading Ahead violations. The Exchange also expanded the rolling time period in which violations would result in escalation to the next highest tier from 12 to 24 months. *See* Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR–CHX–2011–07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR–CHX–2011–07) (Order).

[11] Proposed Rule 10.9217 would retain the Exchange's maximum $5,000 fine for minor rule violations under current Article 12, Rule 8.

[12] As set forth in Article 12, Rule 8(f), the Exchange is not required to impose a censure or fine with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed

failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought.

Any censure or fine imposed pursuant to Article 12, Rule 8 and not contested shall not be publicly reported, except as may be required by Rule 19d–1 under the Act, and as may be required by any other regulatory authority. Any censure or fine that is contested may be publicly reported to the same extent that Exchange disciplinary proceedings may be publicly reported. Any fine imposed pursuant to Article 12, Rule 8 that (1) does not exceed $2,500 and (2) is not contested, shall be reported by the Exchange to the Securities and Exchange Commission on a periodic, rather than a current, basis, except as may otherwise be required by Act Rule 19d–1 and by any other regulatory authority. Under Article 12, Rule 8(b), the Chief Enforcement Counsel or CRO have the authority to impose a fine pursuant to the rule.

Under Article 12, Rule 8(c), in any action taken by the Exchange pursuant to the rule, the person against whom a censure or fine is imposed shall be served as provided in Article 12, Rule 1(c) with a written statement, signed by an Exchange officer setting forth (1) the rule(s) or policy(ies) alleged to have been violated; (2) the act or omission constituting each violation; (3) the sanctions imposed for each violation; (4) the date on which such action is taken; and (5) the date on which such determination becomes final and such fine, if any, becomes due and payable to the Exchange, or on which such action must be contested as provided in paragraph (e) of Article 12, Rule 8, such date to be not less than 15 days after the date of service of the written statement. Pursuant to Article 12, Rule 8(d), if the person fined pursuant to the rule pays the fine, such payment is deemed a waiver of any right to a disciplinary proceeding under Article 12 and any right to review or appeal. Commentary .01 to Article 12, Rule 8 provides that, with respect to subsection (d), a failure to pay a fine imposed Article 12, Rule 8 by the time it is due, without timely contesting the action upon which such fine was based pursuant to Article 12, Rule 8(e), shall be deemed a waiver by the person against whom the fine is imposed of such person's right to a disciplinary proceeding under Article 12 and any right to review or appeal.

Under Article 12, Rule 8(e), any person censured or fined pursuant to the rule may contest such censure or fine by filing with the Secretary a written response meeting the requirements of an Answer as provided in Article 12, Rule 4(b) no later than the date by which such determination must be contested. The Secretary may deny the answer if such answer is untimely or the answer fails to meet the standards of Article 12, Rule 4(b). If the Secretary denies the answer without leave to amend and refile, the sanction imposed by the Exchange pursuant to Article 12, Rule 8(b) shall become final and the censure shall be imposed and/or fine become due and payable. Unless denied by the Secretary, an answer filed by Respondent is deemed accepted, at which point the matter shall become a ''Disciplinary Proceeding'' subject to the provisions of Article 12 applicable to disciplinary proceedings.

Pursuant to Article 12, Rule 8(f), the Exchange must prepare and announce to its Participants from time to time a listing of the Exchange rules and policies as to which the Exchange may impose censures or fines as provided in this Rule that must also indicate the specific or recommended dollar amount that may be imposed as a fine hereunder with respect to any violation of such rule or policy, or may indicate the minimum and maximum dollar amount that may be imposed by the Exchange with respect to any such violation. In applying the Recommended Fine Schedule, the Exchange shall consider a violation as having occurred at the time that the underlying conduct of the Participant occurred. Nothing in Article 12, Rule 8 requires the Exchange to impose a censure or fine pursuant to this Rule with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Rule 8. Under Article 12, Rule 8(g), any fine assessed under Rule 8 cannot be deemed to satisfy any damages or liability incurred from the violation.

Finally, Article 12, Rule 8(h) sets forth the Exchange rules and policies that are subject to the MRVP.

Rule 10 (Pending Proceedings) [13]

Article 12, Rule 10 provides that the Exchange will report to the Central Registration Depository (''CRD'') the initiation of, and all significant changes in the status of, a formal disciplinary proceeding. For purposes of this rule, significant changes in the status of a pending formal disciplinary proceeding include, but are not limited to, issuance of a decision by the Hearing Officer the filing of an appeal to and/or the issuance of a decision by a Judiciary Committee or the Exchange's Board.

Article 13 (Suspension—Reinstatement)

Article 13 addresses suspensions, and reinstatements.

Article 13, Rule 1 governs automatic suspensions. Under the rule, a Participant failing to perform his or its contracts, or being insolvent, shall immediately inform the Secretary of the Exchange in writing that he or it is unable to perform his or its contracts or is insolvent. Such Participant's Trading Permit shall thereupon be suspended by the CEO and prompt notice of such suspension shall be given to all Participants. Such suspension shall continue until the Participant's Trading Permit is reinstated by the Board.

Article 13, Rule 2 governs emergency suspensions. Under Article 13, Rule 2(a)(1), whenever it appears to the CRO (after verification and with such opportunity for comment by the Participant as the circumstances reasonably permit) that a Participant, or, with respect to Article 13, Rule 2(a)(1)(B), any Associated Person has:

- Failed to perform his or its contracts or is insolvent or is in such financial or operational condition or otherwise conducting his or its business in such a manner that he or it cannot be permitted to continue in business with safety to his or its customers or creditors or to the Exchange, including but not limited to, the reasonable belief that the Participant is violating and will continue to violate any provision of the Rules of the Exchange, the federal securities laws (or rules promulgated thereunder) or any condition or restriction imposed pursuant to the provisions of Article 7, Rule 3(d) or Article 7, Rule 8(a) (Article 13, Rule 2(a)(1)(A)); or
- failed to perform or is failing to perform any material responsibility imposed on the Participant as a result of its registration as an Institutional Broker or Market Maker (or an associated person thereof who is registered as an Institutional Broker Representative or Market Maker Authorized Trader, respectively) and, as a result, cannot be permitted to continue in business with safety to its customers or creditors or to the Exchange ((Article 13, Rule 2(a)(1)(B)); or
- been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-

under other provisions of Article 12 rather than under Article 12, Rule 8.

[13] Article 12, Rule 9 is marked ''Reserved.''

regulatory organization (Article 13, Rule 2(a)(1)(C)),

the CRO may suspend such Participant Firm Trading Permit or such Participant's registration under Article 6 or limit or prohibit such Participant, Participant Firm's or associated person with respect to access to services offered by the Exchange, or limit or revoke such Participant's registration as Institutional Broker or Market Maker and if so suspended, revoked, limited or prohibited, prompt notice of action shall be given to all Participants and the written statement described below shall be provided to the person affected by the suspension, limitation or prohibition.

Unless the CRO determines after further inquiry that lifting the suspension, revocation, limitation or prohibition without further proceedings is appropriate, such suspension, limitation, revocation or prohibition shall continue until the Participant Firm's Trading Permit, such Participant's registration or the access of the associated person is reinstated or terminated pursuant to the provisions of Article 13, Rule 3 or unless otherwise determined pursuant to Article 13, Rule 2(b).

Under Article 13, Rule 2(a)(2), whenever it appears to the CRO that a person who is not a Participant (after verification and with such opportunity for comment by the person as circumstances reasonably permit) does not meet the qualification requirements or prerequisites for access to services offered by the Exchange and such person cannot be permitted to continue to have such access with safety to investors, creditors, Participants or the Exchange, the CRO may limit or prohibit any person with respect to such access.

Under Article 13, Rule 2(a)(3), the CRO shall, within two business days of taking action pursuant to Article 13, Rule 2 (whether with respect to a Participant, an associated person of a Participant or any other person), furnish such person with a written statement setting forth the reasons and specific grounds which constitute the basis for the action taken.

Article 13, Rule 2(b) governs appeals of CRO action under Article 13, Rule 2(a). Subsection (b) provides that, in the event the CRO takes any action pursuant to Article 13, Rule 2(a), any person named in such action shall have the right to appeal. Appeals pursuant to Article 13, Rule 2(b) shall be made by filing a written notice of appeal with the secretary of the Exchange within five days after notification of the action. The notice shall state with particularity the action complained of, the appellant's reasons for taking exception to the decision and the relief sought. Appeals filed under Article 13, Rule 2(b) are considered and decided by a panel appointed by the Board, composed of three Board members, at least two of whom shall be public members of the Board. No member of such panel shall have any direct or indirect interest in the matter presented before them which might preclude such member from rendering an objective and impartial determination. All appeals heard pursuant to Article 13, Rule 2(b) are expedited to the maximum extent possible and, in any event, shall be heard within ten days. Appellants are notified of the composition of the panel and the time, place and date when the panel will meet. Written materials in support of the appeal or requests to make an oral presentation shall be filed with the panel prior to the date when the panel will meet. The panel will grant requests for oral presentation. After consideration of the appeal, the panel shall, by vote of a majority of its members, affirm, reverse, or modify the action upon which the appeal was made. All decisions by the panel are final.

Finally, under Article 13, Rule 2(c), any appeal from a decision of the CRO shall be made pursuant to the procedures set out in Article 15 (Hearings and Reviews).

Commentary .01 to Article 13, Rule 2 provide that any Exchange Officer designated by the CRO may suspend the trading privileges of a Participant on the Exchange's facilities pursuant to the provisions of Article 13, Rule 2 if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The CRO must approve any such suspensions within two (2) days of the action. If the CRO does not approve the action taken, the suspension shall be immediately lifted as of the time of his or her decision or after the expiration of two days, whichever is earlier.

Article 13, Rule 3 governs failure to obtain reinstatement and provides that if a Participant suspended under the provisions of Article 13, Rule 1 or Article 13, Rule 2(a) fails to obtain reinstatement within one year from the time of his or its suspension, or within such further time as the Board may grant, or fails to obtain reinstatement as hereinafter provided, his or its Trading Permit shall be terminated. Any person suspended under Article 13 may, at any time, be reinstated by the Board upon their own motion.

Article 13, Rule 4 sets forth the procedure for reinstatement.

Article 13, Rule 4(a) provides that when a Participant (or any Associated Person) suspended under the provisions of Article 13, Rule 1 applies for reinstatement, he or it shall be investigated by the staff to determine if the circumstances which brought about the suspension have been corrected and if any specified requirements imposed as a condition of reinstatement have been met, prior to the consideration of the application by the Executive Committee.

Article 13, Rule 4(b) provides that if the staff recommends that the applicant not be reinstated, the applicant shall be sent a statement of reasons therefore and may, within 15 days of the receipt thereof, file a request with the Executive Committee that it consider his or its application together with a written statement indicating why in his or its opinion the staff recommendation is in error or insufficient to preclude his or its reinstatement.

Under Article 13, Rule 4(c), if the staff recommends that the applicant be reinstated or if the applicant files a request with the Executive Committee pursuant to Article 13, Rule 4(b), the Executive Committee shall consider and vote upon the application for reinstatement. An affirmative vote of two-thirds of the members of the Executive Committee present at the time of voting shall be required for reinstatement.

Under Article 13, Rule 4(d), in the event the applicant does not receive two-thirds vote, he or it shall have the right to a hearing before the Executive Committee, conducted in accordance with procedures set forth in a notice of such hearing to be given to the applicant. Following the hearing, the Executive Committee shall again vote upon the applicant, a two-thirds vote of the members of the Executive Committee present at the time of voting being required for reinstatement. The applicant may petition the Board for review of any adverse determination made by the Executive Committee following a hearing, a two-thirds vote of the members of the Board present at the time of voting being required for reinstatement. The Board shall not reverse, modify or remand for further consideration any determination made by the Executive Committee if the factual conclusions in such determination are supported by substantial evidence and such determination is not arbitrary, capricious or an abuse of discretion.

Finally, Article 13, Rule 5 governs termination of rights by suspension and provides that a Participant suspended under the provisions of Article 13 shall

be deemed not in good standing and shall be deprived during the term of his or its suspension of all rights and privileges of a holder of a Trading Permit, as provided in Article 3, Rule 2(b). The suspension of a Participant or any Associated Person thereof shall create a vacancy in any office or position held by him.

Proposed Rule Change

The Exchange proposes the Rule 10.8000 Series (Investigations and Sanctions) and the Rule 10.9000 Series (Code of Procedure), which would be based on the text of the NYSE Arca Rule 10.8000 and 10.9000 Series. The Exchange proposes to include the new disciplinary rules in current Rule 10 that would be renamed ''Disciplinary Proceedings; Suspension, Cancellation and Reinstatement.''

Unless otherwise specified below, the individual rules in the proposed Rule 10.8000 Series and Rule 10.9000 Series are based on the individual rules of the counterpart NYSE Arca Rule 10.8000 and 10.9000 Series without any differences, except that the Exchange would:

- describe its own transition process in Article 12, Rule 10 and in proposed Rules 10.8001, 10.8130(d), and 10.9001 as well as for Article 13, which governs suspension and reinstatement;
- use the terms ''Participant'' and ''Participant Firm,'' together or separately, as applicable, rather than ''ETP Holder,'' ''OTP Holder'' and ''OTP Firm,'' consistent with the Exchange's other rules;
- define ''covered person'' in proposed Rule 10.9120 to mean an Associated Person [14] and any other person subject to the jurisdiction of the Exchange. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange;
- not utilize Floor-Based Panelists referenced in NYSE Arca Rules 9120(q), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2) and (c)(2), and 9232(c) because the Exchange does not have a trading floor;
- retain the text of the Exchange's currently applicable list of minor rule violations in proposed Rule 10.9217, move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain corrections and additions; [15]
- adopt substantially the same appellate and call for review processes as its affiliate NYSE Arca except that the Exchange will not be adopting appeals panels as provided for in NYSE Arca Rule 3.3 (Board Committees) and NYSE Arca Rule 10.9310(b). NYSE Arca retained appeals panels from its legacy disciplinary rules. The Exchange does not have a similar current process; and
- make certain other technical and conforming changes as described below and herein.

The Exchange also proposes to adopt the following rules in order to harmonize its rules with those of its affiliates, as described in detail below:[16]

- A new Rule 11.21 governing disruptive quoting and trading activity modeled on NYSE Arca Rule 11.21; and
- a new Article 2, Rule 4 that would create a Committee for Review (''CFR'') as a sub-committee of the Regulatory Oversight Committee (''ROC'') that would replace the Judiciary Committee as the Exchange's appellate body reviewing disciplinary decisions on behalf of the Board under the proposed disciplinary rules.

Finally, the Exchange proposes certain changes to Article 7, Rule 12 governing non-payment of any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries, to reflect that failure to pay any fine, sanction or cost levied in connection with a disciplinary action would be governed by proposed Rule 10.8320.

First, the heading of Article 7, Rule 12 would become ''Failure to Pay Fees.'' Second, the Exchange would replace ''any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries'' with ''a fee.'' For the avoidance of doubt, and consistent with the requirements of Article 15 (Hearings and Reviews), the Exchange would add text providing that Exchange actions under Article 7, Rule 12 would be subject to the procedural safeguards set forth in Article 15, which sets out the procedures to seek an opportunity to be heard and to appeal from non-disciplinary actions taken by the Exchange pursuant to its Rules. Amended Article 7, Rule 12 would also specify that failure to pay any fine levied in connection with a disciplinary action shall be governed by proposed Rule 10.8320. Finally, the Exchange would remove ''pursuant to Article 12'' following ''disciplinary proceedings.''

Transition

Once the proposed rule change is effective, the Exchange intends to announce by Information Memorandum with at least 30 days advance notice the effective date of the new rules.[17] To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that matters already initiated under the current rules would be completed under such rules. The proposed transition is substantially the same as the NYSE Arca transition to its Rule 10.8000 and 10.9000 Series.

Specifically, the Exchange proposes that current Article 12, whose coverage overlaps the proposed Rule 10.8000 and Rule 10.9000 Series, would continue to apply to an investigation or proceeding instituted under Article 12, Rule 1 prior to the effective date of the new rules and would continue to apply until such proceeding was final. Article 12 would also continue to apply to any Participant, Participant Firm or person associated with a Participant or Participant Firm over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to the effective date of the new rules. In all other cases, the proposed Rule 10.8000 and Rule 10.9000 Series, as described below, would apply.

