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Presidential Documents

Title 3—

The President

Notice of October 31, 2023

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and took related steps to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Sudan. On April 26, 2006, by Executive Order 13400, the President determined that the conflict in Sudan's Darfur region posed an unusual and extraordinary threat to the national security and foreign policy of the United States, expanded the scope of the national emergency declared in Executive Order 13067, and ordered the blocking of property of certain persons connected to the Darfur region. On October 13, 2006, by Executive Order 13412, the President took additional steps with respect to the national emergency declared in Executive Order 13067 and expanded in Executive Order 13400. In Executive Order 13412, the President also took steps to implement the Darfur Peace and Accountability Act of 2006 (Public Law 109–344).

On January 13, 2017, by Executive Order 13761, the President found that positive efforts by the Government of Sudan between July 2016 and January 2017 improved certain conditions that Executive Orders 13067 and 13412 were intended to address. Given these developments, and in order to encourage the Government of Sudan to sustain and enhance these efforts, section 1 of Executive Order 13761 provided that sections 1 and 2 of Executive Order 13067 and the entirety of Executive Order 13412 would be revoked as of July 12, 2017, provided that the criteria in section 12(b) of Executive Order 13761 had been met.

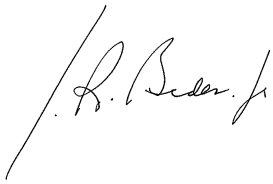
On July 11, 2017, by Executive Order 13804, the President amended Executive Order 13761, extending until October 12, 2017, the effective date in section 1 of Executive Order 13761. On October 12, 2017, pursuant to Executive Order 13761, as amended by Executive Order 13804, sections 1 and 2 of Executive Order 13067 and the entirety of Executive Order 13412 were revoked.

On May 4, 2023, by Executive Order 14098, I further expanded the scope of the national emergency declared in Executive Order 13067, finding that the situation in Sudan, including the military's seizure of power in October 2021 and the outbreak of inter-service fighting in April 2023, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States.

The crisis that led to the declaration of a national emergency in Executive Order 13067 of November 3, 1997; the expansion of the scope of that emergency in Executive Order 13400 of April 26, 2006; the taking of additional steps with respect to that emergency in Executive Order 13412 of October 13, 2006, Executive Order 13761 of January 13, 2017, and Executive Order 13804 of July 11, 2017; and the further expansion of the scope of that emergency in Executive Order 14098 of May 4, 2023, has not been resolved. The policies and actions of the Government of Sudan, and the situation in Sudan and Darfur, continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13067,

as expanded by Executive Orders 13400 and 14098, must continue in effect beyond November 3, 2023.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 31, 2023.

[FR Doc. 2023–24364
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Rules and Regulations

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

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Florida Keys National Marine Sanctuary: Establishment of Temporary Special Use Area for Coral Nursery

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notification of extension of temporary special use area.

SUMMARY: On September 6, 2023, the National Oceanic and Atmospheric Administration (NOAA) issued a final temporary rule establishing a special use area of a 0.07 square mile area approximately five miles southeast of the community of Tavernier, on the island of Key Largo, within Federal waters of the Florida Keys National Marine Sanctuary (FKNMS) from September 6, 2023, through November 6, 2023. This document extends the temporary special use area an additional 60 days. The special use area prohibits all entry except for restoration activities under a valid Office of National Marine Sanctuaries (ONMS) permit, continuous transit without interruption, and for law enforcement purposes from November 6, 2023, to January 5, 2024. This temporary extension is necessary to prevent or minimize destruction of, loss of, or injury to sanctuary resources, specifically to facilitate restoration activities to improve or repair living habitats through protecting coral nursery stock at this site from potential impacts caused by anchor damage and/or fishing gear. This extension is necessary to protect the corals in the temporary special use area until all of the corals are moved back to the original in-shore permitted nursery site. This temporary special use area will expire within 120 days from the date it was established.

DATES: The effective period for the temporary rule published September 6, 2023, at 88 FR 60887, is extended. This extension of the final temporary rule is effective November 6, 2023, through January 5, 2024.

ADDRESSES: Sarah Fangman, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL, 33040, 305–360–2713 phone, or by email at *sarah.fangman@noaa.gov*.

Additional background materials can be found on the FKNMS website at *https://floridakeys.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah Fangman, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL, 33040, 305–360–2713 phone, or by email at *sarah.fangman@noaa.gov*.

SUPPLEMENTARY INFORMATION: On September 6, 2023, NOAA issued a final rule (RIN 0648–BM58) creating a temporary special use area for the purpose of coral restoration located approximately five miles southeast of the community of Tavernier, on the island of Key Largo, within Federal waters of FKNMS, for 60 days, with the possibility of extending an additional 60-days following public notice. *88 FR 60887* Section 15 CFR 922.164(e) of the FKNMS regulations allows the ONMS Director to set aside discrete areas of the Sanctuary as special use areas in order to provide for, among other uses, the restoration of degraded or otherwise injured sanctuary resources (15 CFR 922.164(e)(1)(i)). A special use area shall be no larger than the size the ONMS Director deems reasonably necessary to accomplish the applicable objective. No person may enter a special use area except to conduct restoration activities under a valid ONMS permit, for continuous transit without interruption, or for law enforcement purposes. Activities that are currently allowed in the area, including fishing, are prohibited.

This temporary special use area was established to limit the potential for physical impact to a coral nursery that was temporarily relocated to deeper waters to protect the nursery corals from heat stress caused by the current on-going marine heat wave. Creation of this temporary special use area limits the potential for physical impact to this sensitive coral nursery stock from anchoring, unintentional fouling of fishing gear, and bottom tending fishing gear including traps. The ONMS Director determined that the size of 0.07 square miles is no larger than the size reasonably necessary to protect the coral nursery stock from physical damage. The original rule established this special area for 60 days, until November 6, 2023, with the possibility of one 60-day extension. NOAA has determined a 60-day extension is necessary to protect the corals in the temporary special use area until all of the corals are moved back to the original in-shore permitted nursery site.

NOAA will continue to provide notice of the location of this area through sanctuary radio announcements, press releases, and with assistance from the U.S. Coast Guard and FKNMS staff. NOAA has requested that the U.S. Coast Guard give an additional notification to vessels, via notice to mariners, to remain in continuous transit through this temporary area through January 5, 2024.

Justification for Emergency Action and Extension

The establishment of the temporary special use area was taken in accordance with 15 CFR 922.165 of the FKNMS regulations (62 FR 32154, June 12, 1997). Section 922.165 provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 60 days, with one 60-day extension. This notification is for one 60-day extension to complete the relocation of the corals from this off-shore temporary special use area back to the original in-shore permitted nursery site.

The final temporary rule was necessitated by the current ongoing marine heat wave that was impacting and likely killing coral reefs in the Florida Keys at an unprecedented rate and scale. These conditions became unsustainable for coral reef ecosystems, and the coral nursery stock is most at risk because these are located in shallow, nearshore protected environments that heat up much more than offshore locations. There are

currently 14 active coral nursery sites throughout the Florida Keys. These nursery sites are strategically located in close proximity to the sites where the nursery coral will be outplanted to promote coral restoration. Active coral restoration in the Florida Keys is necessary to facilitate coral restoration, as in the last 40 years, healthy coral cover in the Florida Keys reefs has declined by more than 90 percent.

During the initial 60-day period of this emergency rule, NOAA and restoration partners identified deep water locations to temporarily relocate coral nursery stock. These deep water locations had temperatures below the bleaching threshold, are not exposed to deleterious levels of Ultraviolet (UV) radiation and experience substantial water movement, all conditions more conducive to coral survival. A portion of the most valuable corals, including representative colonies of each species of boulder and branching corals, samples of elkhorn coral, staghorn coral, star corals (*Orbicella spp.*), pillar corals and cactus coral listed under the Endangered Species Act, as well as multiple representative genotypes of these corals to ensure we protect the genetic diversity of these species, were relocated to deeper water sites within FKNMS Federal waters. Temperature meters at these deep sites have consistently shown readings below the bleaching threshold of 30.5 °C.

This extension of NOAA's emergency action maintains the offshore temporary special use area to continue to limit the potential for physical impact to this sensitive coral nursery stock while it is being fully relocated back to the original inshore permitted nursery site. These sensitive corals are being grown to support critical sanctuary restoration efforts and could be impacted from anchoring, unintentional fouling of fishing gear, and bottom tending fishing gear including traps. The protections afforded by maintaining this special use area need to be in place to avoid further damage to these sensitive nursery corals that have already experienced impact from heat stress. As such, a 60-day extension of this special use area is necessary to prevent or minimize the destruction of, loss of, or injury to Sanctuary resources.

Emergency Measures

The 60-day extension of this final temporary rule continues the applicability of one special use area, approximately 0.07 square miles in size, into which all entry will be prohibited except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes. This special use area was created and to be effective for 60 days from September 6, 2023, until November 6, 2023. This action extends the temporary special use area for an additional 60 days, until January 5, 2024.

The coordinates for this temporary special use area are included in appendix VI to subpart P of part 922 and in the September 6, 2023, **Federal Register** rule (88 FR 60887).

Location and Boundary

Effective from September 6, 2023, through January 5, 2024, all entry except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes is prohibited within this temporary special use area which is approximately five miles southeast of the community of Tavernier, on the island of Key Largo. The boundary for the special use area begins at Point 1 in the coordinates in appendix VI to subpart P of part 922 and continues to each subsequent point in numerical order ending at Point 5. (Coordinates are unprojected (Geographic) and based on the North American Datum of 1983).

Penalties

Pursuant to 16 U.S.C. 1437(d)(1) and 15 CFR 922.8(a), any person who violates this rule is subject to a civil penalty. The maximum civil monetary penalty authorized under the National Marine Sanctuaries Act (NMSA) has been adjusted for inflation over time and is currently $210,161 per violation per day. *See* 15 CFR 6.3(f)(13). Furthermore, NMSA also authorizes a proceeding in rem against any vessel used in violation of this regulation. *See* 16 U.S.C. 1437(d)(3).

Classification

A. National Marine Sanctuaries Act

This action is issued pursuant to the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.* and implementing regulations at 15 CFR part 922. This action is being taken pursuant to the emergency provision of the Florida Keys National Marine Sanctuary regulations at 15 CFR 922.164(e) and 922.165.

B. Administrative Procedure Act

In the final temporary rule, 88 FR 60887, the Assistant Administrator of the National Ocean Service, NOAA, found good cause to waive notice and public comment pursuant to 5 U.S.C. 553(b)(3)(B) and make the rule immediately effective under 5 U.S.C. 553(d)(3), as it would be impracticable and contrary to the public interest to delay taking the emergency measure to protect corals that were being relocated due to heat stress to deeper, cooler waters. The final temporary rule authorized one 60-day extension of the special use area, which we hereby invoke in this document.

Authority: 16 U.S.C. 1431 *et seq.*

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–24194 Filed 11–1–23; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 891

[Docket No. FR–6385–F–01]

RIN 2502–AJ71

Section 202 Direct Loan Technical Amendments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule implements technical amendments to HUD's program regulations governing Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (''Section 202 Direct Loan''), including the Section 202 Projects for the Elderly or Handicapped—Section 8 Assistance (''202/8'') and the Section 202 Assistance for Nonelderly Handicapped Families and Individuals—Section 162 Assistance (''202/162'') programs. The amendments are necessary to conform the Section 202 Direct Loan program regulations with HUD's final rule implementing sections 102, 103, and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). This final rule also corrects outdated cross references in the Section 202 Direct Loan program regulations and updates the list of protected classes applicable to affirmative marketing requirements for the Section 202/8 and Section 202/162 programs.

DATES: *Effective Date:* January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Jennifer Lavorel, Director, Program Administration Office, Office of Asset Management and Portfolio Oversight, Office of Multifamily Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6180, Washington, DC 20410–0500,

telephone number 202–402–2515 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Background

Enacted on July 29, 2016, HOTMA (Pub. L. 114–201, 130 Stat. 782) contains 14 sections that affect the public housing and Section 8 rental assistance programs. Sections 102, 103, and 104 of HOTMA make sweeping changes to the United States Housing Act of 1937, particularly to those sections affecting income calculations and reviews. On February 14, 2023, HUD a published a final rule entitled ''Housing Opportunity Through Modernization Act of 2016: Implementation of Sections 102, 103, and 104'' (88 FR 9600) (''HOTMA final rule''), which amended HUD regulations to implement these three sections of HOTMA. In addition to amending the regulations governing HUD's public housing and Section 8 programs, the HOTMA final rule revised the program regulations for several other HUD programs, including the Supportive Housing for the Elderly (Section 202) and Supportive Housing for Persons with Disabilities (Section 811) Capital Advance programs. HUD revised the regulations for these programs in the interest of aligning the HOTMA final rule's requirements across programs.

Pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990, Public Law 86–372, Congress repealed the Section 202 Direct Loan program and created the Section 202 and Section 811 Capital Advance programs. However, there are projects still operating under Direct Loan program requirements, including the Section 202/8 and the Section 202/162 programs. Certain regulations applicable to the Direct Loan program and regulations specific to the 202/8 and 202/162 programs were revised by the HOTMA final rule but other regulations were inadvertently excluded. Accordingly, this final rule revises certain regulations applicable to the Direct Loan program (including those governing the 202/8 and 202/162 programs) to conform them with other Direct Loan program regulations as amended by the HOTMA final rule.

This final rule also makes technical corrections to replace outdated cross references in these program regulations consistent with a final rule that took effect on November 18, 1996 (61 FR 54492), in which HUD removed 24 CFR part 813, and updates the list of protected classes applicable to affirmative marketing requirements for the Section 202/8 and Section 202/162 programs.

II. Changes Made in This Final Rule

The following is an overview of the changes made to 24 CFR part 891 in this final rule.

§ 891.510 Displacement, Relocation, and Real Property Acquisition

This final rule revises § 891.510(f)(1)(iii)(A)(*2*) by replacing the outdated cross reference to ''24 CFR 813.107'' with a cross reference to ''24 CFR 5.628.''

§ 891.520 Definitions Applicable to 202/8 Projects

This final rule revises the definition of ''Family (eligible family)'' in § 891.520 by replacing the outdated cross reference to ''part 813 of this chapter'' with a cross reference to ''24 CFR 5.403.''

§ 891.575 Leasing to Eligible Families

This final rule revises § 891.575(a)(2) by replacing the outdated cross reference to ''part 813 of this chapter'' with a cross reference to ''24 CFR 5.653.''

§ 891.655 Definitions

This final rule revises the definitions of ''annual income,'' ''family,'' ''tenant rent,'' and ''total tenant payment'' in § 891.655 to be consistent with the definitions implemented by the HOTMA final rule for the Section 202 and Section 811 programs and to remove outdated cross references to ''part 813 of this chapter''. Specifically, the HOTMA final rule revised the definitions of ''annual income'' in § 5.609 and ''total tenant payment'' in § 5.628. It also added the definition of ''tenant rent'' to § 891.105. This rule incorporates these revised definitions in § 891.655. For consistency with prior HUD rulemakings, this final rule also revises the definitions of ''family,'' ''utility allowance,'' and ''utility reimbursement'' in § 891.655 by replacing outdated cross references to ''part 813 of this chapter''.

This final rule also removes the definition of ''rent'' in § 891.655, as the reference to § 891.505 is incorrect (''rent'' is no longer defined in § 891.505). This revision is consistent with the HOTMA final rule, which updated definitions for the Section 202 and Section 811 program regulations in part 891.

§ 891.720 Leasing to Eligible Families

This final rule revises § 891.720(a)(3) to replace the outdated cross reference to ''part 813 of this chapter'' with a cross reference to ''part 5, subpart F of this title''.

§ 891.740 Responsibilities of Borrower

This final rule revises the last sentence of § 891.740(a)(2) by removing the word ''creed'', adding the parenthetical phrase ''including actual or perceived sexual orientation and gender identity'' following the term ''sex,'' and adding ''disability'' and ''familial status,'' to read: ''The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, religion, sex (including actual or perceived sexual orientation and gender identity), disability, familial status, or national origin.'' This language is consistent with existing civil rights authorities applicable to HUD programs and the HOTMA final rule.

§ 891.750 Selection and Admission of Tenants

The final rule revises 891.750 by replacing an outdated cross reference to ''§ 813.102 of this chapter'' with a cross reference to part 5, subpart F of this title, as modified by 24 CFR 891.505. These revisions are consistent with the HOTMA final rule.

Although the 202 Direct Loan program uses the term 'handicapped,' the term 'disability' is more commonly used and accepted today to refer to physical or mental impairments. For this reason, this rule uses the term 'disabilities' wherever possible. However, corresponding changes to HUD's regulations are not feasible via this final rule, given the limited nature of the technical amendments being made. HUD anticipates future changes that will address this issue throughout its regulations in title 24 of the Code of Federal Regulations. Further, this final rule revises the last sentence in § 891.750(b)(3) by removing the word ''creed'' and adds the parenthetical phrase, ''including actual or perceived sexual orientation and gender identity,'' following the term ''sex,'' substitutes ''disability'' for ''handicap'' and adds ''familial status.'' This language is consistent with existing civil rights authorities applicable to HUD programs and the HOTMA final rule.

Finally, this final rule revises § 891.750(c) by replacing the existing paragraph (c) with revised text on regular reexaminations that aligns with the Section 202 and Section 811 program regulations as amended by the HOTMA final rule.[1]

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. However, part 10 provides for exceptions to the general rule where HUD finds that public comment would be ''impracticable, unnecessary or contrary to the public interest'' (see 24 CFR 10.1).

HUD finds that good cause exists to publish this final rule for effect without first soliciting public comment. Section 102 of HOTMA amends the 1937 Act to revise the frequency of family income reviews and calculations of income in HUD's public housing, Section 8 Moderate Rehabilitation, Section 8 Moderate Rehabilitation Single Room Occupancy (SRO), Section 8 Project-Based Rental Assistance (PBRA), 202/8, 202/162 Project Assistance Contract (202/162 PAC), Section 202/811 Capital Advance with Project Rental Assistance Contract (202/811 PRAC), Section 811 Project Rental Assistance Demonstration (811 PRA), Senior Preservation Rental Assistance Contracts (SPRAC), and non-insured 236 projects with Interest Reduction Payments programs. Section 104 of HOTMA amends the 1937 Act to set limits on the assets that families residing in public housing and families receiving assistance under Section 8 may own. These HOTMA changes impact the Section 202 Direct Loan program, including the Section 202/8 and 202/162 program. As explained in the Background section of this preamble, Congress repealed the Direct Loan program, but there are projects still operating under Direct Loan program requirements, including the Section 202/8 and the Section 202/162 programs. Certain regulations applicable to the Direct Loan program and regulations specific to the 202/8 and 202/162 programs were included in the HOTMA final rule but other regulations were inadvertently excluded. Because of the similarity in functional roles and responsibilities to the HCV program and Section 202 programs, HUD believes that the public comments submitted in response to HUD's HOTMA proposed rule published on September 17, 2019 (84 FR 48820), on these topics, and HUD's responses to public comments in HUD's HOTMA final rule, which applied part 5 regulations to Section 202 programs, provide HUD with a solid basis to make conforming changes to its Section Direct Loan program regulations. In this regard, the interests of the parties most affected by HUD's conforming changes—owners and program participants—are substantially identical to the parties impacted by the changes made by HUD's HOTMA rulemakings. Finally, the purpose of this final rule is to conform the Section 202 Direct Loan program regulations with Section 202 and 811 program regulations as amended by HUD's HOTMA final rule. Most of the HOTMA income changes impacting the Section 202 Direct Loan program were implemented by revisions to 24 CFR part 5 through the HOTMA final rule. The ability to use these part 5 changes in accordance with other interrelated HOTMA Section 102 and 104 requirements would be hindered without conforming changes to part 891.

The changes being made in this final rule are necessary also to update the list of protected classes applicable to affirmative marketing requirements for the Section 202/8 and Section 202/162 programs, aligning these regulations with current protected classes under the Fair Housing Act (42 U.S.C 3601 *et seq.*) as well as providing consistency across part 891. The affirmative marketing requirements in §§ 891.400 and 891.600 reflect current law by requiring that all similarly situated eligible households have a like range of housing choices available to them regardless of ''race, color, creed, religion, familial status, disability, sex, or national origin.'' However, the affirmative marketing provision within § 891.740 lists only ''race, color, creed, religion, sex, or national origin.'' This language is not in alignment with current law. As such, this final rule updates the language to include all protected classes applicable to affirmative marketing requirements for the Section 202/162 program, consistent with requirements across part 891. Further, in the time since these regulations have last been updated, there has been clarification regarding the inclusivity of 'sex' as a federally protected class.[2] Therefore, this final rule also makes changes that clarify what is meant by 'sex' regarding protected classes for affirmative marketing purposes.

As a result, this final rule makes conforming changes to HUD's Section 202 Direct Loan program regulations. Soliciting public comment on this rule is unnecessary because public comment was sought as part of the rulemaking leading to publication of the HOTMA final rule. This final rule aligns Section 202 Direct Loan program regulations with the HOTMA final rule; and it revises and replaces outdated cross references, consistent with HUD's prior rulemakings.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter referred to as the ''Modernizing E.O.'') amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things. In this final rule, HUD is making conforming changes to Section 202 Direct Loan program regulations to align them with HUD's HOTMA final rule and to replace outdated cross references and terminology consistent with prior HUD rulemakings. These changes are technical in nature; HUD is not introducing any new regulatory changes or rationales that differ in substance from those in prior rulemakings. This rule was not subject to OMB review. This rule is not a ''significant regulatory action'' as defined in Section 3(f) of Executive Order 12866 and is not an economically significant regulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory

[1] See the HOTMA final rule's revisions to § 891.610(g)(1), (2), and (3)(i), 88 FR 9669.