Until the effective date, the Exchange could suspend from trading on the Exchange any Participant or Participant Firm that fails to pay any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries under current Article 7, Rule 12, which would remain in effect until payment was made. Thereafter, the Exchange would proceed against an individual or entity subject to its jurisdiction that failed to pay a fine, monetary sanction, or cost levied in connection with a disciplinary action under proposed Rule 10.8320.

[14] *See* Article 1, Rule 1(d). *See also id.* at (d) & note 7 [sic], *supra.*

[15] The Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and to move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. *See* SR–NYSECHX–2022–08. These rules relating to minor rule violations would not be operative until approval of the Exchange's companion rule filing.

[16] The Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. *See* SR–NYSECHX–2022–09. The Exchange will also file a request with the Commission for an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act with respect to the incorporation by reference of proposed Rule 11.2210 and to the extent Rule 11.2210 is effected solely by virtue of a change to cross-referenced FINRA rule. To the extent any rules in this proposed filing refer to Rule 11.2210, such rules would not be effective with respect to Rule 11.2210 until such separate filing is operative.

[17] The proposed Information Memorandum would be substantially the same as that published for NYSE Arca. *See* NYSE Arca Equities RB–19–060 NYSE Arca Options RB–19–02 (April 26, 2019).

As described above, Article 13, Rule 1 governs automatic suspensions by the CEO of the Exchange of Participants for failure to perform its contracts or being insolvent. Article 13, Rule 2 governing emergency regulatory suspensions by the CRO that overlap with the Rule 10.9500 Series. The Exchange proposes that emergency suspensions under Article 13, Rule 2 would continue to apply to a proceeding for which the Exchange has issued a written notice or statement thereunder prior to the effective date of the new rules. Thereafter, the proposed Rule 10.9500 Series would govern all emergency suspensions. Automatic suspensions under Article 13, Rule 1 would be unaffected by the proposed changes.

When the transition is complete, the Exchange intends to submit a proposed rule change that would delete the provisions of Article 12 and Article 13 that are no longer necessary.

Jurisdiction

The Exchange proposes a new Rule 2.0 titled ''Disciplinary Jurisdiction'' based on current Article 12, Rule 7, which describes the Exchange's current disciplinary jurisdiction.[18] Proposed Rule 2.0(a) would be substantially the same as current Article 12, Rule 7(a) except that the Exchange would:

- add ''Participant Firm'' to the first sentence of the proposed rule to explicitly include such firms and persons associated with Participant Firms within the scope of the Exchange's jurisdiction;
- include the phrase ''or any other person or organization subject to the jurisdiction of the Exchange'' in that same first sentence of the proposed rule consistent with current Article 12, Rule 1 and in order to explicitly include such persons or organizations within the scope of the Exchange's jurisdiction;
- omit the reference to ''constitutional provisions'' from the list of potential violations as moot since the Exchange no longer has a Constitution;
- conform the potential sanctions with NYSE Arca's Rule 2.0(a), that exchange's comparable jurisdiction rule;
- replace the reference to ''these Rules'' with ''the Rule 10.8000 and 10.9000 Series'' to add clarity and transparency;
- add the following sentence from NYSE Arca Rule 2.0 in order to harmonize the Exchange's rules with that of its affiliates and clarify the scope of the Exchange's disciplinary jurisdiction: ''A Participant or Participant Firm may be charged with any violation committed by its employees or other person associated with such Participant or Participant Firm, as though such violation were its own.''

Proposed Rule 2.0(b) would be based on NYSE Arca Rule 2.0(b) and would provide that a Participant or Participant Firm that resigns or has its membership canceled or revoked, and a person who is no longer a covered person as defined in Rule 10.9120 or a covered person whose registration has been revoked or canceled, shall continue to be subject to the Exchange's disciplinary jurisdiction as set forth in proposed Rule 10.8130.

Proposed Rule 2.0(c) would be based on NYSE Arca Rule 2.0(c). The proposed rule would provide that the Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act. The proposed rule would further provide that any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision would affect the oversight of such other self-regulatory organization by the Commission. Finally, proposed Rule 2.0(c) would provide that, notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

As proposed, Rule 2.0 would set forth the scope of the Exchange's disciplinary jurisdiction under the Rule 10.8000 and 10.9000 Series. As discussed below, proposed Rule 10.8130 would address the Exchange's retention of jurisdiction, and would enable the Exchange to generally retain jurisdiction to file a complaint against a Participant, Participant Firm or a covered person for two years after such status was terminated. Current Article 12 would continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to the effective date.

To continue the current coverage of the Exchange's disciplinary rules, the proposed rule change would use the terms ''Participant,'' ''Participant Firm'' and ''covered person,'' which would be defined in proposed in Rule 10.9120 to mean an Associated Person [19] and any other person subject to the jurisdiction of the Exchange, to describe the persons to which the proposed Rule 10.8000 and 10.9000 Series apply. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange.

Proposed Rule 10.8000 Series

The Proposed Rule 10.8000 Series would address Investigations and Sanctions.

Proposed Rule 10.8001 (Effective Date of Rule 10.8000 Series) would include the effective date of the proposed rule change for the Rule 10.8000 Series, noting the exception for the retention of jurisdiction dates in proposed Rule 10.8130(d), as described below.

The text of NYSE Arca Rules 10.8110 through 10.8330 would be adopted as Rules 10.8110 through 10.8330 with proposed changes to reflect the Exchange's membership and to update the cross-references in proposed Rule 10.8130(b)(1) to the rules governing termination of registration (Article 6, Rule 2; Article 16, Rule 1; and Article 17, Rule 1). Proposed Rule 10.8100 (General Provisions) would include proposed Rules 10.8110 through 10.8130.[20]

Proposed Rule 10.8110 (Availability of Rules for Customers) would require Participants and Participant Firms to make available a current copy of the Exchange's rules for examination by customers upon request. Although there is no comparable requirement in the current Rules, the Exchange's rules are currently available on the Exchange's website.[21]

Proposed Rule 10.8120 (Definitions) would provide cross-references to definitions of the terms ''Adjudicator,'' ''covered person,'' and ''Regulatory Staff'' in proposed Rule 10.9120. Proposed Rule 10.8120 is technical in nature.

Proposed Rule 10.8130 (Retention of Jurisdiction) would set forth retention of

[18] The new Rule 2.0 titled ''Rule 2.0. Disciplinary Jurisdiction'' would appear below ''Rule 2 Trading Permits.''

[19] *See* Article 1, Rule 1(s). *See also id.* at (d) & note 6, *supra.*

[20] NYSE Arca Rules 10.8212, 10.8213, and 10.8312 are marked ''Reserved'' in the NYSE Arca's rulebook. As such, to maintain consistency with NYSE Arca's rule numbering, the Exchange has designated proposed Rules 10.8212, 10.8213, and 10.8312 as ''Reserved.''

[21] The rules are available at *https://nysechicago.wolterskluwer.cloud/rules.*

jurisdiction provisions that are substantially the same as NYSE Arca Rule 10.8130, except for (1) references to reflect the Exchange's membership, (2) the cross-references in paragraph (b)(1) and (d), and (3) clarifying in paragraph (d) for purposes of the transition Article 12 would continue to apply to a Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to the effective date of the new disciplinary rules.

Generally, subject to proposed Rule 10.8130(d), under the proposed rule change, the Exchange would retain jurisdiction to file a complaint against a Participant, Participant Firm or a covered person for two years after such Participant's, Participant Firm's or covered person's status is terminated. This differs from current Article 12, Rule 7(b), which provides that jurisdiction is retained if a written notice of the commencement of an inquiry into such matters is given by the Exchange to the former Participant or Associated Person within one year of receipt by the Exchange of written notice of the termination of such person's status as Participant or person associated with a Participant. The Exchange believes that the period under the proposed rule is appropriate because it will harmonize the Exchange's rule with NYSE Arca's rule.

Proposed Rule 10.8200 (Investigations) would set forth the following rules. Proposed Rule 10.8210 (Provision of Information and Testimony and Inspection and Copying of Books) would set forth procedures for the provision of information and testimony and inspection and copying of books by the Exchange.

Proposed Rule 10.8210(a) would require Participant, Participant Firm or a covered person to provide information and testimony and permit the inspection of books, records, and accounts for the purpose of an investigation, complaint, examination, or proceeding authorized by the Exchange's rules. As noted above, under proposed Rule 10.8130, the Exchange would retain jurisdiction over a Participant, Participant Firm or a covered person to file a complaint or otherwise initiate a proceeding for two years after such Participant's, Participant Firm's or covered person's status is terminated; as such, the Exchange can continue to obtain information and testimony during such period and thereafter if a complaint or proceeding is timely filed. The Exchange's current Article 6, Rule 9(a) similarly provides that a Participant or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange that fails to submit requested documents or information to the Exchange is subject to formal disciplinary action.

Under current Article 6, Rules 9(b), no Participant, or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to Article 6, Rule 9(c). The requirements of current Article 6, Rule 9(b) shall apply regardless of whether the Exchange has itself initiated a formal investigation or disciplinary proceeding. Proposed Rule 10.8210(b) provides Exchange staff may exercise the authority set forth in 10.8210(a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which the Exchange has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes. The Exchange believes that adopting the proposed rule is appropriate because it will harmonize the Exchange's rules with its affiliate's rules with respect to jurisdiction and obtaining books and records from Participants, Participant Firms and persons associated with Participants and Participant Firms. The Exchange accordingly proposes to delete the text of current Article 6, Rules 9(a) and (b).

Finally, proposed Rule 10.8210(a) would provide that, in performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of Participants and Participant Firms. The proposed rule would further provide that no member of the Board or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding, to proposed Rule 10.8210(a). The proposed language is based on NYSE Arca Rule 10.8210(a) with no substantive changes. The Exchange does not have a comparable rule and believes that adopting the proposed rule is appropriate because it will harmonize the Exchange's rule with NYSE Arca's rule in the important area of regulatory independence.[22]

Proposed Rule 10.8210(b)(2) would authorize Exchange staff to enter into regulatory cooperation agreements with a domestic federal agency or subdivision thereof, a foreign regulator, or a domestic or foreign SRO. Under current Article 6, Rule 9(c), the Exchange may enter into agreements with domestic and foreign SROs, but it does not cover domestic agencies and foreign regulators. As such, the Exchange would delete the text of current Article 6, Rule 9(c). The remainder of Article 6, Rule 9, consisting of interpretations and policies in Commentaries .01 and .02, would be deleted as well.

The remainder of proposed Rule 10.8210 would set forth certain procedures for investigations. Proposed Rule 10.8210(c) would require Participants, Participant Firms and covered person to comply with information requests under the Rule.

Proposed Rule 10.8210(d) would provide that a notice under this Rule would be deemed received by the Participant, Participant Firm or covered person (including a currently or formerly registered person) to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm, or the last known residential address of the covered person as reflected in the Central Registration Depository (''CRD''). With respect to a person who is currently associated with a Participant or Participant Firm in an unregistered capacity, a notice under this Rule would be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm as reflected in CRD. With respect to a person subject to the Exchange's jurisdiction who was formerly associated with a Participant or Participant Firm in an unregistered capacity, a notice under the proposed

[22] As noted below, the last sentence of proposed Rule 10.8210(a) will also be added to proposed Rule 10.9110(a).

Rule would be deemed received by the person upon personal service, as set forth in Rule 10.9134(a)(1).

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or covered person had actual knowledge that the address in CRD is out of date or inaccurate, then a copy of the notice would be mailed or otherwise transmitted to: (1) the last known business address of the Participant or Participant Firm or the last known residential address of the covered person as reflected in CRD; and (2) any other more current address of the Participant, Participant Firm or covered person known to the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice. If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or covered person knew that the such person or entity was represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice would be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of such person or entity, and any notice served upon counsel would be deemed received by the person or entity.

Current Article 12, Rule 1(c) governs service of charges, orders, notices or any instrument on Respondents and provides that these may be served upon a Participant, Associated Person thereof or any other person or organization subject to the jurisdiction of the Exchange (defined as the ''Respondent'') either personally or by leaving same at his or its place of business during office hours or by deposit in the United States post office, postage prepaid via registered or certified mail with return receipt requested, addressed to the Respondent at the last business address given by the Respondent to the Exchange. The changes to proposed Rule 10.8210(d) would harmonize service of process across affiliated exchanges.

Proposed Rule 10.8210(e) would provide that in carrying out its responsibilities under this Rule, the Exchange may, as appropriate, establish programs for the submission of information to the Exchange on a regular basis through a direct or indirect electronic interface between the Exchange and Participants and Participant Firms.

Proposed Rule 10.8210(f) would permit a witness to inspect the official transcript of the witness's own testimony, and permit a person who has submitted documentary evidence or testimony in an Exchange investigation to obtain a copy of the person's documentary evidence or the transcript of the person's testimony under certain circumstances.

Finally, proposed Rule 10.8210(g) would require any Participant, Participant Firm or covered person who in response to a request pursuant to this Rule provided the requested information on a portable media device to ensure that such information was encrypted. The Exchange's current rules do not contain comparable provisions.

Commentary .01 to proposed Rule 10.8210 would require Participants, Participant Firms or covered persons to provide Exchange staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts '' 'of such Participant or covered person,' '' proposed paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its covered persons makes or keeps relating to its operation as a broker-dealer or relating to the person's association with the Participant or Participant Firm. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other Exchange rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a Participant, Participant Firm or covered person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the Participant, Participant Firm or covered person. The rule would require, however, that a Participant, Participant Firm or covered person must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the a Participant, Participant Firm or covered person controls or has a right to demand them. The Exchange's current rules do not contain comparable provisions. The Exchange believes that the additional specificity would provide better notice to persons subject to its jurisdiction.

Proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) would set forth the procedures for electronic blue sheets. Because FINRA now performs surveillance functions based on the information gathered as a result of these rules, the Exchange believes that its procedures for electronic blue sheets should be harmonized with FINRA and across affiliated exchanges that have adopted the FINRA rule. Proposed Rule 10.8211 is substantially the same as NYSE Arca Rule 10.8211 except for references reflecting the Exchange's membership.

Proposed Rule 10.8300 (Sanctions) would set forth the following rules.

Proposed Rule 10.8310 (Sanctions for Violation of the Rules) would set forth the range of sanctions that could be imposed in connection with disciplinary actions under the proposed rule change. Such sanctions would include censure, fine, suspension, revocation, bar, expulsion, or any other fitting sanction. These sanctions are substantially the same as the permitted sanctions set forth in current Article 12, Rule 7(a), which are expulsion; suspension; limitation of activities, functions and operations; fine; censure; being suspended or barred from being associated with a Participant; or any other fitting sanction. Although there is some difference between the text of the current and proposed rules, the Exchange believes that in practice the range of sanctions is the same due to the inclusion in both rules of the general category ''any other fitting sanction.''

Proposed Rule 10.8310 would also permit the Exchange to impose a temporary or permanent cease and desist order against a Participant, Participant Firm or covered person. Under proposed Rule 10.8310, each party to a proceeding resulting in a sanction is deemed to have assented to the imposition of the sanction unless such party files a written application for review or relief pursuant to the Rule 10.9000 Series.

Proposed Rule 10.8311 (Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification) would provide in subsection (a) that if a person is subject to a suspension, revocation, or cancellation of registration, bar from association with a Participant or Participant Firm or other disqualification, a Participant or Participant Firm shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. The proposed rule further provides that a Participant or Participant Firm shall not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue during the period of the sanction

or disqualification. However, a Participant or Participant Firm may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits a covered person from conducting specified activities (such as a suspension from acting in a principal capacity) or a disqualified person has been approved (or is otherwise permitted pursuant to Exchange rules and the federal securities laws) to associate with a Participant or Participant Firm.

Proposed Rule 10.8311(b) would provide that, notwithstanding proposed paragraph (a), a Participant or Participant Firm may pay to a person that is subject to a sanction or disqualification described in Rule 10.8311(a), any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment. Proposed Commentary 01 of the Rule clarified that, notwithstanding the Rule, a Participant or Participant Firm may pay or credit to a person that is the subject of a sanction or disqualification, salary, commission, profit or any other remuneration that the Participant or Participant Firm can evidence accrued to the person prior to the effective date of such sanction or disqualification; provided, however, the Participant or Participant Firm may not pay any salary, commission, profit or any other remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws.

The Exchange does not currently have similar rule that broadly describes the effect of a suspension, revocation, cancellation, bar or other disqualification.

Proposed Rule 10.8313 (Release of Disciplinary Complaints, Decisions and Other Information) would provide, in part, that the Exchange would publish all final disciplinary decisions issued under the proposed Rule 10.9000 Series, other than minor rule violations, on its website. The Exchange does not have a comparable rule.

Proposed Rule 10.8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay) would govern payment of fines and other monetary sanctions or costs and provide for a summary action for failure to pay by a Participant, Participant Firm or covered person.

Proposed Rule 10.8320(a) would provide that all fines and other monetary sanctions shall be paid to the Treasurer of the Exchange.

Proposed Rule 10.8320(b) and (c) would permit the Exchange, after seven days' notice in writing, to summarily suspend or expel from membership a Participant or Participant Firm or revoke the registration of a covered person for failure to pay a fine or other monetary sanction imposed pursuant to proposed Rule 10.8310 or a cost imposed pursuant to proposed Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable. As noted above, under current Article 7, Rule 12, a Participant or Participant Firm can be suspended for failing to pay a fine within 60 days, after written notice, until payment is made. If payment is not made within six months after such suspension, the Participant's status as a Participant may be terminated by the CEO on at least 10 days' written notice mailed to the Participant or Participant Firm at the address last registered with the Exchange. As NYSE Arca explained in connection with its Rule 10.8320, FINRA's rules do not set forth a notice period but, as a matter of practice, FINRA typically provides a respondent at least 30 days to pay a fine after the conclusion of a proceeding. As NYSE Arca reasoned, a 30-day period, along with the seven days' notice provided under Rule 10.8320, provides respondents with an adequate amount of time to pay a fine and avoid any further sanction by the Exchange.[23] The Exchange proposes to follow the same reasoning for its proposed Rule 10.8320.

For clarity regarding the transition, proposed Rule 8320(d) would provide that the Exchange may exercise the authority set forth in Rules 8320(b) and (c) with respect to non-payment of a fine, monetary sanction, or cost assessed in a disciplinary action initiated under Article 12 for which a decision was issued on or after the transition date.

Proposed Rule 10.8330 (Costs of Proceedings) would provide that a disciplined Participant, Participant Firm or covered person may be assessed the costs of a proceeding, which are determined by the Adjudicator. The Exchange believes that Adjudicators should have the discretion to assess costs as they deem appropriate. The Exchange does not have a comparable rule.[24]

Proposed Rule 10.9000 Series

The proposed Rule 10.9000 Series would set forth the Code of Procedure.

Proposed Rules 10.9001 Through 10.9120

Proposed Rule 10.9001 (Effective Date of Rule 10.9000 Series) would set forth the effective date of the Rule 10.9000 Series, noting the transitional provisions described above. The text of proposed Rule 10.9001 would include similar introductory text as that proposed for Rules 10.8001. While the transition would be structured in substantially the same manner as NYSE Arca's transition, the Exchange's proposed text would differ from NYSE Arca Rule 10.9001 due to differences in terminology and cross-references. As noted above, Article 12 would apply only to an investigation or proceeding instituted under Article 12, Rule 1 prior to the effective date of the proposed disciplinary rules and would continue to apply until such proceeding is final. Article 12 would also continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to the effective date of the proposed disciplinary rules.

Proposed Rule 10.9100 (Application and Purpose) would set forth the following rules.

Proposed Rule 10.9110 (Application) would state the types of proceedings to which the proposed Rule 10.9000 Series would apply (each of which is described below) and the rights, duties, and obligations of Participants, Participant Firms or covered persons, and would set forth the defined terms and cross-references. The proposed rule would also provide that, in performing the functions under the Rule 10.9000 Series, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the Participants and Participant Firms. The Exchange does not have a comparable rule.

Proposed Rule 10.9120 (Definitions) would set forth definitions applicable to the Rule 10.9000 Series. The definitions are substantially the same as the definitions set forth in NYSE Arca Rule

[23] *See* NYSE Arca Notice, 84 FR at 16360. NYSE and NYSE American put forth similar arguments. *See* Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213, 5222 (January 24, 2013) (SR–NYSE–2013–02) (Notice); 2016 Notice, 81 FR at 11321.

[24] Rule 13.4 requires a Participant or Associated Person who does not prevail in a lawsuit or other legal proceeding against the Exchange or any of its Directors, officers, committee members, employees or agents, and related to the business of the Exchange, to pay the Exchange all reasonable expenses, including attorneys' fees, incurred in the defense of such proceeding, but only where such expenses exceed $50,000. This provision is by its terms inapplicable to, among other things, disciplinary proceedings.

10.9120, except that (1) references would reflect the Exchange's membership, and (2) the Exchange would not define ''Floor-Based Panelist'' in proposed subsection (q) because the Exchange does not have a trading floor. The Exchange would therefore designate paragraph (q) as ''Reserved.'' In order to maintain the same sequence as NYSE Arca Rule 10.9120, paragraphs (b), (i) and (n) of the proposed rule would also be marked ''Reserved.''

Proposed Rules 10.9130 Through 10.9138

Proposed Rule 10.9130 (Service; Filing of Papers) would govern the service of a complaint or other procedural documents under the Rules.

Proposed Rule 10.9131 (Service of Complaint) would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 10.9132 (Service of Orders, Notices, and Decisions by Adjudicator) would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 10.9133 (Service of Papers Other Than Complaints, Orders, Notices, or Decisions) would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 10.9134 (Methods of, Procedures for Service) would describe the methods of service and the procedures for service. Proposed Rule 10.9135 (Filing of Papers with Adjudicator: Procedure) would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 10.9136 (Filing of Papers: Form) would govern the form of papers filed in connection with any proceeding under the proposed Rule 10.9200 and 10.9300 Series. Proposed Rule 10.9137 (Filing of Papers: Signature Requirement and Effect) would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 10.9138 (Computation of Time) would establish the computation of time.

With respect to service of process, under proposed Rule 10.9134, papers served on a natural person could be served at the natural person's residential address, as reflected in CRD, if applicable. When a Party or other person responsible for serving such person had actual knowledge that the natural person's CRD address was out of date, duplicate copies would be required to be served on the natural person at the natural person's last known residential address and the business address in CRD of the entity with which the natural person is employed or affiliated. Papers could also be served at the business address of the entity with which the natural person is employed or affiliated, as reflected in CRD, or at a business address, such as a branch office, at which the natural person is employed or at which the natural person is physically present during a normal business day. The Hearing Officer could waive the requirement of serving documents (other than complaints) at the addresses listed in CRD if there were evidence that these addresses were no longer valid and there was a more current address available. If a natural person were represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, would be required to be served on the counsel or representative.

Similarly, under proposed Rule 10.9134, papers served on an entity would be required to be made by service on an officer, a partner of a partnership, a managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service. Such papers would be required to be served at the entity's business address as reflected in CRD, if applicable; provided, however, that when the Party or other person responsible for serving such entity had actual knowledge that an entity's CRD address was out of date, duplicate copies would be required to be served at the entity's last known address. If an entity were represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, would be required to be served on such counsel or representative.

By comparison, current Article 12, Rule 1(c), which governs service of charges, orders, notices or any instrument on Respondents, is less detailed. As noted, it provides that these may be served upon the Respondent either personally or by leaving same at his or its place of business during office hours or by deposit in the United States post office, postage prepaid via registered or certified mail with return receipt requested, addressed to the Respondent at the last business address given by the Respondent to the Exchange. The Exchange believes that the more detailed procedures for service of process in proposed Rules 10.9130 through 10.9138 would increase the likelihood of successful service of process while providing appropriate due process protections to its Participants, Participant Firms and persons associated with Participants and Participant Firms.

Proposed Rules 10.9140 Through 10.9148

Proposed Rule 10.9140 (Proceedings) would contain various rules relating to the conduct of disciplinary proceedings.

Proposed Rule 10.9141 (Appearance and Practice; Notice of Appearance) would govern appearances in a proceeding, notices of appearance, and representation. Proposed Rule 10.9141 would permit a Respondent to represent himself or herself, or be represented by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. The proposed rule also permits a partnership to be represented by a partner and a corporation, trust, or association to be represented by an officer of such entity. Proposed Rule 10.9141 requires an attorney or representative to file a notice of appearance. Current Article 12, Rule 4(g) is more general; it permits a Respondent to be represented by counsel but do not require a notice of appearance.

Proposed Rule 10.9142 (Withdrawal by Attorney or Representative) would require an attorney or representative to file a motion to withdraw. The Exchange currently does not have a comparable rule.

Subsection (a) of proposed Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte communications with an Adjudicator or Exchange employee. The Exchange does not have a comparable rule.

Under proposed Rule 10.9143(b), an Adjudicator participating in a decision with respect to a proceeding, or an Exchange employee participating or advising in the decision of an Adjudicator, who received, made, or knowingly caused to be made a communication prohibited by the rule would be required to place in the record of the proceeding (1) all such written communications, (2) memoranda stating the substance of all such oral communications, and (3) all written responses and memoranda stating the substance of all oral responses to all such communications.

Under proposed Rule 10.9143(c), upon receipt of a prohibited communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff, the Exchange or an Adjudicator may order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest

in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants in a proceeding could respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record, and such responses would be placed in the record.

Under proposed Rule 10.9143(d), in a disciplinary proceeding governed by the Rule 10.9200 Series and the Rule 10.9300 Series, the prohibitions of the rule would apply beginning with the authorization of a complaint as provided in Rule 10.9211, unless the person responsible for the communication had knowledge that the complaint would be authorized, in which case the prohibitions would apply beginning at the time of his or her acquisition of such knowledge.

Under proposed Rule 10.9143(e), there would be a waiver of the ex parte prohibition in the case of an offer of settlement; letter of acceptance, waiver, and consent; or minor rule violation letter.

Proposed Rule 10.9144 (Separation of Functions) would establish the separation of functions for Interested Staff and Adjudicators and provide for waivers. The Exchange currently does not have a comparable rule.

Proposed Rule 10.9145 (Rules of Evidence; Official Notice) would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 10.9000 Series. The proposed rule would also provide that in a proceeding governed by the Rule 10.9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body, and that before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice. Current Article 12, Rule 4(d) also provides that formal rules of evidence do not apply. The Exchange's rules do not currently contain a comparable provision to proposed Rule 10.9145(b) governing official notice.

Proposed Rule 10.9146 (Motions) would govern motions a Party may make and requirements for responses and formatting. A Party would be permitted to make written and oral motions, although an Adjudicator could require that a motion be in writing. An opposition to a written motion generally would have to be filed within 14 days, but the moving party would have no right to reply, unless an Adjudicator so permits, in which case such reply generally would be due within five days. Proposed Rule 10.9146 also would permit a Party, a person who is the owner, subject, or creator of a Document subject to production under proposed Rule 10.8210 or any other rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding, to move for a protective order. Article 12, Rule 4 governing hearing procedure does not contain the same level of detail. The Exchange believes that the more detailed provisions of the proposed rule would provide additional specificity and clarity regarding motions to all Parties to a proceeding. Proposed Rule 10.9146 is substantially the same as NYSE Arca Rule 10.9146.

Proposed Rule 10.9147 (Rulings On Procedural Matters) would provide that Adjudicators may rule on procedural matters. The Exchange does not have a comparable rule. Current Article 12, Rule 4 provides that a Hearing Officer is appointed for the purpose of conducting a hearing and describes the conduct of a hearing but does not contain an explicit statement regarding the Hearing Officer's full authority to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding.

Finally, proposed Rule 10.9148 (Interlocutory Review) would generally prohibit interlocutory review, except as provided in proposed Rule 10.9280 for contemptuous conduct. The Exchange currently does not have a comparable rule. Current Article 12, Rule 4(h) provides that motion to disqualify a Hearing Officer is not subject to interlocutory review.

Proposed Rules 10.9150 Through 10.9222

Proposed Rule 10.9150 would provide that a representative can be excluded by an Adjudicator for unethical or improper conduct. The proposed Rule is identical to NYSE Arca Rule 10.9150. The Exchange currently does not have a comparable rule.

Proposed Rule 10.9160 (Recusal or Disqualification)

Proposed Rule 10.9160 would provide that no person may act as an Adjudicator if he or she has a conflict of interest or bias, or circumstances exist where his or her fairness could reasonably be questioned. In such case, the person must recuse himself or herself, or may be disqualified. The proposed rule would cover the recusal or disqualification of an Adjudicator, the Chair of the Board, or a Director. Disqualification of a Director or the Chair of the Board would be governed by proposed Rule 10.9160(a). Disqualification of a Panelist would be governed by Rule 10.9234 while disqualification of a Hearing Officer would be governed by Rule 10.9233.[25] The Exchange currently does not have a strictly comparable rule. Article 12, Rule 4(h) requires a Hearing Officer to function impartially and independently of the staff members who prepared and prosecuted the charges and provides for a process for a respondent to make a motion for disqualification of the Hearing Officer based upon bias or conflict of interest. Unlike proposed Rule 10.9160, the Exchange's current rule does not explicitly require recusal in the event of a conflict of interest or bias, or other circumstance where a Hearing Officer's fairness might reasonably be questioned. The Exchange's current Article 12, Rule 4(h) is also limited to Hearing Officers and there is no comparable recusal or disqualification procedure described in Article 12, Rule 5, governing reviews of penalties and decisions. The Exchange believes that the broader text of the proposed rule, applying the same prohibition against bias and a procedure for disqualification at all levels of review, would help to increase the fairness of and consistency in its proceedings.

Proposed Rules 10.9160(b), (c), and (d) are designated as ''Reserved'' to maintain consistency with NYSE Arca's rule numbering.

Proposed Rules 10.9200 Through 10.9217

Proposed Rule 10.9200 (Disciplinary Proceedings) would cover disciplinary proceedings. Proposed Rule 10.9211 (Authorization of Complaint) would permit Enforcement to request the authorization from the CRO to issue a complaint against any Participant, Participant Firm and covered persons of a Participant or Participant Firm, thereby commencing a disciplinary proceeding. Under Article 12, Rule 1(b)(1), if in the CRO's judgment it appears from the written investigative report that any Participant, Participant Firm or Associated Person is violating or has violated any provision of the Bylaws, Exchange rules or of the federal securities laws or the regulations thereunder, the CRO directs staff to prepare and present written charges against the Respondent.

[25] *See* proposed Rules 10.9160(e) & (f).

Proposed Rule 10.9212 (Complaint Issuance—Requirements, Service, Amendment, Withdrawal, and Docketing) would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. The proposed rule also requires the Office of Hearing Officers to promptly record each complaint filed with it in the Exchange's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding. Current Article 12, Rule 1(b) does not contain a comparable detail. Further, under the proposed rule, the form of the complaint would be more prescribed than under current Article 12, Rule 1(b). For example, current Article 12, Rule 1(b) does not provide for withdrawal of a complaint.

Proposed Rule 10.9213 (Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel) would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer. As defined in proposed Rule 10.9120(r), ''Hearing Officer'' means a FINRA employee who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 10.9200 Series regarding disciplinary proceedings, the Rule 10.9550 Series regarding expedited proceedings, and the Rule 10.9800 Series regarding temporary cease and desist proceedings brought against Participants, Participant Firms and covered persons. Under current Article 12, Rule 4(a), the CEO appoints a hearing officer to hear the matter. Although Article 12, Rule 4(e) describes the vetting process for Hearing Officers under the current rules, they are appointed by the CEO that includes an assessment of professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, and the absence of bias and any actual or perceived conflict of interest, among other things, there is no requirement that the Hearing Officer be an attorney. The Exchange's current process also does not provide for the appointment of panelists to adjudicate a disciplinary matter. The Exchange believes that the participation of professional Hearing Officers, which is a long-standing practice of other SROs, would add legal and administrative expertise to the disciplinary process, and would enhance the dispassionate application of the rules, promote fairness in the disciplinary process, and help ensure that complex or contentious cases are managed effectively.[26] The use of Panelists would help to ensure that market expertise and judgment would continue to be brought to bear on the disciplinary process.[27]

Proposed Rule 10.9214 (Consolidation or Severance of Disciplinary Proceedings) would permit the Chief Hearing Officer to sever or consolidate two or more disciplinary proceedings under certain circumstances and permit a Party to move for such action under certain circumstances. The Exchange currently does not have a comparable rule.