[2] ''. . . it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.'' *Bostock* v. *Clayton County, Georgia,* 590 U.S.____ (2020), 140 S.Ct. 1731, 1742 (2020).

flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As in HUD's HOTMA final rule, this final rule revises HUD's Section 202 Direct Loan program regulations in a manner that will reduce burden or provide flexibility for Borrowers and assisted families, including by providing more specific events that trigger an interim reexamination of family income, whereas current regulations provide that families may request reexaminations at any time. Additionally, HUD is making conforming changes to Section 202 Direct Loan program regulations to align them with HUD's HOTMA final rule and to replace outdated cross references and terminology consistent with prior HUD rulemakings. These amendments impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Environmental Impact

The final rule relates to establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance and related external administrative or fiscal requirements and procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites. The final rule also updates provisions that set out fair housing or nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3) and (c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and Tribal Governments and the private sector. This rule does not impose any Federal mandates on any state, local, or Tribal Governments or the private sector within the meaning of the UMRA.

List of Subjects in 24 CFR Part 891

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Public assistance programs, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 891 as follows:

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 1. The authority for 24 CFR part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

§ 891.510 [Amended]

■ 2. Amend § 891.510(f)(1)(iii)(A)(*2*) by removing ''24 CFR 813.107'' and adding in its place ''24 CFR 5.628''.

§ 891.520 [Amended]

■ 3. Amend the definition of ''Family (eligible family)'' in § 891.520 by removing ''part 813 of this chapter'' and adding in its place ''24 CFR 5.403''.

§ 891.575 [Amended]

■ 4. Amend § 891.575(a)(2) by removing ''part 813 of this chapter'' and adding in its place ''24 CFR 5.653''.

§ 891.655 Definitions applicable to 202/162 projects.

■ 5. Amend § 891.655 by:

■ a. Removing the definition of ''rent''; and

■ b. Revising the definitions of ''annual income,'' ''family (eligible family),'' ''tenant rent,'' ''total tenant payment,'' ''utility allowance,'' and ''utility reimbursement'' to read as follows:

Annual income is defined in part 5, subpart F of this title. In the case of an individual residing in an intermediate care facility for individuals with a developmental disability that is assisted under Title XIX of the Social Security Act and subpart E of this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive if assisted under Title XVI of the Social Security Act.

* * * * *

Family (eligible family) means a family that includes a person with a disability (that meets the definition of a handicapped family in § 891.505) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the low-income requirements described in 24 CFR 5.603, as modified by the definition of ''*annual income*'' in this section.

* * * * *

Tenant rent equals total tenant payment less utility allowance, if any.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of this title.

Utility allowance is defined in part 5, subpart F of this title and is determined or approved by HUD.

Utility reimbursement is defined in part 5, subpart F of this title.

* * * * *

■ 6. Amend § 891.720 by revising paragraph (a)(3) to read as follows:

§ 891.720 Leasing to eligible families.

(a) * * *

(3) Has not rejected any such applicant family except for reasons acceptable to HUD. If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of part 5, subpart F of this title. Failure on the part of the Borrower to comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.

* * * * *

■ 7. Amend § 891.740 by revising paragraph (a)(2) to read as follows:

§ 891.740 Responsibilities of Borrower.

(a) * * *

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan

and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, religion, sex (including actual or perceived sexual orientation and gender identity), disability, familial status, or national origin.

* * * * *

■ 8. In § 891.750, revise the introductory text of paragraph (b) and paragraphs (b)(3), (c)(1), (2), and (3)(i) to read as follows:

§ 891.750 Selection and admission of tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a family that includes a person with a disability (that meets the definition of ''handicapped family'' in 24 CFR 891.505); meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B; and be a low-income family, as defined in part 5, subpart F of this title, as modified by 24 CFR 891.505. Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 891.720.

* * * * *

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by the member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights, including filing a complaint with HUD's Office of Fair Housing and Equal Opportunity, if the applicant believes the applicant is being discriminated against on the basis of race, color, religion, sex (including actual or perceived sexual orientation and gender identity), disability, familial status, or national origin.

* * * * *

(c) * * *

(1) *Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with § 5.657 of this title and must adjust the rent. The Borrower must also request an appropriate adjustment to the project assistance payment. Further, the Borrower must determine whether the family's unit size is still appropriate and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms by families for obtaining wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B.

(2) *Interim reexamination.* If the family occupies an assisted unit (or residential space in a group home) the family must comply with the provisions in § 5.657 of this title regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. See 24 CFR part 5, subpart B, for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new household members. For requirements regarding the signing and submitting of consent forms by families for obtaining wage and claim information from State Wage Information Collection agencies, see 24 CFR part 5, subpart B. Any change in the family's income or other circumstances that result in an adjustment in the total tenant payment, tenant rent, or project assistance payment must be verified.

(3) * * *

(i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payments until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payments may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of § 5.657 of this title (as modified in § 891.105) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

* * * * *

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2023–24236 Filed 11–1–23; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0760, EPA–R09–OAR–2020–0476, and EPA–R09–OAR–2021–0176; FRL–11409–01–R9]

Air Plan Revisions; California; Antelope Valley Air Quality Management District; Imperial County Air Pollution Control District; Correcting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to correct sections in the Code of Federal Regulations (CFR), erroneously caused by administrative oversight, to reflect the current status of conditional approval provisions in the California State Implementation Plan (SIP). These corrections concern Antelope Valley Air Quality Management District's (AVAQMD's) reasonably available control technology (RACT) SIP demonstration requirements for the 1997 and 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and Imperial County Air Pollution Control District's (ICAPCD's) RACT SIP demonstration requirements for the 2008 8-hour ozone NAAQS.

DATES: These correcting amendments are effective on November 2, 2023.

ADDRESSES: The EPA has established dockets for this action under Docket ID No. EPA–R09–OAR–2017–0760, EPA–R09–OAR–2020–0476, and EPA–R09–

OAR–2021–0176. All documents in the dockets are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (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 *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Elijah Gordon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3158 or by email at *gordon.elijah@epa.gov.*

SUPPLEMENTARY INFORMATION: Table 1 lists the documents addressed by this corrective action with the dates they were locally adopted, revised, or amended, and submitted by the California Air Resources Board (CARB).

TABLE 1—RACT SIP DEMONSTRATIONS AND SIP-APPROVED RULES

Local agency	Document	Local action	Submitted
AVAQMD	AVAQMD 8-Hour Reasonably Available Control Technology—State Implementation Plan Analysis (RACT SIP Analysis)—1997 8-hour Ozone NAAQS ''2006 RACT SIP''.	Adopted 09/19/2006	01/31/2007
AVAQMD	AVAQMD 8-Hour Reasonably Available Control Technology—State Implementation Plan Analysis (2015 RACT SIP Analysis)—2008 8-hour Ozone NAAQS ''2015 RACT SIP''.	Adopted 07/21/2015	10/23/2015
AVAQMD	Rule 1151.1—Motor Vehicle Assembly Coating Operations	Adopted 6/20/2017	8/9/2017
AVAQMD	Rule 1110.2—Emissions from Stationary, Non-Road and Portable Internal Combustion Engines.	Amended 09/18/2018	10/30/2018
ICAPCD	Reasonably Availability Control Technology Analysis for the 2017 Imperial County State Implementation Plan for the 2008 8-Hr Ozone Standard ''2017 RACT SIP''.	Adopted 09/12/2017	11/14/2017
ICAPCD	Rule 415—Transfer and Storage of Gasoline	Revised 11/03/2020	02/19/2021

The EPA conditionally approved revisions to the AVAQMD portion of the California SIP on October 10, 2017 (82 FR 46923). These revisions concerned AVAQMD's demonstration regarding RACT requirements for the AVAQMD portion of the Western Mojave Desert nonattainment area for the 1997 8-hour ozone NAAQS, and the AVAQMD portion of the West Mojave Desert nonattainment area for the 2008 8-hour ozone NAAQS. In the October 10, 2017 action, we added paragraphs (b), (b)(1), (b)(2), (b)(3), and (b)(4) to the ''Identification of plan—conditional approval'' section of 40 CFR part 52, subpart F (40 CFR 52.248), addressing RACT demonstrations for rules deemed to not meet RACT requirements. According to 40 CFR 52.248(b), if the State failed to meet its commitment to address the identified deficiencies by November 9, 2018, the conditional approval would be treated as a disapproval. The State submitted SIP revisions addressing all identified deficiencies for the rules listed in paragraphs 40 CFR 52.248(b)(1) through (4) in advance of this November 9, 2018 deadline.

We subsequently approved the SIP revisions addressing the identified deficiencies. We finalized approval of Rule 1151.1 on May 24, 2018 (83 FR 24033). In that rulemaking action, we evaluated Rule 1151.1 for RACT-level stringency, and stated in our proposal that Rule 1151.1 regulates activities covered by the CTG document ''Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings'' (EPA–453/R–08–006, September 2008).[1] Our approval of Rule 1151.1 as establishing RACT for this CTG cured the identified deficiencies associated with our conditional approval of the portion of the District's RACT SIP associated with Rule 1151 in 40 CFR 52.248(b)(3).

Additionally, we finalized approval of Rule 1110.2 on September 10, 2021 (86 FR 50645). In that rulemaking action, we evaluated Rule 1110.2 for RACT-level stringency, and stated in our proposal that Rule 1110.2 was submitted in order to address the RACT deficiencies identified in our previous conditional approval for major source NO_X RACT.[2] Our approval of Rule 1110.2 as establishing RACT for the major stationary sources regulated by this rule cured the identified deficiency associated with our conditional approval of the portion of the District's RACT SIP associated with Rule 1110.2 in 40 CFR 52.248(b)(2).

Due to an administrative oversight, our notices approving these new revisions neglected to remove the conditional approval language from 40 CFR 52.248(b)(2), 40 CFR 52.248(b)(3), and, consequently, 40 CFR 52.248(b). This action addresses this administrative oversight.

Separately, the EPA conditionally approved a revision to the ICAPCD portion of the California SIP on February 13, 2020 (85 FR 8181). This revision concerned ICAPCD's demonstration regarding RACT requirements for the 2008 8-hour ozone NAAQS in the Imperial County ozone nonattainment area. In the February 13, 2020 action, we added paragraph (i) to 40 CFR 52.248, addressing RACT demonstrations for Rule 415, and stating that if the State failed to meet its commitment to address these identified deficiencies by one year from the date of the conditional approval, the conditional approval would be treated as a disapproval.[3] The State submitted a revised Rule 415, addressing these deficiencies in advance of this deadline.

We finalized approval of the revised Rule 415 on September 2, 2021 (86 FR 49248). In that rulemaking action, we evaluated Rule 415 for RACT-level stringency, and stated in our proposal

[1] 83 FR 11944 (March 19, 2018). In the District's commitment letter to CARB (dated 06/26/2017) and CARB's forwarded letter to the EPA (dated 06/27/2017), AVAQMD stated that rather than adopt a modification to Rule 1151 to address the RACT deficiency, it would adopt a new rule, Rule 1151.1, to correct the identified deficiency. They also stated their commitment to revise and correct identified deficiencies within Rule 1110.2.