Proposed Rule 10.9215 (Answer to Complaint) would set forth requirements for answering a complaint, including form, service, notice, content, affirmative defenses, motions for a more definite statement, amendments and extensions of time to answer amended complaints, default, and timing. A written answer to charges under current Article 12, Rule 4(b) is due 30 days after service of the Compliant, while under the proposed rule it would be due 25 days after service. The proposed rule also allows for an extension of time for good cause shown, while the current rule provides that the time to answer can be extended by such further time as the Hearing Officer may grant. Both the current and proposed rules treat charges as admitted if no answer is filed, but the proposed rule would require that the Respondent receive a second notice concerning the consequences of failing to answer.

Minor Rule Fines and Process

As noted above, the Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217.[28] The rules relating to minor rule violations described herein would not be operative until approval of the Exchange's companion rule filing.

Proposed Rule 10.9216(a)

Subsection (a) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would establish the acceptance, waiver, and consent (''AWC'') procedures by which a Respondent, prior to the issuance of a complaint, could execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Respondent's right to a hearing, appeal, and certain other procedures.[29]

The CRO would be authorized to accept or reject an AWC. If the AWC were accepted by the CRO, it would be deemed final and constitute the complaint, answer and decision in the matter 10 days after the AWC is sent to each Exchange Director and each member of the CFR, unless review by the Board is requested pursuant to proposed Rule 10.9310(a)(1)(B)(i).[30] If the AWC were rejected by the CRO, the Exchange would be permitted to take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter were rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the AWC and such document could not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding. Under proposed Rule 10.9310(a)(1)(B)(ii) discussed below, any Party may require a review by the Exchange Board of any rejection by the CRO of an AWC letter under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notification pursuant to Rule 10.9216(a)(3) or Rule 10.9270(h).

The Exchange notes that the AWC process is substantially similar to the Exchange's current process for settlements prior to a hearing on the merits under Article 12, Rule 1(d). The Exchange believes that the proposed process provides appropriate controls to assure consistency and protect against aberrant settlements. Specifically, the CRO would be reviewing all proposed

[26] *See* Securities Exchange Act Release No. 38545 (April 24, 1997), 62 FR 25226, 25249–50 (May 8, 1997) (SR–NASD–97–28).

[27] *See id.* & discussion of proposed Rule 10.9232, *infra*.

[28] *See* SR–NYSECHX–2022–08.

[29] Proposed Rule 10.9270 would address settlement procedures after the issuance of a complaint.

[30] In 2020, NYSE Arca shortened the time period before an AWC under NYSE Arca Rule 10.9216 and an uncontested offer of settlement under NYSE Arca Rule 10.9270(f) become final as well as the corresponding time period to request review of these settlements under NYSE Arca Rule 10.9310 from 25 days to 10 days. *See* Securities Exchange Act Release No. 90678 (December 15, 2020), 85 FR 83136 (December 21, 2020) (SR–SR–NYSEARCA–2020–111) (Notice). The Exchange's proposes to omit certain transition language added to the NYSE Arca Rules 10.9216(a)(4), 10.9270(f)(3), and 10.9310(a)(1)(B)(i) relating to the applicability of the legacy 25 day time period in its proposed version of these rules.

AWCs. The Exchange believes that when both Parties to a proceeding agree to a settlement, a review by the CRO would be sufficient and it is not necessary to bring such matters to an Adjudicator. The Exchange believes that the CRO can provide objectivity and an appropriate check and balance to the settlement process, particularly in light of the call for review process set forth in proposed Rule 10.9310.

Proposed Rule 10.9216(b)

As set forth in the companion notice and comment filing to adopt proposed Rules 9216(b) and 9217,[31] subsection (b) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would set forth the procedure for the imposition of fine for minor rule violations under the Exchange's new disciplinary rules based on NYSE Arca Rule 10.9216(b).

Proposed Rule 10.9216(b)(1) would provide that, notwithstanding proposed Rule 10.9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4), impose a fine in accordance with the fine amounts and fine levels set forth in proposed Rule 10.9217 and/or a censure on any Participant, Participant Firm or covered person with respect to any rule listed in Rule 10.9217. If Enforcement has reason to believe a violation has occurred and if the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a minor rule violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's, Participant Firm's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of review by the Exchange Board of Directors (''Board''), the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter would describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed would be a date to be determined by Regulatory Staff.

Proposed Rule 10.9216(b)(2)(A)(i) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, the submission of such a letter by the Participant, Participant Firm or covered person also waives any right to claim bias or prejudgment of the CRO, the Board, Counsel to the Board, or any Director, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

Proposed Rule 10.9216(b)(2)(A)(ii) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, by the submission such Participant, Participant Firm or covered person also waives any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.[32]

Proposed Rule 10.9216(b)(2)(B) would provide that if a minor rule violation letter is rejected, the Participant, Participant Firm or covered person would be bound by the waivers made under proposed paragraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation letter was executed and submitted and ending upon the rejection of the minor rule violation letter.

Proposed Rule 10.9216(b)(3) would provide that if the Participant, Participant Firm or covered person executes the minor rule violation letter, it would be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

Proposed Rule 10.9216(b)(4) would provide that if the letter is accepted by the CRO, it would be deemed final and that any fine imposed pursuant to the proposed Rule and not contested would not be publicly reported, except as may be required by Rule 19d–1 under the Act, and as may be required by any other regulatory authority.

Proposed Rule 10.9216(b)(4) would further provide that if the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. Subsection (b)(4) would also provide that if the letter is rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the minor rule violation letter under proposed paragraph (b)(1) and that the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

As noted above, proposed Rule 10.9216(b) is substantially the same as NYSE Arca Rule 10.9216(b).

Proposed Rule 10.9217

As set forth in the companion notice and comment filing to adopt proposed Rules 9216(b) and 9217,[33] the Exchange also proposes to adopt Rule 10.9217 based on NYSE Arca Rule 10.9217, which would be titled ''Violations Appropriate for Disposition Under Rule 10.9216(b)''.

Proposed Rule 10.9217(a) would provide that any Participant, Participant Firm or covered person may be subject to a fine, not to exceed $5,000,[34] under Rule 10.9216(b) with respect to any rules listed below and that the fine amounts and fine levels set forth below would apply to the fines imposed.

Proposed Rule 10.9217(b) would provide that Regulatory Staff designated by the Exchange would have the authority to impose a fine pursuant to the proposed Rule.

Proposed Rule 10.9217(c) would provide that any person or organization found in violation of a minor rule would not be required to report such violation on SEC Form BD or Form U–4 if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Subsection (c) would further provide that any fine imposed in excess of $2,500 would be subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d–1 under the Act.

Proposed Rule 10.9217(d) would provide that nothing in the proposed Rule would require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the proposed Rule 10.9000 Series

[31] *See* SR–NYSECHX–2022–08.

[32] Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte communications. Proposed 10.9144 (Separation of Functions) would establish separation of functions and provide for waivers.

[33] *See* SR–NYSECHX–2022–08.

[34] *See* note 10, *supra.*

rather than under proposed Rule 10.9217.

The next section would be titled ''List of Rule Violations and Fines Applicable Thereto'' and would provide that any Participant, Participant Firm or covered person may be subject to a fine under proposed Rule 10.9216(b) with respect to any rules listed below.

Proposed Rule 10.9217(e) would be titled ''Exchange Rules and Policies subject to a Minor Rule Violation'' and would set forth the list of rules under which a Participant, Participant Firm or covered person may be subject to a fine under a minor rule violation letter as described in proposed Rule 10.9216(b). The Exchange would retain the list of rules currently set forth in Article 12, Rule 8(h) under the existing headings for ''Reporting and Record Retention Violations'' and ''Minor Trading Rule Violations'' with the following additions and changes.

First, the Exchange would add subsection (b) of Article 6, Rule 2 (Registration and Approval of Participant Personnel) to proposed Rule 10.9217(e)(13).

Article 6, Rule 2 currently sets forth certain employee registration, approval and other exchange requirements. Specifically, Article 6, Rule 2(a) governs registration of representatives, as defined in Article 6, Rule 14(b)(1), with the Exchange and is currently eligible for a minor rule fine under Article 12, Rule 8(h). Article 6, Rule 2(b) provides for the registration of principals, as defined in Article 6, Rule 14(a)(1). The Exchange proposes that the registration requirements of principals set forth in Article 6, Rule 2(b) be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange's affiliates whose comparable rule requiring the registration of principals is eligible for a minor rule fine.[35]

Second, the Exchange would add subsections (a) and (b) of Article 6, Rule 5 (Supervision of Representatives and Branch and Resident Offices) to proposed Rule 10.9217(e)(14). As discussed below, the Exchange's current minor rule incorrectly references Article 6, Rule 5(b) for violations relating to written supervisory procedures. The correct reference should be to Article 6, Rule 5(c), which the Exchange proposes to retain as proposed Rule 10.9217(e)(15).

Article 6, Rule 5(a) (Adherence to Law) provides that no Participant shall engage in conduct in violation of the Act, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange, or any written interpretation thereof and that every Participant is responsible for reasonably supervising its associated persons to prevent such violations. The requirement to reasonably supervise individuals to ensure compliance with applicable laws, rules and regulations, is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.[36]

Article 6, Rule 5(b) (Designation of persons with supervisory authority) provides that each Participant Firm must designate a principal executive officer, general partner or managing partner to hold overall authority and responsibility for the firm's internal supervision and compliance with securities laws and regulations. This designated supervisor may formally delegate his or her supervisory duties and authority to other persons within the firm. The Rule further provides that Participants must maintain, for a period of not less than six years (the first two years in an easily accessible place), records of the names of all persons who are designated as supervisory personnel and the dates for which those designations are effective. In the absence of such designation by a Participant Firm, the Firm's General Partner(s), President, Chief Executive Officer or other principal executive officer shall be deemed to be responsible for a Firm's internal supervision and compliance function. In addition, each Participant Firm shall designate and specifically identify to the Exchange on Schedule A of Form BD one or more principals to serve as a Chief Compliance Officer. The requirement in Article 6, Rule 5(b) to designate and specifically identify persons with supervisory responsibility is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.[37] The Exchange accordingly proposes to permit minor rule fines for violations of Article 6, Rule 5(b).

As noted, Article 12, Rule 8(h)(1)(N) of the Exchange's current minor rule plan makes failure to establish, maintain and enforce written supervisory procedures under Article 6, Rule 5(b) eligible for a minor rule fine. However, as described above Article 6, Rule 5(b) relates to the designation of persons with supervisory authority and not written supervisory procedures, which is governed by Article 6, Rule 5(c). In 2011, Article 12, Rule 8 was amended to include, among other things, new reporting and recordkeeping provisions, which included ''written supervisory procedures (Article 6, Rule 5(b)).'' [38] At the time, Article 6, Rule 5(b) was titled ''Written supervisory procedures'' and contained the text of current subsection (c). In 2013, the Exchange filed to amend Article 6, Rule 5. As part of that filing, subsection (a), which was titled ''Designation of persons with supervisory authority,'' became new subsection (b), and old subsection (b), which was titled ''Written supervisory procedures,'' became current subsection (c).[39] The Exchange did not, however, update Article 12, Rule 8 to reflect that Article 6, Rule 5(b) had become Article 6, Rule 5(c). The Exchange proposes to make that correction in the text of proposed Rule 10.9217(e)(15). The Exchange notes that the requirement to establish, maintain and enforce written procedures is also currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.[40]

Finally, the Exchange proposes a new subsection (f) titled ''Recommended Fine Schedule'' that would reproduce the current Recommended Fine Schedule from the Fee Schedule with the following changes and corrections. The Recommended Fine Schedule in the Fee Schedule would be deleted:

- The Exchange would add a new sub-heading titled ''Reporting and Record Retention Violations'' [41] that would set forth the corresponding fines for first, second and third and subsequent violations for the rules set forth under the heading ''Reporting and Record Retention Violations'' in proposed Rule 10.9217(e).
- The first 12 entries as well as entries 16 through 23 would be reproduced without change from the current Recommended Fine Schedule in the Fee Schedule.

[35] *See, e.g.,* NYSE National Rules 2.2(c) (Obligations of ETP Holders and the Exchange) and 10.9217(f). The entirety of NYSE National Rule 2.2 is eligible for minor rule treatment; registration of principals under NYSE Nationals' rules is governed by subsection (c).

[36] *See* NYSE Arca Rule 11.18(a) (Supervision) and 10.9217(g)(8).

[37] *See* NYSE Arca Rule 11.18(b)(2) & (4) (Supervision) and 10.9217(g)(8).

[38] *See* Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR–CHX–2011–07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR–CHX–2011–07) (Order). *See generally* note 10, *supra.*

[39] *See* Securities Exchange Act Release No. 70597 (October 2, 2013), 78 FR 62728, 62732 (October 22, 2013) (SR–CHX–2013–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

[40] *See* NYSE Arca Rule 11.18(c) (Supervision) and 10.9217(g)(8).

[41] Immediately before the new sub-heading, the Exchange would include the following text based on NYSE Arca Rule 10.9217: ''These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.''

• Item 13 would be ''Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b)''. The proposed first, second and third level fines for violations of Article 6, Rule 2(b) of $250 for the first violation, $750 for the second violation and $1,500 for the third and subsequent violations would be the same as those in the Exchange's current Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 2(a).

• Items 14 and 15—''Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))'' and ''Written Supervisory Procedures (Article 6, Rule 5(c)),'' respectively—would be added to proposed Rule 10.9271(f) consistent with the changes to proposed Rule 10.9217(e)(14) and (15) described above. The proposed first, second and third level fines for violations of Article 6, Rule 5(a) and (b) in proposed Rule 10.9217(e)(14) and Article 6, Rule 5(c) in proposed Rule 10.9217(e)(15) would be $500 for the first violation, $1,000 for the second violation and $2,500 for the third and subsequent violations. These fine levels would be the same as the current fines in the Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 5(b).

• Finally, item 24 would be ''Consolidated Audit Compliance Rule (Rule 6.6800 Series).'' The corresponding fine ''Up to $2,500.00'' would be transposed from current Article 12, Rule 8 to new footnote ** following ''Rule 6.6800 Series.'' [42] The Exchange would also add the current text from Article 12, Rule 8(a) providing that ''For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought'' to new footnote **.

• The Exchange would add a new second sub-heading titled ''Minor Trading Rule Violations'' that would set forth the corresponding fines for first, second and third and subsequent violations for the 11 rules set forth under the heading ''Minor Trading Rule Violations'' in proposed Rule 10.9217(e), with the following changes and corrections:

○ The entry for ''Failure to clear the Matching System (Article 20, Rule 7)'' and corresponding fines would not be included. This rule was deleted from Article 12, Rule 8 8(h)(2)(F) in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.[43]

○ The Exchange would include ''Short Sales (Rule 7.16)'' as item 10. Rule 7.16 was added to Article 12, Rule 8 in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.[44] The proposed first, second and third level fines for violations of Rule 7.16 of $500 for the first violation, $1,000 for the second violation and $2,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16–E.[45]

○ Finally, the Exchange would include ''Failure to comply with Authorized Trader requirements (Rule 7.30)'' as item 11. Rule 7.30 was also added to Article 12, Rule 8 as part of the transition to Pillar in 2019 but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.[46] The proposed first, second and third level fines for violations of Rule 7.30 of $1,000 for the first violation, $2,500 for the second violation and $3,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30–E.[47]

As noted, proposed subsection (a) of proposed Rule 10.9217 is substantially the same as NYSE Arca Rule 10.9217(a) except for changes reflecting the Exchange's membership. The Exchange proposes that a fine thereunder would not exceed $5,000 (the amount reflected in current Article 12, Rule 8).[48]

Proposed subsections (b), (c) and (d) are also substantially the same as NYSE Arca Rule 10.9217(b), (c) and (d) with the only changes reflecting the Exchange's membership.