[2] 86 FR 17567 (April 5, 2021).

[3] In the District's commitment letter to CARB (dated 05/08/2019) and CARB's forwarded letter to the EPA (dated 05/28/2019), ICAPCD stated their commitment to revise and correct identified deficiencies within Rule 415.

that Rule 415 regulates activities covered by the CTG document ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals'' (EPA–450/2–77–026, October 1977).[4] That proposal stated that Rule 415 was revised in response to the EPA's previous conditional approval and that the updated version of Rule 415 corrected the identified deficiencies. Therefore, our approval of Rule 415 as establishing RACT for this CTG cured the identified deficiency associated with our conditional approval of the portion of the District's RACT SIP associated with Rule 415 in 40 CFR 52.248(i). Due to an administrative oversight, our notice approving Rule 415 neglected to remove the conditional approval language from 40 CFR 52.248(i). This action addresses this administrative oversight.

For the reasons described above, this action corrects the regulatory text to reflect the current status of AVAQMD's RACT SIP demonstration for the 1997 and 2008 8-hour ozone NAAQS. The EPA is removing Rule 1110.2, ''Emission from Stationary, Non-road & Portable Internal Combustion Engines,'' and Rule 1151, ''Motor Vehicle and Mobile Equipment Coating Operations,'' from the regulatory text at 40 CFR 52.248(b)(2) and 40 CFR 52.248(b)(3), respectively. Consequently, AVAQMD has met its RACT SIP obligations for these 1997 and 2008 8-hour NAAQS and, therefore, the EPA is removing the prior conditional approvals for these RACT SIP demonstrations from the Code of Federal Regulations (40 CFR 52.248(b)), leaving only the subsequently approved rules in the California SIP. This action also corrects the regulatory text to reflect the current status of ICAPCD's RACT SIP demonstration for the 2008 8-hour ozone NAAQS. ICAPCD has met its RACT SIP obligations for this NAAQS and, therefore, the EPA will remove the prior conditional approval for this RACT SIP demonstration from the Code of Federal Regulations (40 CFR 52.248(i)), leaving only the subsequently approved rule in the California SIP.

The EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to public interest. Public notice and comment for this action is unnecessary because the underlying rules and RACT evaluations were already subject to a 30-day comment period, and this action is merely making administrative changes and updating the regulatory text accordingly. Further, this action is consistent with the purpose and rationale of the final rules. Because this action does not change the EPA's analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for these amendments to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This action merely corrects incomplete amendatory instructions in previous rulemakings. For these reasons, the EPA finds good cause under APA section 553(d)(3) for these changes to become effective on the date of publication of this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 19, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is 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.*

[4] 86 FR 24835 (May 10, 2021).

Subpart F—California

§ 52.248 [Amended]

■ 2. Section 52.248 is amended by removing and reserving paragraphs (b) and (i).

[FR Doc. 2023–23740 Filed 11–1–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0479; FRL–11425–02–R9]

Determination To Defer Sanctions; California; California Air Resources Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a rule and other materials that correct deficiencies in its Clean Air Act (CAA or ''Act'') state implementation plan (SIP) provisions concerning emissions of volatile organic compounds (VOCs) from vapor recovery systems of gasoline cargo tanks. This determination is based on a proposed approval, published elsewhere in this **Federal Register**, of CARB's California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014 (''Section 94014'') which regulates this source category. The effect of this interim final determination is that the imposition of sanctions that were triggered by a previous limited disapproval by the EPA in 2022 is now deferred. If the EPA finalizes its approval of CARB's submission, relief from these sanctions will become permanent.

DATES: This interim final determination is effective November 2, 2023. However, comments will be accepted on or before December 4, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0479 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 942–3245 or by email at *evanshopper.lakenya@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Background
II. The EPA's Evaluation and Action
III. Statutory and Executive Order Reviews

I. Background

On April 5, 2022 (87 FR 19631), the EPA issued a final limited approval and limited disapproval action for the CARB rule listed in Table 1 that was submitted to the EPA for inclusion into the California SIP. The action addressed the procedures CARB uses to certify vapor recovery systems on cargo tank trucks used to transport gasoline from bulk terminals to gasoline dispensing facilities.

TABLE 1—CARB RULE WITH PREVIOUS EPA ACTION

Regulation or provision	Regulation title or subject	Amended	Submitted	EPA action in 2022
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014.	Certification of Vapor Recovery Systems for Cargo Tanks.	07/25/2013	08/22/2018	Limited Approval and Limited Disapproval.

In the April 5, 2022 final rule, we determined that although the CARB regulation strengthened the SIP and was largely consistent with the requirements of the CAA, the submitted rule included a deficiency that precluded our full approval of the rule into the SIP. CARB's previously submitted Section 94014 incorporated by reference Certification Procedure CP–204 (''CP–204'') that allowed for CARB's Executive Officer to approve alternate test procedures without EPA approval. The EPA found that this provision was an instance of unbounded director's discretion. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52, the disapproval action on CP–204 under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of November 5, 2023, and highway sanctions 6 months later.

On July 12, 2023, the CARB revised Section 94014 and CP–204, and on September 13, 2023, submitted it to the EPA for approval into the California SIP as shown in Table 2 below.

Regulation or provision	Regulation title or subject	Amended	Submitted
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014, excluding subsections (a)–(d).	Certification of Vapor Recovery Systems for Cargo Tanks.	[1] 07/12/23	09/13/23
Certification Procedure CP–204	Certification Procedure for Vapor Recovery Systems of Cargo Tanks.	07/12/23	09/13/23

[1] The California Air Resources Board amended the introductory paragraph of 17 California Code of Regulations Section 94014 on July 12, 2023, and the changed was filed with Thomson Reuters Westlaw on August 29, 2023. Therefore, the amendment for Section 94014 will be recorded as July 12, 2023.

On September 25, 2023, the Submittal was determined to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

The revised CARB section 94014 and CP–204 in Table 2 is intended to address the disapproval issues in our April 5, 2022 final rule. Based on this proposed action approving Section 94014 and CP–204 into the California SIP, we are also making this interim final determination, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our final action on April 5, 2022, because we believe that the submittal corrects the deficiencies that triggered such sanctions.

The EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination and the proposed approval of CARB Section 94014 and CP–204, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our final action on April 5, 2022, would be permanently terminated on the effective date of our final approval of Section 94014 and CP–204.

II. The EPA's Evaluation and Action

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval action on April 5, 2022, of CARB's section 94014 with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve CARB Section 94014 which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that CARB Section 94014 and CP–204, amended on July 12, 2023, address the limited disapproval issues under part D of title I of the CAA identified in our 2022 final action and

the amended rule is now fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. 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, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 appropriate circuit by January 2, 2024. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which 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 CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 19, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–23608 Filed 11–1–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230523–0136; RTID 0648–XD467]

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2023 Tribal Fishery Allocations for Pacific Whiting; Reapportionment Between Tribal and Non-Tribal Sectors

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

ACTION: Inseason reapportionment of tribal Pacific whiting allocation.

SUMMARY: This document announces the reapportionment of 45,000 metric tons of Pacific whiting from the tribal allocation to the non-tribal commercial fishery sectors via automatic action on September 27, 2023. This

reapportionment is to allow full utilization of the Pacific whiting resource.

DATES: The reapportionment of Pacific whiting went into effect at 12 p.m. local time, September 27, 2023, and is effective through December 31, 2023. Comments will be accepted through November 17, 2023.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2023–0130 by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0130 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic Access

This notification is accessible online at the Office of the Federal Register's website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/region/west-coast.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, West Coast Region, NMFS, (206) 526–4656, *Colin.Sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pacific Whiting

Pacific whiting (*Merluccius productus*) is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span compared to other groundfish species. Pacific whiting has the largest annual allowable harvest levels (by volume) of the more than 90 groundfish species managed under the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. The coastwide Pacific whiting stock is managed jointly by the United States and Canada, and mature Pacific whiting are commonly available to vessels operating in U.S. waters from April through December. Background on the stock assessment, and the establishment of the 2023 Total Allowable Catch (TAC), for Pacific whiting was provided in the final rule for the 2023 Pacific whiting harvest specifications, published May 31, 2023 (88 FR 34783). Pacific whiting is allocated to the Pacific Coast treaty tribes (tribal fishery) and to three non-tribal commercial sectors: the catcher/processor cooperative (C/P Co-op), the mothership cooperative (MS Co-op), and the Shorebased Individual Fishery Quota (IFQ) Program.

This notification announces the reapportionment of 45,000 metric tons (mt) of Pacific whiting from the tribal allocation to the non-tribal commercial sectors. This reapportionment was effective on September 27, 2023. Regulations at 50 CFR 660.131(h) contain provisions that allow the Regional Administrator to reapportion Pacific whiting from the tribal allocation, specified at 50 CFR 660.50, that will not be harvested by the end of the fishing year to other sectors.

Pacific Whiting Reapportionment

For 2023, the Pacific Coast treaty tribes were allocated 80,806 mt of Pacific whiting. The best available information on September 15, 2023, indicated that at least 45,000 mt of the tribal allocation would not be harvested by December 31, 2023. As required under the 2017 Endangered Species Act section 7(a)(2) biological opinion on the effects of the Pacific Coast Groundfish Fishery Management Plan on listed salmonids, NMFS considered the number and bycatch rate of Chinook salmon taken by the Pacific whiting fishery sectors prior to reapportionment. Based on the best available information in September 2023, NMFS determined there is low risk that the reapportionment will cause the Pacific whiting sector fisheries to exceed both the guideline limit of 11,000 and reserve of 3,500 Chinook salmon under current regulations and practices. At the time of this notification, incidental take of Chinook salmon by the non-tribal sectors is 37 percent of the guideline limit. NMFS will continue to monitor Chinook salmon bycatch as part of inseason management.

To allow for increased utilization of the resource, on September 27, 2023, NMFS reapportioned 45,000 mt from the tribal allocation to the Shorebased IFQ Program, C/P Co-op, and MS Co-op in proportion to each sector's original allocation. Reapportioning this amount is expected to allow for greater attainment of the TAC while not limiting tribal harvest opportunities for the remainder of the year. NMFS provided notice of the reapportionment on September 27, 2023, via emails sent directly to fishing businesses and individuals. Reapportionment was effective the same day as the notice.

The amounts of Pacific whiting available for 2023 before and after the reapportionment are described in Table 1 below.

TABLE 1—2023 PACIFIC WHITING ALLOCATIONS

Sector	Initial 2023 allocation (mt)	Final 2023 allocation (mt)
Tribal	80,806	35,806
C/P Coop ..	129,266	144,566
MS Coop ...	91,246	102,047
Shorebased IFQ Program	159,681	178,581

Classification

NOAA's Assistant Administrator for Fisheries (AA) finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B), because such notification would be impracticable and contrary to the public interest. As previously noted, NMFS provided actual notice of the reapportionment to fishery participants at the time of the action. Prior notice and opportunity for public comment on

this reapportionment was impracticable because NMFS had insufficient time to provide prior notice between the time the information about the progress of the fishery needed to make this determination became available and the time at which fishery modifications had to be implemented in order to allow fishery participants access to the available fish during the remainder of the fishing season. For the same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness for these actions, required under 5 U.S.C. 553(d)(3).

These actions are authorized by 50 CFR 660.55(i), 660.60(d), and 660.131(h) and are exempt from review under Executive Order 12866.

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

Dated: October 30, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–24205 Filed 11–1–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 211
Thursday, November 2, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2039; Airspace Docket No. 23–ANM–14]

RIN 2120–AA66

Establishment of Class E Airspace; Flying Joseph Ranch Airport, May, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Flying Joseph Ranch Airport, May, ID, in support of the airport's transition from visual flight rules (VFR) to instrument flight rules (IFR) operations.

DATES: Comments must be received on or before December 18, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2039 and Airspace Docket No. 23–ANM–14 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

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

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These

updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from 700 feet above the surface at Flying Joseph Ranch Airport, May, ID, in support of the airport's forthcoming transition from VFR to IFR operations.

The proposed Class E airspace would extend 11.3 miles northwest and 4.5 miles southeast of the airport reference point (ARP) and is designed to contain the following procedures: departing and missed approach IFR operations until reaching 1,200 feet above the surface on the Runway (RWY) 11 YOYYU ONE (OBSTACLE) Area Navigation (RNAV) DEPARTURE, the RWY 29 ZAROD ONE RNAV DEPARTURE, the RNAV Global Positioning System (GPS) M RWY 11 missed approach, and arriving IFR operations below 1,500 feet above the surface on the RNAV GPS M RWY 11 approach. This action would support the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM ID E5 May, ID [New]

Flying Joseph Ranch Airport, ID
(Lat. 44°26′38″ N, long. 113°46′30″ W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the airport, and within 2.6 miles southwest and 2.2 miles northeast of the 311° bearing extending from the 4-mile arc to 11.3 miles northwest, and within 1.9 miles either side of the 129° bearing extending from the 4-mile arc to 4.5 miles southeast.

* * * * *

Issued in Des Moines, Washington, on October 18, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–23730 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2051; Airspace Docket No. 23–ASO–38]

RIN 2120–AA66

Amendment of Class E Airspace; Statesboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Statesboro-Bulloch County Airport, Statesboro, GA, to support the revised area navigation (RNAV)instrument approach procedure. This action would increase the radius of the Class E airspace extending upward from 700 feet above the surface and update the airport's name and geographic coordinates.

DATES: Comments must be received on or before December 18, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2051 and Airspace Docket No. 23–ASO–38 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next FAA Order JO 7400.11 update. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface for Statesboro-Bulloch County Airport, Statesboro, GA, by increasing the Class E airspace extending upward from 700 feet above the surface to 7.2-miles (previously 6.5-miles), to support a revised RNAV approach procedure. In addition, this action would update the airport name (formerly Statesboro Municipal Airport) and the geographic coordinates to coincide with the FAA's database. Controlled airspace is necessary for the area's safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO GA E5 Statesboro, GA [Amended]

Statesboro-Bulloch County Airport, GA
(Lat. 32°28′58″ N, long. 81°44′13″ W)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of the Heart of Statesboro-Bulloch County Airport.

* * * * *

Issued in College Park, Georgia, on October 13, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–23631 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0843]

RIN 1625–AA00

Safety Zone; Fireworks Display; Hood River, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Columbia River. This action is necessary to provide for the safety of life on these navigable waters near Hood River, Oregon, during a fireworks display on December 31, 2023. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before December 4, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0843 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 LT Carlie Gilligan, Waterways Management Division, Sector Columbia River, Coast Guard; telephone 503–240–9319, email *SCRWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Columbia River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On August 15, 2023, the Hood River Fireworks, LLC notified the Coast Guard that it will be conducting a fireworks display from 8 to 8:30 p.m. on December 31, 2023. The fireworks are to be launched from Hood River Spit, approximately 1000 feet south of the Columbia River in Hood River, OR. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 1000-foot radius of the discharge site.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 1000-foot radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 7:30 to 9 p.m. on December 31, 2023. The safety zone would cover all navigable waters within 1000 feet of the Hood River Spit, located approximately 1000 feet south of the Columbia River in Hood River, OR. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM 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. The safety zone created by this proposed rule is designed to minimize its impact on navigable waters. The safety zone will impact approximately a 1000-foot area at the intersection of the Columbia and Hood Rivers and is not anticipated to exceed 1.5 hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP. The Coast Guard would issue a Notice to Mariners 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 proposed rule would 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 IV.A above, this proposed rule would 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 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the proposed 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 proposed rule would 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 1.5 hours that would prohibit entry within 1000 feet of the fireworks discharge site located on Hood River Spit. 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.

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–2023–0843 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 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. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

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.

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 is proposing 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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T13–0843 to read as follows:

§ 165.T13–0843 Safety Zone; Fireworks Display, Hood River, OR.

(a) *Location.* The following area is a safety zone: All navigable waters within 1000 feet of a fireworks launch site in Hood River, OR. The fireworks launch site will be at the approximate point of 45°42′51.20″ N 121°30′32.18″ 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 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 fireworks display.

(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 period.* This section will be enforced from 7:30 to 9 p.m. on December 31, 2023. 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: October 25, 2023.

J.W. Noggle,

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

[FR Doc. 2023–24152 Filed 11–1–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0479; FRL–11425–01–R9]

Air Plan Approval; California; California Air Resources Board; Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California Air Resources Board (CARB) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from vapor recovery systems of gasoline cargo tanks. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before December 4, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2023–0479 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3245 or by email at *evanshopper.lakenya@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was amended by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local agency	Regulation or provision	Regulation title or subject	Amended	Submitted
CARB ...	California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014, except sub-sections (a)–(d) [1].	Certification of Vapor Recovery Systems for Cargo Tanks.	[2] 07/12/23	09/13/23
CARB ...	Certification Procedure CP–204	Certification Procedure for Vapor Recovery Systems of Cargo Tanks.	07/12/23	09/13/23

Pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51 appendix V, the

[1] Letter dated September 21, 2023, from Michael Benjamin, Chief, Air Quality Planning and Science Division, to Martha Guzman, Regional Administrator, EPA Region IX. The letter states that Section 94014, sub-sections (a)–(d), that describe fee provisions, were inadvertently submitted to the EPA. Therefore, the CARB will withdraw Section 94014, sub-sections (a)–(d), from consideration for inclusion into the SIP. The EPA will not act on Section 94014, sub-sections (a)–(d) in this rulemaking.

EPA determined that the submittal for CARB's California Code of Regulations (CCR), Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014 (Section 94014) met the completeness criteria on September 25, 2023.

B. Are there other versions of this rule?

On April 5, 2022 (87 FR 19631), we finalized a limited approval and limited disapproval of the July 25, 2013, version of Section 94014 into the SIP, including those regulatory provisions we identified as deficient. As part of our limited disapproval of Section 94014, CARB was required to submit revisions to correct the deficiencies. CARB subsequently adopted revisions to Section 94014 on July 12, 2023, and submitted them to the EPA on September 13, 2023. In this action we are proposing to approve the July 12, 2023, version of Section 94014 and, if finalized, it would replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revisions?

Emissions of VOCs contribute to the production of ground-level ozone, smog, which harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. The regulations covered by this action are intended to limit VOC emissions from cargo tank trucks used to transport gasoline from bulk terminals to gasoline dispensing facilities (*e.g.,* gas stations). VOC emissions can be emitted from cargo tanks when gasoline is being loaded or unloaded from the cargo tank. CARB requires the use of a gasoline vapor recovery system to significantly reduce the amount of VOC emitted during the gasoline loading and unloading process.

Section 41954 of the California Health and Safety Code requires that CARB ''[inspect] and [test] . . . certified vapor recovery systems upon installation during the permit process and [conduct] regular inspections to check that systems are operating as certified.'' Section 94014 allows gasoline vapor recovery systems for cargo tanks to be certified in accordance with Certification Procedure CP–204, ''Certification Procedure for Vapor Recovery Systems of Cargo Tanks'' (CP–204). Section 94014 then incorporates CP–204 by reference. CP–204 describes the process for certifying cargo tanks with a system that recovers vapors during the loading and unloading of gasoline. This certification procedure establishes performance standards and/or specifications for cargo tanks, including trucks and trailers that transport gasoline.

As described above, on April 5, 2022 (87 FR 19631), the EPA finalized a limited approval and limited disapproval of an earlier version of Section 94014 into the SIP. The basis for the limited disapproval was the allowance of CARB's Executive Officer to approve alternate test procedures in CP–204 without EPA approval. CP–204, Section 5.4, allows the Executive Officer to approve the use of an alternative test procedure if it meets the equivalency criteria established by EPA Method 301. However, for situations where Method 301 was not directly applicable, CP–204, Section 5.4 previously allowed the CARB Executive Officer to establish other test procedures without EPA approval. The EPA identified this as an instance of unbounded director's discretion. To correct this deficiency, CARB revised CP–204 to remove this instance of director's discretion and submitted the revised rule to the EPA.

In addition to correcting the unbounded director's discretion, CARB also made other minor editorial improvements to CP–204. The EPA's technical support document (TSD) has more information.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as ''Moderate'' or above (see CAA section 182(b)(2)). We determined in our April 5, 2022 final action that Section 94014 and the referenced certification procedures and test procedures implement a RACT level of stringency.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the rule meet the evaluation criteria?

This rule meets CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The revised version of CP–204 removes the provision allowing CARB's Executive Officer to approve alternative test procedures, which the EPA identified as a deficiency in our April 5, 2022 final action. As a result, alternative test procedures for vapor recovery systems will be determined following an equivalence framework as provided by EPA Method 301. The EPA determines the removal of this language to correct the previously identified deficiency.

The EPA's TSD has more information on our evaluation.

C. The EPA's recommendations To Further Improve the Rule

The EPA has no recommendations at this time for the next time CARB modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until December 4, 2023. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference California Air Resources Board, California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014—Certification of Vapor Recovery Systems—Cargo Tanks, excluding sub-sections (a) through (d), amended on July 12, 2023, which regulates VOCs from vapor recovery systems of gasoline cargo tanks. The EPA has made, and will continue to make, these materials

[2] The California Air Resources Board amended the introductory paragraph of 17 California Code of Regulations Section 94014 on July 12, 2023, and the changed was filed with Thomson Reuters Westlaw on August 29, 2023. Therefore, the amendment for Section 94014 will be recorded as July 12, 2023.

available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 19, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–23607 Filed 11–1–23; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–3

[FMR Case 2022–01; Docket No. 2022–0015, Sequence No. 1]

RIN 3090–AK59

Federal Management Regulation; Federal Advisory Committee Management

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

ACTION: Proposed rule.