Unlike current Article 12, Rule 8(e) described above, proposed Rule 10.9216(b) and Rule 10.9217 would not permit a Respondent to contest a minor rule violation letter. Rather, as proposed, if the Respondent rejects the minor rule violation letter, then a complaint must be filed under proposed Rule 10.9211, and the minor rule violation letter may not be introduced into evidence.[49] The Exchange believes the proposed rule is appropriate because it will harmonize the Exchange's minor rule violation process with its affiliates' rules.

Proposed Rule 10.9220 (Request for Hearing; Extensions of Time, Postponements, Adjournments)

Proposed Rule 10.9220 would set forth the following rules.

Proposed Rules 10.9221 (Request for Hearing) and 10.9222 (Extensions of Time, Postponements, and Adjournments) would describe the process for a Respondent to request a hearing; the notice of a hearing; timing considerations; and the authority of a Hearing Officer, Hearing Panel or Extended Hearing Panel to order a hearing. Proposed Rule 10.9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing. Current Article 12, Rule 4 governing hearing procedures does not provide for a respondent to request a hearing. Rather, Article 12, Rule 4(d) provides that within 30 days of the filing of a respondent's answer, the Hearing Officer will schedule the time and place at which the Hearing shall be held. Similarly, current Article 12, Rule 4 also does not provide for extensions of time, postponements, and adjournments like proposed Rule 10.9222.

Proposed Rules 10.9230 Through 10.9235

Proposed Rule 10.9231 (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer) would govern appointment of a Hearing Panel or Extended Hearing Panel, and would also govern appointment of a replacement Hearing Officer and the designation of an observer to a Hearing Panel or an Extended Hearing Panel. As proposed, under proposed Rule 10.9231(a) the Exchange would rely on FINRA's Chief Hearing Officer to appoint a Hearing Panel or an Extended Hearing Panel to conduct disciplinary proceedings and issue a decision. The Chief Hearing Officer and the Hearing Officers would all be FINRA employees. Under proposed Rule 10.9231(b), a Hearing Panel would be composed of a

[42] In 2020, the Exchange added the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in Article 12, Rule 8 and the corresponding fine up to $2,500. At the time, the Exchange inadvertently did not amend the Recommended Fine Schedule in the Fee Schedule. *See* Securities Exchange Act Release No. 89410 (July 28, 2020), 85 FR 46741 (August 3, 2020) (SR–CHX–2020–21).

[43] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR–CHX–2019–08).

[44] *See id.*

[45] *See* NYSE Arca Rule 7.16–E (Short Sales) & 10.9217(i)(1)1.

[46] *See* Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR–CHX–2019–08).

[47] *See* NYSE Arca Rule 7.30–E (Authorized Traders) & 10.9217(i)(1)5.

[48] *See* note 10, *supra.*

[49] *See* proposed Rule 10.9216(b)(4).

Hearing Officer and two Panelists, except as provided in paragraph (e) and in proposed Rule 10.9234(a), (c), (d), or (e). The Hearing Officer would serve as the chair of the Hearing Panel. The Chief Hearing Officer would appoint Panelists pursuant to the criteria in proposed Rule 10.9232.[50] The proposed procedure would differ from the current procedure under Article 12, Rule 4(e) where the Exchange CEO appoints a Hearing Officer to conduct a hearing but the rule does not provide for the appointment of panelist.

Proposed Rule 10.9231(c) describes Extended Hearing Panels. As proposed, upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in proposed Rule 10.9234(a), (c), (d), or (e). The Hearing Officer would serve as the chair of the Extended Hearing Panel. The Chief Hearing Officer would have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for FINRA arbitrators. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in Rule 10.9232.

Proposed Rule 10.9231(d) provides for the appointment of an observer. As proposed, a person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer would obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

[50] NYSE Arca Rule 10.9231(b)(1) incorrectly states that the Hearing Officer would appoint the Panelists pursuant to the criteria of Rule 10.9232. The rules adopted by the Exchange's other affiliates contain the same error. *See* NYSE Rule 9231(b)(1); NYSE American Rule 9231(b)(1); NYSE National Rule 10.9231(b)(1). The Exchange understands that its affiliates will submit separate rule filing to conform their version of proposed Rule 10.9231(b)(1).

Proposed Rule 10.9231(e) provides for the appointment of a replacement Hearing Officer. As proposed, in the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the proposed Rule provides that a replacement Hearing Officer would have the discretion to (1) allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 10.9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 10.9268; or (2) certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

Proposed Rule 10.9231(c)–(e) would be substantially the same as NYSE Arca Rule 10.9231 except that the proposed rule would not provide for the selection of a Floor-Based Panelist because the Exchange does not have a trading floor.

Proposed Rule 10.9232 (Criteria for Selection of Panelists and Replacement Panelists) would set forth the criteria for the selection of Panelists and Replacement Panelists. Proposed Rule 10.9232 would be substantially the same as NYSE Arca Rule 10.9232. As is the case under the NYSE Arca Rule, Panelists would be required to be persons of integrity and judgment and, other than the Hearing Officer, would be a member of the Exchange hearing board. Moreover, at least one Panelist would be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement. Proposed Rule 10.9232 would also provide that the Exchange Board would from time to time appoint a hearing board to be composed of such number of permit holders of the Exchange that are not members of the Exchange Board and registered employees and nonregistered employees of Participants and Participant Firms. In order to have the largest number of potential Panelists available, the proposed Rule would further provide that former Participants and registered and non-registered employees of Participants and Participant Firms who have retired from the securities industry may be appointed to the hearing board. The Exchange believes that there are well-qualified persons, in particular retirees, who would be valuable members of the hearing board. The members of the hearing board would also be appointed annually and would serve at the pleasure of the Exchange Board. As reflected in Article 12, Rule 4, Exchange hearings are currently conducted by a Hearing Officer appointed by the CEO acting alone.

Finally, proposed Rule 10.9232 would include Panelist selection criteria, which would be expertise, absence of any conflict of interest or bias or any appearance thereof, availability, and the frequency with which a person has served as a Panelist in the last two years, favoring the selection of a person as a Panelist who has never served or who has served infrequently as a Panelist during the period. Article 12, Rule 4 contains similar provisions with respect to Hearing Officers appointed by the CEO.

Proposed Rules 10.9233 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers) and 10.9234 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists) would establish the processes for recusal and disqualification of Hearing Officers or Panelists.

Under proposed Rule 10.9233(a), if at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer would notify the Chief Hearing Officer and the Chief Hearing Officer would issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer would appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer would proceed according to proposed Rule 10.9231(e).

Proposed Rule 10.9233(b) governs motions for disqualification. Under the proposed Rule, a Party may move for the disqualification of a Hearing Officer. Such a motion must be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and must be accompanied by an affidavit setting forth in detail the facts alleged to

constitute grounds for disqualification, and the dates on which the Party learned of those facts. Under the proposed Rule, such motions shall be filed not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the assignment of the Hearing Officer.

Finally, proposed Rule 10.9233(c) describes the disposition of a disqualification motion. Under the proposed Rule, a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

Proposed Rule 10.9234 sets forth similar procedures for the recusal of panelists on a Hearing Panel and Extended Hearing Panel. Under proposed Rule 10.9234(a), if at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist must notify the Hearing Officer and the Hearing Officer would issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the proposed Rule permits the Chief Hearing Officer to appoint two replacement Panelists.

Proposed Rule 10.9234(b) provides that a Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. Such a motion must be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. As proposed, such motions shall be filed not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the appointment of the Panelist. As proposed, the Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

Under proposed Rule 10.9234(c), if a Party files a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist.

Under subsection (d) of proposed Rule 10.9234, if a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and issue a written ruling on the motion. I n the event one Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer will promptly appoint two persons as replacement Panelists.

Under proposed Rule 10.9234(e), if a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel and the Hearing Officer, the Chief Hearing Officer shall promptly investigate whether disqualification is required and issue a written ruling on the motion. Under the proposed Rule, in the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists. In the event a Hearing Officer and a Panelist are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer. In the event both Panelists and the Hearing Officer are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer and two persons as replacement Panelists.

Finally, proposed subsection (f) would provide that if a Chief Hearing Officer appoints a replacement Panelist by operation of the proposed Rule, the Chief Hearing Officer would do so using the criteria set forth in Rule 10.9232.

Current Article 12, Rule 4(h) does not address recusal of a Hearing Officer but does permit a party to move for disqualification of the Hearing Officer within 15 days of the appointment of the Hearing Officer based upon bias or conflict of interest. The proposed Rule is broader and permits recusal as well as motions for disqualification. Moreover, the proposed Rule permits motions for disqualification not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification, or (2) when the Party was notified of the assignment of the Hearing Officer or the appointment of the Panelist, respectively. The Exchange's current rule permits motions to disqualify based upon bias or conflict of interest within 15 days of the appointment of the Hearing Officer.

Proposed Rule 10.9235 (Hearing Officer Authority) would set forth the Hearing Officer's duties and authority in detail. The Exchange does not have a comparable rule.

Proposed Rules 10.9240 Through 10.9242

Proposed Rule 10.9240 would set forth the following rules.

Proposed Rules 10.9241 (Pre-hearing Conference) and 10.9242 (Pre-hearing Submission) would govern the substantive and procedural requirements for pre-hearing conferences and pre-hearing submissions. Proposed Rule 10.9242 would also prohibit former Regulatory Staff, within a period of one year immediately following termination of employment with the Exchange or FINRA, from providing expert testimony on behalf of any other person in any proceeding under the Rule 10.9000 Series. Nothing in the proposed Rule would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. As noted above, current Article 12, Rule 4 gives the Hearing Officer general authority in procedural matters, but there are no specific provisions in the current Rules relating to pre-hearing conferences and submissions.

Proposed Rules 10.9250 Through 10.9253

Proposed Rule 10.9250 (Discovery) through 10.9253 would address discovery, including the requirements and limitations relating to the inspection and copying of documents in the possession of Exchange staff, requests for information and limitations on such requests, and the production of witness statements and any harmless

error relating to the production of such witness statements.

Proposed Rule 10.9251 (Inspection and Copying of Documents in Possession of Staff) would require Enforcement to make available to a Respondent any documents prepared or obtained in connection with the investigation that led to the proceedings, except that certain privileged or other internal documents, such as examination or inspection reports or documents that would reveal an examination, investigation, or enforcement technique or confidential source, or documents that are prohibited from disclosure under federal law, are not required to be made available. A Hearing Officer may require that a withheld document list be prepared. Proposed Rule 10.9251 also sets forth procedures for inspection and copying of produced documents. In addition, if a Document required to be made available to a Respondent pursuant to the proposed Rule was not made available by Enforcement, no rehearing or amended decision of a proceeding already heard or decided would be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon review under proposed Rule 10.9310, the Exchange Board, would determine whether the failure to make the document available was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent. The proposed Rule would not establish any preference for Exchange versus other precedent in this respect; rather the Adjudicators could determine in their discretion what precedent to apply. The Exchange's current rules do not include a comparable provision.

Under proposed Rule 10.9252 (Requests for Information), a Respondent could request that the Exchange invoke proposed Rule 10.8210 to compel the production of Documents or testimony at the hearing if the Respondent can show that certain standards are met, *e.g.,* that the information sought is relevant, material, and non-cumulative. Under proposed Rule 10.9253 (Production of Witness Statements), a Respondent could file a motion to obtain certain witness statements. Current Article 12, Rule 4(c)(2) permits any party to request production of all or some of the documents that its adversary intends to introduce as evidence either in support of or to counter the charges but does not specify that such production can be compelled. Rather, under Article 12, Rule 4(c)(2), a party responding to a request to produce all or some of the documents that are intended to be introduced as evidence at the hearing will be precluded from introducing at the hearing any documents that were not produced in response to the request, unless there is good cause shown for failing to produce the document(s) 30 days prior to the hearing and the failure to permit the introduction of such evidence would result in undue hardship to the party requesting to introduce such document.

Proposed Rules 10.9260 Through 10.9269

Proposed Rules 10.9260 (Hearing and Decision) through 10.9269 would govern hearings and decisions.

Proposed Rule 10.9261 (Evidence and Procedure in Hearing) would generally require the Parties to submit copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing no later than 10 days before the hearing. Current Article 12, Rule 4(c) (1) requires the parties to exchange a list of witnesses that they each plan to call to testify at the hearing no less than 30 days prior to the hearing. The proposed Rule would also provide that if a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. The Exchange's current rule does not include such an explicit provision. Finally, under the proposed rule, a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record. The Exchange's current rules do not contain a comparable provision. Under Article 12, Rule 4(d), the Market Regulation Department and the Respondent can introduce additional witnesses and evidence solely in rebuttal to the respondent's evidence.[51]

Proposed Rule 10.9262 (Testimony) would require persons subject to the Exchange's jurisdiction to testify under oath or affirmation at a hearing. The Exchange's current rules do not contain comparable provisions.

Proposed Rule 10.9263 (Evidence: Admissibility) would authorize the Hearing Officer to exclude irrelevant, immaterial, or unduly repetitious or prejudicial evidence and permit a Party to object to the admission of evidence. Under the proposed Rule, objections to the admission or exclusion of evidence would be made on the record and would succinctly state the grounds relied upon; excluded material would be deemed a supplemental document and would be attached to the record and retained under proposed Rule 10.9267. The Exchange's current rules do not contain a comparable provision.

Proposed Rule 10.9264 (Motion for Summary Disposition) would allow Parties to file a motion for summary disposition under certain circumstances and would describe the procedures for filing and ruling on such motion. Under current Article 12, Rule 4, the Hearing Officer regulates the hearing, but the Rule does not specifically provide for motions for summary disposition.

Proposed Rule 10.9265 (Record of Hearing) would require that the hearing be recorded by a court reporter, that a transcript be prepared and made available for purchase, and that a Party or a witness be permitted to seek a correction of the transcript from the Hearing Officer. Current Article 12, Rule 4(d) provides generally that the Exchange must make a transcript of the hearing.

Proposed Rule 10.9266 (Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs) would authorize the Hearing Officer to require a post-hearing brief or proposed findings of fact and conclusions of law and would outline the form and timing for such submissions. There is no comparable current rule, although the Hearing Officer generally regulates the conduct of a hearing under Article 12, Rule 4.

Proposed Rule 10.9267 (Record; Supplemental Documents Attached to Record; Retention) would detail the required contents of the hearing record and the treatment of any supplemental documents attached to the record. The Exchange's current rules do not contain a similar provision.

Proposed Rule 10.9268 (Decision of Hearing Panel or Extended Hearing Panel) would set forth the timing and

[51] In 2020, NYSE Arca filed to harmonize Rules 10.9261 and 10.9830 with certain changes by FINRA that temporarily granted the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. *See* Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR–NYSEArca–2020–85). The expiration of the temporary amendments to NYSE Arca Rules 10.9261 and 10.9830 have been extended to July 31, 2022. *See* Securities Exchange Act Release No. 94663 (April 11, 2022), 87 FR 22587 (April 15, 2022) (SR–NYSEArca–2022–18). NYSE, NYSE American and NYSE National made similar filings. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof. *See* 87 FR at 22588, n.5 The Exchange does not propose to incorporate these temporary amendments to NYSE Arca Rule 10.9261 and 10.9830 into the proposed rule text and will evaluate the need for such temporary relief once the current rule filing is operative.

the contents of a decision of the Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and any requests for review. Under proposed Rule 10.9268, the decision would be issued within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer. Under current Article 12, Rule 4(f), a decision must be issued within 90 days after the conclusion of the hearing. The Exchange believes that the shorter period of time is appropriate to allow the Hearing Panel or Extended Hearing Panel adequate time to reach its decision and agree on the text of the decision and would not prejudice any Party.[52]

The Exchange proposes to include text providing that a disciplinary decision concerning an affiliate of the Exchange as such term is defined in Rule 12b–2 under the Act would not be subject to review under proposed Rule 10.9310 but instead would be treated as a final disciplinary action subject to SEC review. The Exchange does not believe that an appeal by an affiliate to the Exchange Board is appropriate, but rather such affiliate should be permitted to appeal directly to the SEC. The proposed text is identical to NYSE Arca Rule 10.9268(e)(2).