SUMMARY: GSA proposes to amend the Federal Management Regulation (FMR) to update the regulations concerning Federal Advisory Committee Management. This rule proposes revisions that will implement legislative updates; help ensure that regulations concerning Federal Advisory Committee Management are user-friendly; clarify and update key roles; increase transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; update the language regarding merger; and implement process improvements with respect to advisory committee charters and agency administrative guidelines.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before January 2, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FMR Case 2022–01 to *Regulations.gov* at *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FMR Case 2022–01''. Select the link ''Comment Now'' that corresponds with FMR Case 2022–01. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FMR Case 2022–01'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FMR Case 2022–01, in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please

check *www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Lorelei Kowalski, Director, Committee Management Secretariat, Office of Asset and Transportation Management, Office of Government-wide Policy, at 202–208–6035 or email at *lorelei.kowalski@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FMR Case 2022–01.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Changes

The Federal Advisory Committee Act (FACA or ''the Act'') as amended, 5 U.S.C. Chapter 10, (codified at 5 U.S.C. 1001 *et seq.*), governs the establishment, operation, and termination of advisory committees within the Executive Branch of the Federal Government. Advisory committees are a useful tool for ''furnishing expert advice, ideas, and diverse opinions to the Federal Government,'' Sec. 2(a) (codified at 5 U.S.C. 1002(a)), and the Act helps to ensure that Congress and the public are kept informed regarding the purpose, membership, activities, and cost of advisory committees, Sec. 2(b)(5) (codified at 5 U.S.C. 1002(b)(5)).

GSA is responsible for administering the Act, including ''prescribing administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, providing advice, assistance, and guidance to advisory committees to improve their performance.'' Sec. 7(c) (codified at 5 U.S.C. 1006(c)); see also Executive Order 12024 (delegating to the Administrator of General Services almost all of ''the functions vested in the President by the Federal Advisory Committee Act'').

The Administrator of General Services has delegated all of GSA's FACA-related responsibilities to GSA's Committee Management Secretariat (''the Secretariat''). See 41 CFR 102–3.100. Over the past forty years, the Secretariat has been implementing the Act through regulations concerning Federal Advisory Committee Management currently published at 41 CFR part 102–3. See *Public Citizen* v. *DOJ,* 491 U.S. 440, 465 n.12 (1989).

As explained throughout this section, GSA is now proposing to amend Part 102–3 of the Federal Management Regulation to implement legislative updates; help ensure that regulations concerning Federal Advisory Committee Management are user-friendly; clarify and update key FACA roles; increase transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; update the language regarding merger; and implement process improvements with respect to advisory committee charters and agency administrative guidelines.

A. Implementing Legislative Updates

GSA proposes to update 41 CFR 102–3.40 to reflect a legislative change that was made by the Intelligence Authorization Act for Fiscal Year 2010 (Pub. L. 111–259), which states that the Director of National Intelligence may determine that, for reasons related to national security, FACA is not applicable to advisory committees of the Office of the Director of National Intelligence (ODNI).

B. Removing Unnecessary Language and Information

To make regulations concerning Federal Advisory Committee Management more user-friendly—and ultimately enhance the performance of advisory committees—GSA proposes to remove certain language and information from Part 102–3. See also Executive Order 14058 on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government (directing agency heads to identify opportunities, as appropriate and consistent with applicable law, to modify their regulations to enhance customer experience and service delivery outcomes).

First, GSA proposes to remove Appendices throughout Part 102–3 because that information—guidance in the form of answers to frequently asked questions—is better suited for GSA's Federal Advisory Committee Management website, where GSA can more easily ''provide advice, assistance, and guidance to advisory committees to improve their performance.'' Sec. 7(c) (codified at 5 U.S.C. 1006(c)).

Second, GSA proposes removing unnecessary language throughout Part 102–3 because it either does not add meaningful clarification to the implementation of the Act, is not easily understandable, or is duplicative of language included elsewhere.

For example, 41 CFR 102–3.30(b) on termination currently provides requirements for terminating an advisory committee, which are essentially repeated in 41 CFR 102–3.55 on the duration of committees. GSA is also aware that the difference between ''termination'' and ''duration'' has been a source of confusion during the advisory committee chartering process. Accordingly, GSA proposes revising both of those sections in order to remove duplicative language and to help ensure that the Act's use of those terms is consistently applied throughout GSA's regulations.

Similarly, GSA proposes to remove certain language from 41 CFR 102–3.130 that is already captured in other regulations or policies governing the appointment, compensation, or reimbursement of advisory committee members, staff, experts, and consultants. For example, the Office of Personnel Management (OPM) establishes policy for compensating Federal employees and hiring experts and consultants, and GSA need not repeat those policies in 41 CFR 102–3.130.

Overall, these proposed amendments will improve the clarity of regulations concerning Federal Advisory Committee Management, which will in turn enhance the performance of advisory committees.

C. Updating Key Roles

Consistent with the agency's responsibility to ''prescribe administrative guidelines and management controls applicable to advisory committees,'' Sec. 7(c) (codified at 5 U.S.C. 1006(c)), GSA proposes clarifying the definitions and responsibilities of certain key roles.

First, GSA proposes adding two key roles to the definitions section at 41 CFR 102–3.25—the ''Chairperson'' and the ''Group Federal Officer.''

- The Act refers to a chair of each advisory committee, see Sec. 10 (codified at 5 U.S.C. 1009), but does not define the contours of that role. Accordingly, GSA proposes to define ''chairperson'' as ''the advisory committee or subcommittee member who serves in this role on an advisory committee or subcommittee by statutory requirement, or by appointment or invitation by presidential authority or an agency's authority.''
- GSA proposes defining ''Group Federal Officer'' as ''an individual who assists the [Committee Management Officer] in overseeing and managing a portion of the agency's Federal advisory committee management program.'' GSA coined this term years ago to capture a key role that some agencies use to support their FACA programs, and GSA believes it is helpful to formally recognize what continues to be a key role for some agencies.

Second, GSA proposes clarifying the responsibilities of certain roles:

- GSA (41 CFR 102–3.100): Proposed revisions provide a more comprehensive description of actual Secretariat activities, update terminology, and

recognize a government-wide interagency group that has been in existence since GSA published the Final Rule in 2001, see Federal Advisory Committee Management, 66 FR 37727 (July 19, 2001) (hereinafter ''2001 Final Rule'').

- Agency Heads (41 CFR 102–3.105): Proposed revisions more clearly identify the role of the agency head with respect to advisory committee charters and members.
- Committee Management Officer (41 CFR 102–3.115): Proposed revisions help to clarify the full scope and importance of the Committee Management Officer, including acknowledgment of common actions implemented by Committee Management Officers across the executive branch in managing their agency's Federal advisory committee program.
- Designated Federal Officer (DFO) (41 CFR 102–3.120): Proposed revisions better reflect the central function of the DFO under the Act—including ensuring compliance with the Act, serving as a point of contact for members of the public, and maintaining appropriate record keeping and reporting of committee activities.

Overall, these proposed amendments will improve the clarity of FACA-related responsibilities, which will in turn enhance the performance of advisory committees.

D. Increasing Transparency, Diversity, Equity, Access, Accessibility, and Inclusion

The Act states that advisory committees must be ''fairly balanced in terms of the points of view represented and the functions to be performed.'' Sec. 5(b)(2), (c) (codified at 5 U.S.C. 1004(b)(2), (c)). Further, the Act's ''legislative history makes clear that the fairly balanced requirement was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee.'' *Nat'l Anti-Hunger Coal.* v. *Exec. Comm. of President's Priv. Sector Surv. on Cost Control,* 711 F.2d 1071, 1074 n. 2 (D.C. Cir. 1983).

While the Act itself does not provide instructions on how agencies are to attain fairly balanced committee membership, the legislative history indicates that the Act, ''[i]n the interest of economy and organization,'' places ''substantial power in [the implementing agency] to establish guidelines for advisory committees and to direct the agencies' use of them.'' 118 Cong. Rec. 16302 (1972) (statement of Rep. Moss) (referring to responsibilities that initially belonged to the Office of Management and Budget, which were later transferred to GSA in Executive Order 12024); see also 118 Cong. Rec. 16305 (1972) (statement of Rep. Fascell) (referring to responsibilities that were eventually transferred to GSA and stating that the Act ''is explicit and without any ambiguity as to the kind of authority [that the implementing agency] would have in making the guidelines''); 118 Cong. Rec. 30280 (1972) (statement of Sen. Roth) (recognizing that the Act would ''offer[ ] improved tools for the management of committees by [the implementing agency]'').

Over the past forty years, GSA has issued regulatory requirements and subregulatory guidance on how to ensure fairly balanced committee membership. Since 1983, GSA's regulations have required agencies to consider a ''cross-section'' of ''interested'' persons and groups with demonstrated professional or personal qualifications or experience to contribute to the ''functions'' and tasks to be performed. See Federal Advisory Committee Management, 48 FR 19324 (Apr. 28, 1983). In response to comments, that language evolved over time, before settling in 1989 on the formulation that exists in the current regulatory text: that agencies must consider ''a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee,'' which should ''include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed'' by the advisory committee. Federal Advisory Committee Management, 54 FR 41215 (Oct. 5, 1989). Further, in 2001, GSA responded to a commenter seeking further guidance on how to achieve fairly balanced committee membership by including an Appendix that encouraged agencies to consider several factors, including (1) the advisory committee's mission; (2) the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (3) the types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (4) the need to obtain divergent points of view on the issues before the advisory committee; and (5) the relevance of State, local, or tribal governments to the development of the advisory committee's recommendations. See 2001 Final Rule, 66 FR 37727, 37740.

Consistent with the agency's responsibility to ''prescribe administrative guidelines and management controls applicable to advisory committees, and . . . [to] provide advice, assistance, and guidance to advisory committees to improve their performance,'' Sec. 7(c) (codified at 5 U.S.C. 1006(c))—and in an effort to help committees to actually attain fairly balanced membership—GSA has long required agencies to submit ''a description of the agency's plan to attain balanced membership,'' 48 FR 19324 (Apr. 28, 1983). More recently, in an effort to collect more substantive information regarding an agency's plan to attain a fairly balanced membership, GSA released guidance to the FACA community in 2011 on ''Preparing Membership Balance Plans'' (MBPs). See *https://www.gsa.gov/cdnstatic/MembershipBalancePlanGuidance-November_2011.pdf.*

Now, GSA proposes updating the regulatory language pertaining to the MBP (specifically at 41 CFR 102–3.60) to reflect GSA's longstanding guidance. Furthermore, in response to feedback from agencies and consistent with recent Presidential Actions supporting diversity, equity, inclusion, and accessibility, GSA proposes clarifying the procedures for submitting a MBP that helps ensure fairly balanced committee membership. Under that proposal, an agency shall provide the Secretariat with a MBP that addresses how the agency will ensure representation of all points of view required for fairly balanced committee membership—including groups and entities potentially affected, those with relevant lived experience, and persons with demonstrated professional or personal qualifications—as well as how the agency intends to conduct broad outreach to ensure that the call for nominees reaches the targets and stakeholder groups likely to possess those points of view.

By requiring agencies to seek out individuals for potential membership that have relevant professional and/or lived experience with topics likely to come before the advisory committee, agencies can help to ensure that those insights and experiences inform and enhance the committee's work. See Syreeta Skelton-Wilson et al., ''Methods and Emerging Strategies to Engage People with Lived Experience,'' Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services (Dec. 21, 2021), *https://aspe.hhs.gov/sites/default/files/documents/47f62cae96710d1fa13b0f590f2d1b03/lived-experience-brief.pdf.* For example,

by engaging individuals with relevant lived experience, ''[s]ome initiatives, especially those involving legislatively mandated advisory groups or research commissions, [have] reported benefits such as an improved ability to deliver responsive services, programming, training, and technical assistance.'' Id. at 6. Overall, the proposed amendments will help to continue improving the quality of committee conclusions and recommendations—ultimately enhancing the performance of advisory committees.

Further, GSA proposes updating the rules and principles that apply to the management of advisory committees (specifically at 41 CFR 102–3.95 and 41 CFR 102–3.140), including (a) clarifying that adequate committee support includes access to adequate virtual meeting capabilities and access to communication modes that are more inclusive; (b) encouraging agencies to be as transparent, equitable, inclusive, and timely as possible when providing public access to committee activities and materials; and (c) fostering active engagement, participation, and expression from all committee members and any member dissenting opinions, as applicable. Overall, the proposed amendments will help improve public access to advisory committees and membership engagement, which will in turn enhance the performance of advisory committees.

Finally, GSA proposes improving public access to advisory committee meetings through amendments to 41 CFR 102–3.65, 102–3.150, and 102–3.165. The Act specifies that meeting notices shall be published in the **Federal Register** and states that GSA ''shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of each meeting in advance.'' Sec. 10(a)(2) (codified at 5 U.S.C. 1009(a)(2)). These amendments accordingly seek to expand public notification beyond publication in the **Federal Register** by encouraging use of agency websites and other online forums. These amendments will also improve public access to advisory committees and thus will enhance the performance of those advisory committees.

E. Updating the Language Regarding Merger

The Act instructs the Administrator of General Services to conduct an annual ''review of the activities and responsibilities of each advisory committee,'' in part ''to determine . . . whether the committee should be merged with other advisory committees.'' Sec. 7(b) (codified at 5 U.S.C. 1006(b)). Historically, merger of advisory committees has been infrequent. More recently, however, merger has become a more routine occurrence during the consultation process. Accordingly, to appropriately account for that trend, GSA proposes adding the term ''merge'' throughout Part 102–3—namely, to sections that apply to actions taken by an agency in the establishment, reestablishment, renewal, operation, and termination of Federal advisory committees.

F. Implementing Process Improvements—Charters

The Act identifies certain information that must be included in the charter for each committee. See Sec. 9 (codified at 5 U.S.C. 1008). Over a decade ago—consistent with the Administrator's responsibility to ''provide advice, assistance, and guidance to advisory committees to improve their performance,'' Sec. 7(c) (codified at 5 U.S.C. 1006(c))—GSA issued guidance on Preparing Federal Advisory Committee Charters, available at: *https://www.gsa.gov/cdnstatic/Preparing_FAC_Charters_%28F%29-110211.pdf.* In addition to setting forth the requirements included in Section 9 of the Act (codified at 5 U.S.C. 1008), the guidance also includes other information that enhances the transparency of advisory committee operation to the public, such as information on the authority, formation of subcommittees, and recordkeeping. GSA now proposes updating the charter section at 41 CFR 102–3.75 to reflect this current guidance—ultimately with the goal of increasing transparency with respect to the operation of each advisory committee and enhancing the performance of advisory committees.

Further, GSA proposes revising the charter amendment process. The current regulatory process for amending charters (per the 2001 Final Rule) stipulates two separate processes for amendments—one that applies to minor changes, and the other that applies to major changes. Those processes, however, are identical except for a requirement to consult with the Secretariat as to any major changes. Although GSA's intent was to forgo the need for consultation with the Secretariat if the changes were truly minor, there has been confusion in the FACA community regarding what specifically constitutes a minor amendment. Further, this confusion has resulted in a number of agencies choosing to consult with the Secretariat on all charter amendments. Accordingly, to eliminate confusion, GSA proposes consolidating the charter amendment sections into a singular process, to appear at 41 CFR 102–3.80. In addition, consistent with GSA's priority of increasing transparency with respect to advisory committee activities (as explained above), GSA proposes requiring that agencies post notice of the amendment to the relevant advisory committee website (if one exists).

G. Implementing Process Improvements—Agency Administrative Guidelines

The Act requires each agency head to ''establish uniform administrative guidelines and management controls for advisory committees established by that agency.'' Sec. 8(a) (codified at 5 U.S.C. 1007(a)). In recent years, the FACA community has inquired about appropriate content for those guidelines. In response, GSA now proposes revising 41 CFR 102–3.125 to clarify some of the operational components that agency administrative guidelines should reflect—such as specifying the content of committee bylaws and providing instructions on how to identify, calculate, and document advisory committee costs.

H. Severability

GSA proposes adding a new subpart on severability at 41 CFR 102–3.190, which states that all provisions included in Part 102–3 are separate and severable from one another.

Regulations concerning Federal Advisory Committee Management do a number of things—from outlining public notification requirements to explaining the role of an agency head. Overall, each constituent element in Part 102–3 operates independently to help ensure that standards and uniform procedures govern the establishment, operation, administration, and duration of advisory committees. See Sec. 2(b)(4) (codified at 5 U.S.C. 1002(b)(4)).

Accordingly, if any particular provision in Part 102–3 were to be stayed or invalidated by a reviewing court, the remaining provisions would continue to function effectively for advisory committees. For example, if 41 CFR 102–3.75 on charter requirements were invalidated, that would not make 41 CFR 102–3.155, which lists the requirements for facilitating an advisory committee meeting that is closed to the public, unworkable. Likewise, if 41 CFR 102–3.60(b)(3) on attaining fairly balanced membership were invalidated, that would not prevent an agency from relying on the definitions section at 41 CFR 102–3.25 to understand what ''committee staff'' means.

Further, any cross-references that appear throughout Part 102–3 are

duplicative and are intended only to make the regulations more user-friendly. Invalidation of a particular provision that is cross-referenced elsewhere will not materially alter the provision that contains the cross-reference.

In summary, removal of any particular provision from Part 102–3 would not render the entire regulatory scheme unworkable. Thus, GSA considers each of the provisions in Part 102–3 to be separate and severable from one another. In the event of a stay or invalidation of any particular provision, it is GSA's intention that the remaining provisions shall continue in effect.

II. Expected Impact of This Proposed Rule

This rule will have a cost impact on the Federal Government; however, it will not impact the private sector or state, local, or Tribal Governments, as it relates solely to agency administration and management. GSA has already incorporated a number of the changes into the consultation process that occurs between the agencies and GSA, the government-wide training for agencies and personnel involved with committee work, and routine interactions regarding agency committee management programs.

III. Expected Costs and Benefits

GSA conducted an economic analysis of the proposed changes and determined that during the first and subsequent years after publication of the rule, there are compliance costs associated with the new rule. GSA estimates the overall total additional undiscounted cost of this proposed rule to be $7,007,064 over a ten-year period. See Section VI.A (providing a full breakdown of compliance costs). There are numerous benefits described throughout Section I—including implementing legislative updates; helping to ensure that regulations concerning Federal Advisory Committee Management are user-friendly; clarifying and updating key FACA roles; increasing transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; updating language regarding merger; and implementing process improvements with respect to advisory committee charters and agency administrative guidelines.

IV. Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 12866, 13463, and 14094 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 14094 supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has designated this rule as a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866.

V. Regulatory Flexibility Act

GSA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed rule applies only to Federal agencies and employees.

A. Government Costs

GSA has determined, based on an economic model, that there are compliance costs associated with the Proposed Rule. The following section is a list of activities related to regulatory familiarization and compliance that GSA anticipates will occur. Compliance activities would take place in the FACA community and would consist of amending charters, revising guidelines, training, and outreach for diversity, equity, inclusion, access, and accessibility. These assumptions were generated based on internal GSA expertise. GSA estimates this cost by multiplying the time required to conduct the compliance activity by the estimated compensation. GSA calculates the estimated hourly compensation using the U.S. Office of Personnel Management's 2023 General Schedule (GS) Rest of United States Locality Pay Table and the full fringe benefit cost factor. [1] [2] [3]

1. Amending Charters

GSA estimates it will take 25 government employees on average with a GS–14 step five average hourly rate of $86.12/hour, three hours each in years 1 to 10 to amend charters with updated information from this rule. Therefore, GSA estimates the total estimated cost for this part of the rule per year to be $6,459 (= [25 employees] × [$86.12/hour] × [3 hours]).

2. Revising Guidelines

GSA estimates it will take 57 government employees, Committee Management Officers with a GS–15 step five average hourly rate of $101.30/hour, four hours each in year 1 to update guidelines with updated information from this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be $23,096 (= [57 employees] × [$101.30/hour] × [4 hours]).

GSA estimates it will take 987 government employees, Designated Federal Officers with a GS–12 step five average hourly rate of $61.29/hour, 0.5 hours each in year 1 to update guidelines with updated information from this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be $30,245 (= [987 employees] × [$61.29/hour] × [0.5 hours]).

3. Training

GSA estimates it will take 57 government employees, Committee Management Officers with a GS–15 step five average hourly rate of $101.30/hour, 0.5 hours each in year 1 to deliver training related to changes with this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be $2,887 (= [57 employees] × [$101.30/hour] × [0.5 hours]).

GSA estimates it will take 1,552 government Full-Time Equivalents (FTEs) with a GS–12 step five average hourly rate of $61.29/hour 0.5 hours each in year 1 to receive training related to changes with this rule. Therefore, GSA estimates the total estimated cost for this part of the rule to be $47,558 (= [1,552 FTEs] × [$61.29/hour] × [0.5 hours]).

4. Outreach for Diversity, Equity, Inclusion, Access, and Accessibility

GSA estimates it will take government employees with a GS–13 step five average hourly rate of $72.88/hour four hours per membership slot, in years 1 to 10 to conduct additional outreach in identifying 1,050 new members that may be able to participate in new advisory committees—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the rule per year to be $306,081 (= [1,050 membership slots] × [$72.88/hour per government employee] × [4 hours]).

GSA estimates it will take government employees with a GS–13 step five average hourly rate of $72.88/hour) 0.5 hours per membership slot in year 1, to

[1] *U.S. Office of Personnel Management General Schedule.*

[2] *OMB Memo M–08–13, dated March 11, 2008.*

[3] *Fact Sheet: Computing Hourly Rates of Pay Using the 2087-Hour Divisor.*

conduct additional outreach in identifying 31,831 new members that may be able to participate in U.S. Department of Health and Human Services grant reviews—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the rule to be $1,163,509 (= [31,831 membership slots] × [$72.88/hour per government employee] × [0.5 hours]).