The proposed Rule would further provide that, unless otherwise provided in the majority decision issued under proposed Rule 10.9268(a), a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Exchange for purposes of Act Rule 19d–1(c)(1) would become effective on a date to be determined by the Exchange, and a bar or an expulsion specified in a decision would become effective immediately upon the decision becoming the final disciplinary action of the Exchange for purposes of Act Rule 19d–1(c)(1).

Finally, proposed Rule 10.9269 (Default Decisions) would establish the process for the issuance and review of default decisions by a Hearing Officer when a Respondent fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. A Party may, for good cause shown, file a motion to set aside a default decision. Under Article 12, Rule 4(b), if a Respondent fails to file an answer within the required timeframe, the allegations of the charging document are deemed admitted and the Hearing Officer will hold a hearing to determine the appropriate sanctions. Under Article 12, Rule 5(a), a party can request review by the Judiciary Committee of such default decision. Proposed Rule 10.9269 would provide a robust process for the issuance and content of default decisions.

Proposed Rule 10.9270 (Settlement Procedure)

Proposed Rule 10.9270 would provide for a settlement procedure for a Respondent who has been notified that a proceeding has been instituted against him or her. The proposed settlement procedure is similar to the settlement procedures in current Article 12, Rule 1(d), except that the Exchange's rule does not distinguish between contested and uncontested settlements.

Under proposed Rule 10.9270(a), a Respondent notified of the institution of a disciplinary proceeding could make a written offer of settlement at any time, but the proposal would not stay the proceeding unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel. Current Article 12, Rule 1(d) does not explicitly provide that a proceeding is not stayed.

Under proposed Rule 10.9270(b), a Respondent making an offer of settlement would also be required to do so in conformity with the provisions of the proposed Rule and would be prohibited from making a frivolous settlement offer or one that was inconsistent with the seriousness of the violations. Current Article 12, Rule 1(d) does not contain a similar prohibition.

Proposed Rule 10.9270(c) would provide that an offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. Under the proposed Rule, the offer of settlement should contain in reasonable detail the required content of the proposal, which would include, among other things, a statement consenting to findings of fact and violations, a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Regulatory Staff. Current Article 12, Rule 1(d) is not as detailed but specifies that the settlement agreement must admit jurisdiction and contain a proposed penalty that must be reasonable and consistent with the seriousness of the alleged violations.

Proposed Rule 10.9270(d) would provide that submission of a settlement offer waives a Respondent's right to a hearing, to claim bias or ex parte communication violations, any right to claim that a person or body violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, and the right to review by the Board, the Commission, or the courts. Under current Article 12, Rule 1(d), settlement agreements must include a waiver by the respondent of all rights of appeal to the Executive Committee, Board, the Commission and United States Court of Appeals or to otherwise challenge or contest the validity of the decision if the offer of settlement is accepted.

Proposed Rule 10.9270(e) would address contested settlement offers. Under the proposed rule, if a Respondent made an offer of settlement and Enforcement opposed it, the offer of settlement would be contested and thereby deemed rejected, and thus the proceeding would continue to completion under the proposed Rule 10.9200 Series. The contested offer of settlement would not be transmitted to the Office of Hearing Officers, CRO, or Hearing Panel or Extended Hearing Panel, and would not constitute a part of the record in any proceeding against the Respondent making the offer. Current Article 12, Rule 1(d) does not contain a comparable provision. The Exchange believes that its proposed rule would encourage Respondents to make reasonable offers of settlement that would be acceptable to Enforcement.

Proposed Rule 10.9270(f) and (h) would address uncontested settlement offers. Under the proposed rule, if a hearing on the merits had not begun, the CRO could accept the settlement offer; if a hearing on the merits had begun, the Hearing Panel or Extended Hearing Panel could accept the settlement offer.[53] If they did not, the offer would be deemed withdrawn and the matter would proceed under the proposed Rule 10.9200 Series and the settlement offer would not be part of the record. Under current Article 12, Rule 1(d), where an offer of settlement is rejected by the CRO, the offer of settlement shall be deemed withdrawn and it will not be given consideration in the

[52] Under the proposed rule, a dissenting opinion must be served within 65 days after such final date. The Exchange does not have a comparable current rule.

[53] The CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether to accept the settlement offer.

determination of the issues involved in the disciplinary proceeding.

As described below, if the offer of settlement were accepted by the CRO, Hearing Panel or Extended Hearing Panel, it would become final 10 days after being sent, together with an order of acceptance, to each Director and each member of the CFR, unless review by the Exchange Board is required pursuant to proposed Rule 10.9310(a)(1)(A) or (B). The Exchange anticipates that the required acceptance by the CRO, Hearing Panel, or Extended Hearing Panel would help ensure objectivity and consistency among offers of settlement that are issued. The proposed rule change would also allow an offer of settlement to be called for review by the Exchange Board. The Exchange believes that this review mechanism provides an additional, appropriate check and balance to the proposed settlement process.

Proposed Rule 10.9270(g) would provide that the proceeding under the proposed rule would conclude as of the date the order of acceptance is final, and the order of acceptance would constitute final disciplinary action of the Exchange. The sanction would take effect as set forth in the order.

Proposed Rule 10.9270(i) would address disciplinary proceedings with multiple Respondents and permit settlement offers to be accepted or rejected as to any one or all of such Respondents. Current Article 12, Rule 1(d) does not contain similar authorizations.

Proposed Rule 10.9270(j) would provide that a Respondent may not be prejudiced by a rejected offer of settlement nor may it be introduced into evidence. Current Article 12, Rule 1(d) contains a substantially similar provision.

Proposed Rule 10.9280 (Contemptuous Conduct)

Proposed Rule 10.9280 would set forth sanctions for contemptuous conduct by a Party or attorney or other representative, which may include exclusion from a hearing or conference, and would set forth a process for reviewing such exclusions. The proposed Rule would also provide for adjournments in the event an exclusion is upheld to allow for the retention of new counsel or selection of a new representative, and would set forth the criteria for determining whether to grant an adjournment and the length of an adjournment.

The Chief Hearing Officer would review exclusions. The Exchange believes that Respondents and their attorneys and representatives would have adequate procedural protections with a review by the Chief Hearing Officer. The Exchange's current rules do not have similar procedures addressing contemptuous conduct.

Proposed Rule 10.9290 (Expedited Disciplinary Proceedings)

Under proposed Rule 10.9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to proposed Rule 10.9810 or a temporary cease and desist order, hearings would be required to be held and decisions rendered at the earliest possible time. The proposed Rule is identical to NYSE Arca Rule 10.9290. The Exchange does not currently have a similar rule.

Proposed Rule 10.9291 (Permanent Cease and Desist Orders) would govern the content, scope, form and delivery requirements of permanent cease and desist orders. Under proposed Rule 10.9291(a), when a decision issued under proposed Rule 10.9268 or proposed Rule 10.9269 or an order of acceptance issued under proposed Rule 10.9270 imposes a permanent cease and desist order, the decision shall: Order a Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) to cease and desist permanently from violating a specific rule or statutory provision; set forth the violation; and describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) shall take or refrain from taking. The proposed Rule would also require Respondents that are a Participant or Participant Firm to deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its covered persons. With the exception of conforming changes reflecting the Exchange's membership, the text of the proposed Rule is substantially same as NYSE Arca Rule 10.9291. The Exchange currently does not have a similar rule.

Proposed Rules 10.9300 Through 10.9310

The Exchange's appellate and call for review processes would be set forth in the Rule 10.9300 Series (Review of Disciplinary Proceeding by Exchange Board) and would be substantially the same as the current NYSE Arca process.

Proposed Rule 10.9310 (Review by Exchange Board of Directors) would provide for one review at the Board of Directors level, and discontinue the current practice under Article 12, Rule 5 whereby a decision by the Judiciary Committee is the final decision of the Exchange under subsection (a) except where the Board in its discretion determines to review a Judiciary Committee decision, as provided for in subsection (b). Under proposed Rule 10.9310(b), upon review, and with the advice of the CFR, the Board may, by the affirmative vote of a majority of the Board then in office, sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, modify or reverse any such determination, and increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board otherwise specifically directs, the determination and penalty, if any, of the Board after review shall be final and conclusive subject to the provisions for review of the Act. The Exchange believes that the proposed appellate review process would be fair and efficient and harmonize the Exchange's appellate process with the process of the Exchange's affiliates who have adopted similar disciplinary rules.

Under proposed Rule 10.9310(a)(1)(A), any Party, any Director, and any member of the CFR could require a review by the Exchange Board of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the proposed Rule 10.9200 Series, except that none of the aforementioned persons could request a review by the Exchange Board of a decision concerning an affiliate of the Exchange as that term is defined in Rule 12b–2 under the Act. Under current Article 12, Rule 5, there is no similar call for review process; only a Respondent or the Exchange may request review and that review is conducted by the Judiciary Committee, subject to the exceptions in Article 12, Rule 5(b).

Moreover, under proposed Rule 10.9310(a)(1)(A), a request for review would be made by filing with the Secretary a written request stating the basis and reasons for such review, within 25 days after notice of the determination and/or penalty was served upon the Respondent. However, any request for review of an offer of settlement determined to be uncontested after a hearing on the merits has begun under proposed Rule 10.9270(f) that has been accepted by a Hearing Panel or Extended Hearing Panel would be governed by Rule 10.9310(a)(1)(B)(i). The Secretary of the Exchange would give notice of any such request for review to the Parties.

Under proposed Rule 10.9310(a)(1)(B)(i), any Director and any

member of the CFR could require a review by the Board of any determination or penalty, or both, imposed in connection with an AWC under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except for a determination or penalty concerning an Exchange affiliate as defined in Rule 12b–2 under the Act. Under the proposed rule, a request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 10 days after a letter of acceptance, waiver, and consent or an offer of settlement has been sent to each Director and each member of the CFR pursuant to proposed Rule 0.9216(a)(4) or Rule 10.9270(f)(3). The Secretary would give notice of any such request for review to the Parties.

Under proposed Rule 10.9310(a)(1)(B)(ii), any Party could require a review by the Exchange Board of any rejection by the CRO of a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that no Party may request Board review of a rejection of an AWC or an offer of settlement concerning an Exchange affiliate as defined in Rule 12b–2 under the Act. As proposed, a request for review shall be made by filing with the Secretary a written request stating the basis and reasons for such review within 25 days after notification pursuant to proposed Rule 10.9216(a)(3) or Rule 10.9270(h) that a letter of acceptance, waiver, and consent, or an uncontested offer of settlement or an order of acceptance is not accepted by the CRO. The Secretary would provide notice of any such request for review to the Parties.

Under current Article 12, Rule 5(a), the parties have 15 days from the date of service of notice of a decision, while under Article 12, Rule 5(b) the Board has no time period in which to request discretionary review of a Judiciary Committee decision. The proposed rule would apply a longer period to requests to review of contested determinations.

Under proposed Rule 10.9310(a)(2), the Secretary would direct the Office of Hearing Officers to complete and transmit a record of the disciplinary proceeding in accordance with Rule 10.9267. Within 21 days after the Secretary gives notice of a request for review to the Parties, or at such later time as the Secretary could designate, the Office of Hearing Officers would assemble and prepare an index to the record, transmit the record and the index to the Secretary, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, would certify that the record transmitted to the Secretary was complete. Under Article 12, Rule 5(a), unless the Judiciary Committee decides to open the record for the introduction of evidence to hear argument, its review must be based on the factual record as certified to the Judiciary Committee by the Secretary and Board review of matters as provided in Article 12, Rule 5(b) must be upon the record as certified to the Board by the Secretary.

Under proposed Rule 10.9310(b), review by the Exchange Board would be based on oral arguments and written briefs and limited to consideration of the record before the Hearing Panel or Extended Hearing Panel. Under current Article 12, Rule 5, the Judiciary Committee has the discretion but is not required to hear oral argument. Moreover, the Judiciary Committee is not bound by the factual record as certified by the Secretary but can open the record for the introduction of evidence to hear argument.

Proposed Rule 10.9310(b) further provides that, upon review, and with the advice of the CFR, the Board, by the affirmative vote of a majority of the Exchange Board then in office, could sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, could modify or reverse any such determination, and could increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board otherwise specifically directs, its determination and penalty, if any, after review shall be final and conclusive subject to the provisions for review of the Act.

As noted above, the Exchange would discontinue the current practice under Article 12, Rule 5 whereby a decision by the Judiciary Committee is a final decision of the Exchange except where the Board determines to review the Judiciary Committee's decision on a discretionary basis. As proposed, under Rule 10.9310(b), the Board's determination, with the advice of the CFR, if any, would be final and conclusive subject to the provisions for review of the Act unless the Board specifically directs otherwise. In addition, NYSE Arca Rule 10.9310(b) permits the CFR to appoint an Appeals Panel to conduct a review and make a recommendation to the CFR. NYSE Arca retained appeals panels from its legacy disciplinary rules. The Exchange does not currently have a similar process and does not propose to follow NYSE Arca on this point. Proposed Rule 10.9310(b) accordingly omits a comparable provision.

Under proposed Rule 10.9310(c), notwithstanding the foregoing, if either Party upon review applied to the Exchange Board for leave to adduce additional evidence, and showed to the satisfaction of the Exchange Board that the additional evidence was material and that there were reasonable grounds for failure to adduce it before the Hearing Panel or Extended Hearing Panel, the Exchange Board could remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board considered appropriate. Article 12, Rule 5 does not contain a remand provision.

Under proposed Rule 10.9310(d), notwithstanding any other provisions of the proposed Rule 10.9000 Series, the CEO could not require a review by the Exchange Board under this rule and would be recused from deliberations and actions of the Exchange Board with respect to such matters. Current Article 12, Rule 5 does not have a comparable provision.

Proposed Rules 10.9500 Through 10.9527

The proposed Rule 10.9500 Series (Other Proceedings) would relate to other proceedings under the Exchange Rules.

The proposed Rule 10.9520 Series would set forth procedures for a covered person to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a Participant, Participant Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the proposed rule refers to as ''eligibility proceedings.'' The proposed rules are substantially similar to the NYSE Arca Rule 10.9520 Series.

Proposed Rule 10.9521 (Purpose and Definitions) would add certain definitions relating to eligibility proceedings that are not currently part of the Exchange's definitions, including ''Application,'' ''disqualified Participant,'' ''disqualified Participant Firm,'' ''disqualified person,'' ''sponsoring Participant,'' and ''sponsoring Participant Firm.''

Proposed Rule 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) would govern the initiation of an eligibility proceeding by the Exchange and the obligation for

a Participant or Participant Firm to file an application or, for matters set forth in proposed Rule 10.9522(e)(1), a written request for relief if the Participant or Participant Firm determines prior to receiving a notice under Rule 10.9522(a) that (1) it has become a disqualified Participant or Participant Firm; (2) a person associated with such Participant or Participant Firm or whose association is proposed by an applicant for membership under Exchange rules has become a disqualified person; or (3) the Participant or Participant Firm or applicant for membership under Exchange rules wishes to sponsor the association of a covered person who is a disqualified person. The proposed rule also contains provisions governing withdrawal of an application or written request for relief as well as the application of the prohibitions against ex parte communications set forth in Rule 10.9143 to the Rule 10.9520 Series.

Finally, the proposed rule describes the matters that may be approved by the Department of Member Regulation (''Member Regulation'') without the filing of an application and after filing an application, and the rights of a disqualified Participant or Participant Firm, Sponsoring Participant or Participant Firm, Disqualified Person, and Member Regulation where Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to proposed Rule 10.9522(e)(1) or an application pursuant to proposed Rule 10.9522(e)(2).

Proposed Rule 10.9523 (Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to Exchange Act Rule 19h–1) would generally allow Member Regulation to recommend a supervisory plan to which a disqualified Participant or Participant Firm, or sponsoring Participant or Participant Firm and/or disqualified person, as the case may be, could consent and by doing so, waive the right to hearing or appeal if the plan is accepted and the right to claim bias or prejudgment, prohibited ex parte communications or the separation of functions prohibitions.

Specifically, under subsection (a), which would apply to all disqualifications except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, a disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person (the ''Disqualified Person''), would execute a letter consenting to the imposition of the supervisory plan. By submitting such a letter, the Disqualified Person waive the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Board, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted; any right to claim bias or prejudgment by Member Regulation, the CRO, the Board, or any member of the Board, in connection with such person's or body's participation in discussions regarding the terms and conditions of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

If a recommendation or supervisory plan is rejected, the Disqualified Person would be bound by the waivers made under proposed paragraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under the proposed rule and proposed Rule 10.9524, as applicable. Under subsection (a), if a Disqualified Person executes a letter consenting to the supervisory plan, such letter would be submitted to the CRO by Member Regulation with a proposed Notice under Act Rule 19h–1, where required. The CRO may accept or reject Member Regulation's recommendation and the supervisory plan. If accepted, the recommendation and supervisory plan would be deemed final and, where required, the proposed Notice under Rule 19h–1 of the Act would be filed by the Exchange. If rejected by the CRO, the Exchange would be able to take any other appropriate action with respect to the Disqualified Person. The Disqualified Person would not be prejudiced by the execution of the letter consenting to the supervisory plan, and the letter could not be introduced into evidence in any proceeding.

Under subsection (b), which would apply to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, in approving an application under proposed Rule 10.9522(e)(2)(F), Member Regulation would be authorized to accept the membership or continued membership of a Disqualified Person or the association or continuing association of a Disqualified Person pursuant to a supervisory plan where the Disqualified Person would consent to the imposition of the supervisory plan. The Disqualified Person would execute a letter consenting to the imposition of the supervisory plan and Member Regulation would prepare a proposed Notice under Rule 19h–1 of the Act where required to be filed by the Exchange.

By submitting an executed letter consenting to a supervisory plan, a Disqualified Person would waive the right of appeal to the Board, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted; any right to claim bias or prejudgment by Member Regulation or the CRO in connection with such person's or body's participation in discussions regarding the terms and conditions of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan. If the supervisory plan is rejected, the Disqualified Person would be bound by the waivers made under proposed paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under proposed Rule 10.9524 (Exchange Board Consideration), which would allow a request for review by the applicant to the Exchange Board. Proposed Rule 10.9527 would provide that a filing of an application for review would not stay the effectiveness of final action by the Exchange unless the Commission otherwise ordered. To maintain consistency with NYSE Arca's rule numbering, proposed Rules 10.9525 and 10.9526 would be designated ''Reserved.''

Proposed Rules 10.9550 Through 10.9559

Proposed Rules 10.9550 through 10.9559 would govern expedited proceedings.

Under proposed Rule 10.9551 (Failure to Comply with Public Communication Standards Pursuant to FINRA Rule 2210 as Incorporated by Reference in Rule 11.2210), Regulatory Staff could issue a written notice requiring a Participant or Participant Firm to file communications with FINRA's Advertising Regulation Department at least 10 days prior to use if the staff determined that the Participant or Participant Firm had departed from the standards of proposed Rule 11.2210 (Communications with the Public).[54] The notice would state the specific grounds and include the factual basis for the action as well as the effective date. The Participant or Participant Firm could file a written request for a hearing with the Office of Hearing Officers pursuant to proposed Rule 10.9559. A Participant or Participant Firm would be required to set forth with specificity any and all defenses to the action in its request for a hearing. Pursuant to proposed Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, could approve, modify or withdraw any and all sanctions or limitations imposed by the staff's notice, and impose any other fitting sanction. A Participant or Participant Firm subject to a pre-use filing requirement also could file a written request for modification or termination of the requirement. FINRA Rule 2210 proposed to be incorporated by reference in proposed Rule 11.2210 references the procedures in FINRA Rules 9551 and 9559, which are substantially the same as proposed Rules 10.9551 and 10.9559.

Under proposed Rule 10.9552 (Failure to Provide Information or Keep Information Current) would establish procedures in the event that a Participant, Participant Firm or covered person failed to provide any information, report, material, data, or testimony requested or required to be filed under the Exchange's rules, or failed to keep its membership application or supporting documents current. In the event of the foregoing, under proposed Rule 10.9552, the Participant, Participant Firm or covered person could be suspended if corrective action were not taken within 21 days after service of notice. A Participant, Participant Firm or covered person served with a notice could request a hearing within the 21-day period. A Participant, Participant Firm or covered person subject to a suspension could file a written request for termination of the suspension on the ground of full compliance. A Participant, Participant Firm or covered person suspended under the proposed rule that failed to request termination of the suspension within three months of issuance of the original notice of suspension would automatically be expelled or barred.[55] Proposed Rule 10.9552 is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership. Under the Exchange's current rules, there is no procedure that relates to failure to keep a membership application or supporting documents current. Under current Article 6, Rule 9(a), a Participant or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange that fails to submit requested documents or information to the Exchange is subject to formal disciplinary action. The Exchange's current rules do not authorize an expedited proceeding against persons who fail to submit documents or information.

Proposed Rule 10.9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution) [56] would contain similar procedures and consequences as proposed Rule 10.9552 relating to a failure to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution. Under proposed Rule 10.9554, if a Participant, Participant Firm or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange's rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, Regulatory Staff could provide written notice to such Participant, Participant Firm or covered person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any Participant or Participant Firm. Proposed Rule 10.9554 is substantially the same as NYSE Arca Rule 10.9554 except for references reflecting the Exchange's membership. The Exchange lacks a comparable rule setting forth a uniform notice period and specific procedures to be followed in the event of suspension or cancellation.

Current Article 14, Rule 1(e) simply provides that any Participant, or covered person who fails to honor an arbitration award can be subject to disciplinary proceedings in accordance with Article 12. To add clarity to the Exchange's rules, the Exchange would delete the phrase ''in accordance with Article 12'' following ''disciplinary proceedings'' in Article 14, Rule 1(e).

Proposed Rule 10.9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services) would govern the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange. Under proposed Rule 10.9555, if a Participant, Participant Firm or covered person did not meet the eligibility or qualification standards set forth in the Exchange's rules, Exchange staff could provide written notice to such Participant, Participant Firm or covered person that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any Participant or Participant Firm. Similarly, if a Participant, Participant Firm or covered person did not meet the prerequisites for access to services offered by the Exchange or a Participant or Participant Firm thereof or could not be permitted to continue to have access to services offered by the Exchange or a Participant or Participant Firm thereof with safety to investors, creditors, Participant, Participant Firms or the Exchange, Exchange staff could provide written notice to such Participant, Participant Firm or covered person limiting or prohibiting access to services offered by the Exchange or a Participant or Participant Firm thereof. The limitation, prohibition, suspension, cancellation, or bar referenced in the notice would become effective 14 days after service of the notice except that the

[54] The Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. *See* note 17 [sic], *supra.* Accordingly, proposed Rule 10.9551 would not be operative until approval of the Exchange's companion rule filing.

[55] The Exchange believes that the provision for automatic expulsion or bar after three months is consistent with Section 6 of the Act because the Respondent would have ample notice and opportunity to be heard under proposed Rule 10.9552, the proposed rule is substantially the same as NYSE Arca's and FINRA's counterpart rules, and the Commission has upheld at least one bar under a prior version of FINRA's rule. *See, e.g.,* Dennis A. Pearson, Jr., Securities Exchange Act Rel. Nos. 54913 (December 11, 2006) (dismissing application for review by associated person barred under NASD Rule 9552(h)) and 55597A (April 6, 2007) (denying motion for reconsideration).

[56] Proposed Rule 10.9553 would be designated ''Reserved'' to maintain consistency with NYSE Arca's rule numbering.

effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant, or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access would be upon service of the notice.

Proposed Rule 10.9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders) would provide procedures and set forth consequences for a failure to comply with temporary and permanent cease and desist orders issued under the Rule 10.9200, 10.9300 or 10.9800 Series. The Exchange does not currently have rules governing cease and desist orders or that sets forth procedures and consequences for a failure to comply with a cease and desist order. The proposed rule is the substantially the same as NYSE Arca Rule 10.9556 except for references reflecting the Exchange's membership.

Proposed Rule 10.9557 (Procedures for Regulating Activities Under Article 7, Rules 3 or 8 Regarding a Participant or Participant Firm Experiencing Financial or Operational Difficulties) would allow the Exchange to issue a notice directing a Participant or Participant Firm comply with the provisions of Article 7, Rule 3 (Net Capital and Aggregate Indebtedness) or Article 7, Rule 8 (Operational Capability) or otherwise directing it to restrict its business activities. Article 7, Rule 3 establishes minimum net capital requirements and Article 7, Rule 8 governs the operational capability of Participants and Participant Firms. Article 7, Rule 3 and Rule 8 provide that the Exchange can take certain actions when it appears that a Participant Firm is unable or unwilling to comply with the requirements set forth in those rules. Proposed Rule 10.9557 would govern the process to be followed when the Exchange determines to take the prescribed actions under Article 7, Rules 3 and 8. Except for these rule references and references to reflect the Exchange's membership, the proposed rule is otherwise substantially the same as NYSE Arca Rule 10.9557.

The requirements and/or restrictions imposed by a notice issued and served under the proposed Rule would be immediately effective, except that a timely request for a hearing would stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under proposed Rule 10.9559(o)(4)(A) (whichever period is less), unless the Exchange's CRO (or such other senior officer as the CRO may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other Participants or Participant Firms. Such a determination by the Exchange's CRO (or such other senior officer as the CRO may designate) would not be appealable and an extension of the stay period would not be permitted. Under the proposed Rule, where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less), the notice would not be deemed to have taken effect during that entire period. Any requirements and/or restrictions imposed by an effective notice would remain in effect unless Exchange staff removes or reduces the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in proposed Rule 10.9557(g)(2).

Proposed Rule 10.9558 (Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Exchange Act) would allow the Exchange's CRO to provide written authorization to Exchange staff to issue a written notice for a summary proceeding for an action authorized by Section 6(d)(3) of the Act. The list of proceedings in the proposed Rule would track the types of proceedings currently provided for in Article 13, Rule 2(a), which governs summary proceedings in accordance with Section 6(d)(3) of the Act. The Exchange does not have a rule comparable to NYSE Arca Rule 11.2(a)–(f), hence the Exchange will not include a subsection (4) to proposed Rule 10.9558(a).

The notice issued under the proposed Rule would be immediately effective; a Participant, Participant Firm or covered person would have seven days to request a hearing. As noted, emergency proceedings are currently authorized under Article 13, Rule 2(a)(1), under which the Exchange has authority to, in part, (i) suspend a Participant or Participant Firm or Associated Person that is expelled or suspended by another SRO or an Associated Person that is barred or suspended from being associated with a member of an SRO; (ii) suspend a Participant, Participant Firm, or any other covered person who is in financial or operating difficulty; or (iii) limit or prohibit any person with respect to access to Exchange services in certain circumstances. Article 13, Rule 2(b) provides that any person subject to an action under Article 13, Rule 2(a) has five days after notification of the action to file a written notice of appeal with the secretary of the Exchange. The Exchange would retain the seven day period in NYSE Arca Rule 10.9558 in order to harmonize with its affiliates. The Exchange believes that the seven day period to request a hearing is not unreasonable given the summary nature of the action. The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership and the reference to NYSE Arca Rule 11.2(a)–(f), which has no counterpart on the Exchange.

Proposed Rule 10.9559 (Hearing Procedures for Expedited Proceedings Under the Rule 10.9550 Series) would set forth uniform hearing procedures for all expedited proceedings under the proposed Rule 10.9550 Series. Currently, emergency suspensions under Article 13, Rule 2 utilize the Article 15 rules, which are used for hearings and appeals from certain decisions made by the Exchange pursuant to the Rules. The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership.

Proposed Rule 10.9560 (Expedited Suspension Proceeding) would set forth procedures for issuing suspension orders, immediately prohibiting a Participant, Participant Firm or covered person from conducting continued disruptive quoting and trading activity on the Exchange and would also provide the Exchange the authority to order a Participant, Participant Firm or covered person to cease and desist from providing access to the Exchange to a client that is conducting disruptive quoting and trading activity. The proposed Rule is substantially the same as NYSE Arca Rule 10.9560 except for changes reflecting the Exchange's membership.

Proposed Rule 10.9560(a)(1) provides that, with the prior written authorization of the CRO or such other senior officers as the CRO may designate, Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited).[57] Proposed Rule 10.9560(a) would also set forth the requirements for notice and service ((a)(2)), and the content of such notice ((a)(3)) pursuant to the Rule.

Proposed Rule 10.9560(b) would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers or Panelists. The proposed provision is consistent with proposed Rule 10.9231(b) and (c), which govern

[57] As discussed below, the Exchange proposes to adopt a new Rule 11.21 prohibiting disruptive quoting and trading activity.

the appointment of a Hearing Panel or Extended Hearing Panel to conduct disciplinary proceedings, and proposed Rules 10.9233 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers) and 10.9234 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists), which would establish the processes for recusal and disqualification of Hearing Officers or Panelists. Proposed Rule 10.9233 provides for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned. In addition to recusal initiated by such a Hearing Officer, a party to the proceeding would be permitted to file a motion to disqualify a Hearing Officer. This is similar to the requirements under proposed Rule 10.9234 for Panelists. However, due to the compressed schedule pursuant to which the process would operate under Rule 10.9560, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof.

Under proposed Rule 10.9560(c)(1), the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Hearing Officer with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer or Panelist, the hearing shall be held not later than five days after a replacement Hearing Officer or Panelist is appointed. Under proposed Rule 10.9560(c)(2), a notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Under the proposed Rule, service shall be made by personal service or overnight commercial courier and the notice shall be effective upon service.

Proposed Rule 10.9560(c) would also govern how the hearing is conducted, including the authority of Hearing Officers ((c)(3)), witnesses ((c)(4)), additional information that may be required by the Hearing Panel ((c)(5)), the requirement that a transcript of the proceeding be created and details related to such transcript ((c)(6)), and details regarding the creation and maintenance of the record of the proceeding ((c)(7)). Proposed Rule 10.9560(c)(8) would also provide that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings.

Finally, as proposed, if Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under proposed Rule 10.9560(d)(1), the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Hearing Officer with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed Rule 10.9560(d)(2) would also describe the content, scope and form of a suspension order. As proposed, under proposed Rule 10.9560(d)(2)(A), a suspension order shall be limited to ordering a Respondent to cease and desist from violating Rule 11.21, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 11.21. Under proposed Rule 10.9560(d)(2)(B), a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from ((d)(2)(C)). Finally, the order shall include the date and hour of its issuance ((d)(2)(D)). As proposed, under proposed paragraph (d)(3), a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d)(4) would require service of the Hearing Panel's decision and any suspension order by personal service or overnight commercial courier.

Proposed Rule 10.9560(e) would provide that at any time after the Respondent is served with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The filing of an application to have a suspension order modified, set aside, limited, or revoked under the proposed Rule would not stay the effectiveness of the suspension order.

For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel can modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions of the modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Proposed Rule 10.9560(f) would describe the call for review process by the Exchange Board. Specifically, the proposed Rule would provide that if there is no pending application to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked, the Board, in accordance with proposed Rule 10.9310 (Review by Exchange Board), may call for review the Hearing Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board shall not stay the effectiveness of a suspension order.

Finally, proposed Rule 10.9560(g) would generally provide that sanctions issued under proposed Rule 10.9560 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Proposed Rule 10.9600 Series (Procedures for Exemptions)

The Exchange proposes to adopt a new Rule 10.9600 Series, which would provide procedures for exemptions.

Under proposed Rule 10.9610 (Application), a Participant or Participant Firm could seek exemptive relief as permitted under proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) or proposed Rule 11.2210 (Communications with the Public) [58] by filing a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO.[59]

Under proposed Rule 10.9620 (Decision), after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant [60] pursuant to proposed Rules 10.9132 and 10.9134. After the decision is served on the Applicant, the application and decision may be publicly available. Under proposed Rule 10.9630 (Appeal), an Applicant that wished to appeal the decision would be required to file a written notice of appeal with the Exchange's CRO within 15 days after service of the decision.

Under proposed Rule 10.9630(e), the CRO would affirm, modify, or reverse the decision issued under proposed Rule 10.9620 and issue a written decision setting forth his or her findings and conclusions and serve the decision on the Applicant. The decision would be served pursuant to proposed Rules 10.9132 and 10.9134, would be effective upon service, and would constitute final action of the Exchange. The Exchange does not have a comparable rule.

Proposed Rule 10.9700 Series

To maintain consistency with NYSE Arca's rule numbering conventions, the Rule 10.9700 Series would be marked ''Reserved.''

Proposed Rule 10.9800 Series (Temporary Cease and Desist Orders)

The Exchange proposes a new Rule 10.9800 Series to set forth procedures for issuing temporary cease and desist orders. The Exchange does not currently have a comparable rule. Except for cross-references to Exchange rules and references reflecting the Exchange's membership, the proposed Rule 10.9800 Series is substantially the same as the NYSE Arca Rule 10.9800 Series.

Under proposed Rule 10.9810 (Initiation of Proceeding), with the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act and Rule 10b–5 thereunder; Exchange Act Rules 15g–1 through 15g–9; Article 9, Rule 2 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); and Article 9, Rules 9, 10 11 and 12, which prohibit a variety of manipulative activity, by serving a notice (as described in proposed Rule 10.9810(b)) on a Participant, Participant Firm or covered person or upon counsel or other person authorized to represent others under Rule 10.9141, and filing a copy thereof with the Office of Hearing Officers. The notice issued under the proposed Rule would be effective when service is complete. Proposed Rule 10.9810(c) would provide that if the parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order. Finally, proposed Rule 10.9810(d) would provide that if Enforcement has not issued a complaint under Rule 10.9211 relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in proposed paragraph (b), Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in proposed Rule 10.9810(a). The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership and the underlying rule references.[61] The Exchange does not have a comparable rule.

Proposed Rule 10.9820 (Appointment of Hearing Officer and Hearing Panel) would govern the appointment of a Hearing Officer and Panelists.

Under proposed Rule 10.9830 (Hearing), the hearing would be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. Proposed Rule 10.9830 would govern how the hearing was conducted.

Under proposed Rule 10.9840 (Issuance of Temporary Cease and Desist Order by Hearing Panel), the Hearing Panel would be authorized to issue a written decision stating whether a temporary cease and desist order would be imposed. The Hearing Panel would be required to issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

Under proposed Rule 10.9850 (Review by Hearing Panel), at any time after the Office of Hearing Officers served the Respondent with a temporary cease and desist order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The Hearing Panel generally would be required to respond to the request in writing within ten days after receipt of the request unless extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. Proposed Rule 10.9860 (Violation of Temporary Cease and Desist Orders) would authorize the initiation of a suspension or cancellation of a Respondent's association or membership or any fitting sanction under proposed Rule 10.9556 if the Respondent violated a temporary cease and desist order.

Finally, proposed Rule 10.9870 (Application to SEC for Review) would provide that temporary cease and desist orders issued under the proposed Rule 10.9800 Series would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under this rule series reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay

[58] As previously noted, the Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. *See* note 17, *supra*. Accordingly, proposed Rule 10.9610 would not be operative with respect to proposed Rule 11.2210 until approval of the Exchange's companion rule filing.

[59] Exchange rules providing for exemptive relief would be the two proposed rules governing communications with the public and the submission of automated trading data. The Exchange does not have a rule analogous to NYSE Arca Rule 2.5. Except for references to Exchange rules specifying exemptions and references to reflect the Exchange's membership, the proposed rule is otherwise substantially the same as NYSE Arca Rule 10.9610.

[60] Under proposed Rule 10.9610(c), a Participant or Participant Firm that files an application under Rule 10.9610 would be referred to as an ''Applicant'' thereafter in the proposed Rule 10.9600 Series.

[61] NYSE Arca Rule 10.9810 references Section 10(b) of the Act and Rule 10b–5 thereunder and Exchange Act Rules 15g–1 through 15g–9. Article 9, Rule 2 is the Exchange's equivalent to NYSE Arca Rules 9.2010–E and 9.2020–E.

the effectiveness of the temporary cease and desist order, unless the Commission otherwise ordered.

Proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited)

The Exchange proposes new Rule 11.21 based on NYSE Arca Rule 11.21, NYSE American Rule 5220—Equities, and NYSE Rule 5220, which in turn are modeled on Commentary .03 to FINRA Rule 5210, that defines and prohibits two types of disruptive quoting and trading activity on the Exchange. The Exchange proposes to include this rule under Rule 11 because it is a business conduct trading practices rule.

Proposed Rule 11.21(a) would prohibit Participant, Participant Firms and covered persons from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 11.21(b)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange also believes that, with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

Proposed Rule 11.21(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. For instance, with respect to the pattern defined in proposed Rule 11.21(b)(1)(A)–(D), it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders.

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described in the NYSE American notice and with the rules of other SROs.[62]

Proposed Article 2, Rule 4 (CFR)

The Exchange proposes to create a CFR as a sub-committee of the ROC.[63] As proposed, the CFR would replace the Judiciary Committee as the Exchange's appellate body reviewing disciplinary decisions on behalf of the Board. The Judiciary Committee would retain the responsibility for reviewing disciplinary decisions under the legacy disciplinary rules. To effectuate this change, ''initiated pursuant to Article 12, Rule 1'' would be added to the first sentence of Article 2, Rule 3 governing the Judiciary Committee.

As proposed, upon the effective date of the proposed disciplinary rules, the CFR would be responsible for reviewing disciplinary decisions and acting in an advisory capacity to the Board with respect to disciplinary matters. The current Judiciary Committee is limited to reviewing disciplinary decisions and does not act in an advisory capacity to the Board. The Exchange proposes that the CFR, like the current NYSE Arca CFR, would also advise the Board with respect to disciplinary matters. Unlike the NYSE Arca CFR, the Exchange does not propose that the CFR would review determinations to limit or prohibit the continued listing of an issuer's securities on the Exchange or act in an advisory capacity to the Board with respect to the listing and delisting of securities because the Exchange is not a listing market.[64] Further, the Exchange does not propose to permit the CFR to appoint a CFR Appeals Panel as on NYSE Arca.[65] As noted above, NYSE Arca retained appeals panels from its legacy disciplinary rules and the Exchange does not a similar current process.

Similar to NYSE Arca, the Exchange's proposed CFR would be composed of Non-Affiliated Director(s) and the Public Directors of the Exchange. As per the Exchange Bylaws, ''Non-Affiliated Directors'' are individuals nominated by the trading permit holders who are permitted to trade on the Exchange's facilities for the trading of equities that are securities as covered by the Act.[66] ''Public Directors'' are persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.[67] The Exchange believes that member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including the disciplinary process, consistent with Section 6(b)(3) of the Act.[68]

By establishing the CFR, the Exchange would make its appellate process consistent with that of NYSE Arca and its other affiliates, all of which have established a CFR as a subcommittee of the respective affiliate's ROC.[69] Like its affiliates, proposed Article 2, Rule 4 would provide that, subject to the proposed Rule 10.9000 Series, decisions of the proposed CFR would be subject to Board review. As proposed, the decision of the Board would constitute the final action of the Exchange, unless such Board remands the proceedings.

Current Article 2, Rule 4 (Committee Quorum) would become new Article 2, Rule 5.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[70] in general, and furthers the objectives of Section 6(b)(5) of the Act,[71] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule furthers the objectives of Section 6(b)(7) of the Act,[72] in particular, in that it provides fair procedures for the disciplining of members [73] and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and

[62] *See, e.g.,* BZX Rule 12.15; NASDAQ General 9, Section 53. *See also* Securities Exchange Release No. 80804 (May 30, 2017), 82 FR 25887, 25888–25890 (June 5, 2017) (SR–NYSEMKT–2017–25) (Notice of filing discussing matters involving Biremis Corp. and Hold Brothers On-Line Investment Services, Inc.).

[63] The composition and responsibilities of the ROC are described in the Second Amended and Restated CHX Bylaws (''Exchange Bylaws''), available here *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_Chicago_Second_Amended_and_Restated_Bylaws.pdf.* The ROC consists of at least three members, each of whom shall be a Public Director of the Exchange.

[64] *See* NYSE Arca Rule 3.3(a)(2)(A).

[65] *See, e.g.,* NYSE Arca Rule 3.3(a)(2)(B).

[66] *See* Exchange Bylaws, Art. II, Sec. 2(a).

[67] *See id.*

[68] 15 U.S.C. 78f(b)(3).

[69] *See, e.g.,* NYSE Arca Rule 3.3(a)(2)(A). *See generally* Thirteenth Amended and Restated Operating Agreement of the NYSE, Section 2.03(h)(iii); Twelfth Amended and Restated Operating Agreement of NYSE American, Section 2.03(h)(iii); and Sixth Amended and Re-Stated Bylaws of NYSE National, Section 5.8.

[70] 15 U.S.C. 78f(b).

[71] 15 U.S.C. 78f(b)(5).

[72] 15 U.S.C. 78f(b)(7).

[73] The Exchange's equivalent to the term ''member'' in this context is ''Participant'' and ''Participant Firm.''

the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,[74] in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The proposed changes will provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as the NYSE Arca disciplinary rules, which were in turn modeled on the FINRA rules. The proposed rule change will enhance the Exchange's ability to have a direct and meaningful impact on the end-to-end quality of its regulatory program, from detection and investigation of potential violations through the efficient initiation and completion of disciplinary measures where appropriate. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In this regard, the Exchange believes that amending Article 7, Rule 12 so that failure to pay any fine, sanction or cost levied in connection with a disciplinary action would be governed by proposed Rule 10.8320 would further harmonize the Exchange's rules with its affiliates that have adopted the substantially similar version of proposed Rule 10.8320. Similarly, the Exchange believes that adopting a new jurisdiction rule based on the Exchange's current jurisdiction rule Article 12, Rule 7 that incorporates substantially similar provisions based on NYSE Arca's jurisdiction Rule 2.0 would also further harmonize the Exchange's disciplinary rules with its affiliates.

The Exchange believes that the proposed processes for settling disciplinary matters both before and after the issuance of a complaint are fair and reasonable. While such proposed rules differ from certain aspects of the Exchange's current settlement processes, the Exchange believes that the proposed rule change, like the settlement process adopted by NYSE Arca, provides adequate procedural protections to all Parties and promotes efficiency.

[74] 15 U.S.C. 78f(b)(3).

Similarly, the Exchange believes that adopting its affiliates' appellate procedures would be fair and efficient and create consistency with its affiliates' practices. The proposed rule change would provide individual directors with the opportunity to call a case for review. Currently, in addition to the parties, only the Board may order review of a decision. Adopting the appellate rules of the Exchange's affiliates would also apply a uniform period to all requests for review of a disciplinary determination or penalty.

Subject to a separate notice and comment filing, the Exchange would retain its list of minor rule violations with certain technical and conforming amendments, while adopting its affiliates' and FINRA's process for imposing minor rule violation fines.[75] In addition, as set forth in the Exchange's companion filing and herein, the Exchange believes that adding certain rules to its list of eligible minor rule violations based on the rules of its affiliate will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Specifically, the proposed additions are designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing general registration and supervision requirements in situations where a more formal disciplinary action may not be warranted or appropriate. As provided for in proposed Rule 10.9217(d), nothing in proposed Rule 10.9217 would require the Exchange to impose a minor rule fine for a violation of any eligible rule and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed with formal disciplinary action rather than under proposed Rule 10.9217.

The Exchange also believes that adding rules based on the rules of its affiliate to its list of eligible minor rule violations would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Article 6, Rule 2(b), 5(a) and 5(b) are substantially similar to NYSE National and NYSE Arca rules of similar purpose, which are each separately eligible for a minor rule fine under the respective market's version of proposed Rule 10.9217.[76]

Further, the Exchange believes that the proposed additions to its list of rules eligible for minor rule fines based on the rules of its affiliate are consistent with Section 6(b)(6) of the Act,[77] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules and would increase the amounts of fines in order for the Exchange to better deter violative activity and to harmonize its rules with that of its affiliates.

The Exchange believes that moving the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and removing it from the Fee Schedule would add clarity and transparency to the Exchange's rules by reflecting the recommended fines for minor rule violations in the same place in the Exchange's rules. Similarly, updating the Recommended Fine Schedule to delete obsolete rules and add recommended fines for rules that were added to the list of minor rules but inadvertently omitted from the Recommended Fine Schedule would also add clarity and transparency to the Exchange's rules. The Exchange believes that adding such clarifying language would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

Further, the Exchange believes that adding recommended fines for Rule 7.16 and Rule 7.30 that were inadvertently omitted from the current Recommended Fine Schedule based on the fines for the same rules set forth in the rules of its affiliate would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are

[75] *See* NYSE Arca Rule 10.9216(b), NYSE Rule 9216(b), & NYSE American Rule 9216(b). *See also generally* FINRA Rule 9216(b). *See generally* SR–NYSECHX–2022–08.

[76] *See* text accompanying notes 35–37, *supra.*

[77] 15 U.S.C. 78f(b)(6).

eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, the proposed first, second and third level fines for violations of Rule 7.16 are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16–E, and the proposed first, second and third level fines for violations of Rule 7.30 are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30–E.[78]

The Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members consistent with Sections 6(b)(7) and 6(d) of the Act.[79] Proposed Rules 10.9216(b) and 10.9217 would not preclude a Participant, Participant Firm or covered person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

In addition, the Exchange believes that its proposed transition plan would allow for a more orderly and less burdensome transition for the Exchange's permit holders. The proposed delayed implementation of the new rule set would provide a clear demarcation between matters that would proceed under the new rules and those that would be completed under the legacy rules.

The Exchange believes adopting a new Article 2, Rule 4 to establish a CFR as a sub-committee of the ROC, complies with Section 6(b)(7) of the Act,[80] which requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members. The members of the Exchange's ROC are all Public Directors of the Exchange Board, thereby ensuring that the ROC is comprised of independent members. In addition, the Exchange believes that participation on the proposed CFR by Non-Affiliated Directors would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.[81] In addition, the Exchange believes that having the CFR serve in the advisory capacity is consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Act.[82]

The Exchange believes that proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited), which is modeled on NYSE American Rule 5220—Equities, NYSE Rule 5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules with those of other SROs, including its affiliated exchanges.

In addition, the Exchange believes that the proposed rule change is 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 by providing the Exchange with authority to prohibit specified disruptive quoting and trading activity on the Exchange. More specifically, the Exchange believes that the proposed rule is consistent with the public interest and the protection of investors and otherwise furthers the purposes of the Act because the proposal strengthens the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed. For the same reasons, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[83] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but is rather designed to (i) provide greater harmonization among Exchange, NYSE Arca, NYSE, NYSE American, and FINRA rules of similar purpose for investigations and disciplinary matters; and (ii) enhance the quality of the Exchange's regulatory program, from detection of violations through disciplinary actions, resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions. In addition, the proposed rule change will provide the Exchange with necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Participants, Participant Firms and covered person with the necessary due process. The Exchange believes that it is important for all exchanges to be able to take similar action to enforce its rules against manipulative conduct thereby leaving no exchange prey to such conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[84] and Rule 19b–4(f)(6) thereunder.[85]

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

[78] *See* text accompanying notes 44–47, *supra.*

[79] 15 U.S.C. 78f(b)(7) & 78f(d).

[80] 15 U.S.C. 78f(b)(7).

[81] 15 U.S.C. 78f(b)(3).

[82] 15 U.S.C. 78f(b)(5).

[83] 15 U.S.C. 78f(b)(1) & (b)(6).

[84] 15 U.S.C. 78s(b)(3)(A).

[85] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–2022–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2022–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2022–10 and should be submitted on or before June 29, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[86]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–12170 Filed 6–7–22; 8:45 am]

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[86] 17 CFR 200.30–3(a)(12).

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