GSA estimates it will take government employees with a GS–13 step five average hourly rate of $72.88/hour) one hour per membership slot in years 1 and 2 to conduct additional outreach in identifying 17,937 new members that may be able to participate in non-grant review Federal advisory committees—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the rule per year to be $1,307,185 (= [17,937 membership slots] × [$72.88/hour] × [1 hour]).

5. Total Government Costs

GSA estimates the total government costs to be $7,007,064 for years 1 to 10. A breakdown of the total estimated government costs by year is provided in the table below.

Year	Costs
1	$2,887,020
2	1,619,725
3	312,540
4	312,540
5	312,540
6	312,540
7	312,540
8	312,540
9	312,540
10	312,540
Total	7,007,064

B. Overall Total Additional Costs

The overall total additional undiscounted cost of this final rule is estimated to be $7,007,064 over a ten-year period. A summary of the estimated costs calculated for a ten-year period at a 3- and 7-percent discount rate is provided in the table below. GSA did not identify any cost savings based on the impact of the rule.

Summay	Total costs
Present Value (3 percent)	$6,397,671
Annualized Costs (3 percent)	750,002
Present Value (7 percent)	5,742,952
Annualized Costs (7 percent)	817,667

C. Analysis of Alternatives

The preferred alternative is the process laid out in the analysis above. However, GSA has analyzed one alternative to the preferred process.

As an alternative, GSA could decide not to update regulations concerning Federal Advisory Committee Management; however, that alternative would leave outdated content in the regulations, which would continue to cause confusion, impede accessibility and transparency by excluding the expansion of virtual formats, and waste government time and resources by forcing agencies to seek clarification on sections that contain unclear and unnecessary language. In light of those concerns, GSA rejects the alternative.

VI. Paperwork Reduction Act

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

List of Subjects in 41 CFR Part 102–3

Advisory committees; Governmental property management.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

Therefore, GSA proposes to amend 41 CFR part 102–3 as set forth below:

PART 102–3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

■ 1. The authority citation for part 102–3 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C. Chapter 10; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

■ 2. Amend § 102–3.5 by revising the first sentence to read as follows:

§ 102–3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework and establishes minimum requirements that must be used by agency heads and Federal officers in applying the Federal Advisory Committee Act, as amended (FACA or ''the Act''), 5 U.S.C., Chapter 10, to advisory committees they establish and operate. * * *

■ 3. Revise § 102–3.10 to read as follows:

§ 102–3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, administration, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, recommendations, outcomes, and cost of advisory committees through reporting requirements. These requirements form the basis for implementing the Act at both the agency and government-wide levels.

§§ 102–3.15 and 102–3.20 [Removed and Reserved]

■ 4. Remove and reserve §§ 102–3.15 and 102–3.20.

■ 5. Amend § 102–3.25 by—

■ a. Revising the definitions for ''Act'', ''Advisory committee'' and ''Agency'';

■ b. Adding, in alphabetical order, the definitions for ''Agency Head'' and ''Chairperson'';

■ c. Revising the definitions for ''Committee Management Officer'', ''Committee Management Secretariat'', ''Committee Meeting'', ''Committee member'' and ''Committee staff'', and ''Designated Federal Officer'';

■ d. Adding, in alphabetical order, the definition for ''Group Federal Officer (GFO)''; and

■ e. Revising the definitions for ''Independent Presidential advisory committee'', ''Non-discretionary advisory committee'', ''Subcommittee'', and ''Utilized''.

The additions and revisions read as follows:

§ 102–3.25 What definitions apply to this part?

* * * * *

Act means the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. Chapter 10.

* * * * *

Advisory committee means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining the group's advice or recommendations for the President or on issues or policies within the scope of agency responsibilities (codified at 5 U.S.C. 1001). Advisory committees are subject to the Act unless specifically exempted by the Act, or by other statutes, or not covered by this Part.

Agency has the same meaning as in 5 U.S.C. 551(1).

Agency Head means the head of an executive branch agency, department, or

commission, or their designated delegate.

Chairperson means the advisory committee or subcommittee member who serves in this role on an advisory committee or subcommittee by statutory requirement, or by appointment or invitation by Presidential authority or an agency's authority.

Committee Management Officer (CMO) means the individual designated by the agency head to implement the provisions of section 8(b) of the Act (codified at 5 U.S.C. 1007(b)) and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat (Secretariat) means the organization established pursuant to section 7(a) of the Act (codified at 5 U.S.C. 1006(a)), which is responsible for all matters relating to advisory committees and carries out the responsibilities of the Administrator under the Act and E.O. 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or electronically, such as using telecommunications or through a virtual platform), held with the approval of an agency, and with a Designated Federal Officer in attendance, for the purpose of deliberating on the matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation by the appointing authority on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee. Committee staff serve in coordination with the Designated Federal Officer.

Designated Federal Officer (DFO) means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act (codified at 5 U.S.C. 1009(e) and (f)) and any advisory committee procedures of the agency under the control and supervision of the CMO.

* * * * *

Group Federal Officer (GFO) means an individual who assists the CMO in overseeing and managing a portion of the agency's Federal advisory committee management program.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress, or by the President or the President's delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A non-discretionary advisory committee required by statute generally is identified specifically in a statute by name, purpose, or function(s), and its establishment or termination is beyond the legal discretion of an agency head.

* * * * *

Subcommittee means the group that reports to an advisory committee, and not directly to a Federal officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee. However, if a subcommittee makes advice or recommendations directly to a Federal officer or agency, it is no longer functioning as a subcommittee, and must: file a charter following the requirements of subpart § 102–3.70, that includes the information required in § 102–3.75; comply with all of the requirements of this part; and will be counted as a chartered advisory committee at an agency.

Utilized by means a committee that is one over which the President or a Federal officer or agency exercises actual management or control of its operation, whether or not it was established by the Federal Government.

■ 6. Amend § 102–3.30 by revising the introductory text and paragraphs (a) through (d) to read as follows:

§ 102–3.30 What policies govern the use of advisory committees?

These are the policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government.

(b) *Termination.* Advisory committees terminate pursuant to § 102–3.55.

(c) *Fairly balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed (as explained further in § 102–3.60).

(d) *Open meetings.* Advisory committee meetings must be open to the public except when a meeting is closed or partially closed in accordance with the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(1) *Compliance with section 504 of the Rehabilitation Act of 1973, as amended.* With the support of the sponsoring Federal department or agency, the advisory committee must provide reasonable modifications for individuals with disabilities when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the program or activity. The advisory committee must also take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, including by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the advisory committee. Examples of auxiliary aids and services include qualified interpreters and information in alternate formats, such as braille or large print. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. An advisory committee may not charge for the provision of auxiliary aids and services. An advisory committee is not required to provide an aid or service if it can demonstrate that providing that aid or service would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. See 29 U.S.C. 794. Advisory committees should consider how to ensure that advisory committee members and members of the public are made aware of available auxiliary aides and services, as well as the option to request reasonable modifications in advance of meetings, and should identify a point of contact to receive and respond to requests for reasonable modifications.

(2) *Ensuring language access and provision of language assistance services.* With the support of the sponsoring Federal department or agency, the advisory committee must ensure equal participation by individuals with limited English proficiency. This may include conducting outreach and providing notifications in the language(s) used by the affected communities and potential or actual advisory committee members, as well as providing language assistance services, including electronic and printed written translated documents and oral interpretation services free of

charge and in a timely manner, when such services are necessary to provide meaningful access to a limited English proficient individual, consistent with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.,* and E.O. 13166: Improving Access to Services for Persons With Limited English Proficiency (August 11, 2000), 3 CFR, 2000 Comp., p. 289.

* * * * *

■ 7. Revise § 102–3.35 to read as follows:

§ 102–3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee.

(b) If a subcommittee reports directly to a Federal officer or agency, it is no longer functioning as a subcommittee. In that case, the subcommittee must be chartered as a new advisory committee, must comply with all of the requirements of this part, and will be counted as a chartered advisory committee at an agency.

(c) Unless required by statute or Presidential directive, the creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee in coordination with the DFO.

■ 8. Revise § 102–3.40 to read as follows:

§ 102–3.40 What types of committees or groups are not covered by the Act and this part?

In addition to the committees created by the National Academy of Sciences, Engineering, and Medicine and the National Academy of Public Administration (except as covered by subpart E of this part), the Central Intelligence Agency, and the Federal Reserve, the following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) Any advisory committee established or utilized by the Office of the Director of National Intelligence, if the Director of National Intelligence determines that for reasons of national security such advisory committee cannot comply with the requirements of the Act;

(b) Committees specifically exempted by statute;

(c) Committees created by non-Federal entities and not actually managed or controlled by the executive branch;

(d) Groups assembled where attendees provide individual advice to a Federal official(s);

(e) Groups assembled to exchange facts or information with a Federal official(s);

(f) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local, and Tribal Governments (or their designated employees with authority to act on their behalf), acting in their official capacities. The purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), and OMB Memorandum M–95–20, dated September 21, 1995, available on the Committee Management Secretariat website);

(g) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(h) Local civic groups whose primary function is that of rendering a public service with respect to a Federal program;

(i) Groups established to advise State or local officials;

(j) Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature; and

(k) Any committee established, created, managed, and staffed by the government of a foreign country; or any committee created, managed, and staffed by an executive branch agency to advise or make recommendations to a government official, government group, or government agency of a foreign country.

Appendix A to Subpart A of Part 102–3 [Removed]

■ 9. Remove appendix A to subpart A of part 102–3.

■ 10. Revise the heading of subpart B to read as follows:

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, Merged, and Terminated?

■ 11. Revise § 102–3.45 to read as follows:

§ 102–3.45 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, merger, and termination of advisory committees. These procedures include, but are not limited to, consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the **Federal Register**, and amending an advisory committee charter.

■ 12. Amend § 102–3.50 by revising paragraphs (a) through (d) to read as follows:

§ 102–3.50 What are the authorities for establishing advisory committees?

* * * * *

(a) *Required by statute.* By law where Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (non-discretionary);

(b) *Presidential authority.* By E.O. of the President or other Presidential directive (non-discretionary);

(c) *Authorized by statute.* By law where Congress authorizes, but does not direct the President or an agency to establish it (discretionary); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other agency-authorizing statutes (discretionary).

■ 13. Amend § 102–3.55 by revising paragraphs (a)(1) and (4) to read as follows:

§ 102–3.55 What rules apply to the duration of an advisory committee?

(a) * * *

(1) The statutory authority used to establish the advisory committee provides a different duration or termination, either stated in or implied by operation of the statute;

* * * * *

(4) The President or agency head renews the advisory committee not later than two years after its date of establishment, renewal, or

reestablishment in accordance with § 102–3.60. If the President or an agency needs an advisory committee that was terminated or an advisory committee terminated because it was not renewed in a timely manner, it can be reestablished in accordance with § 102–3.60.

* * * * *

■ 14. Revise § 102–3.60 to read as follows:

§ 102–3.60 What procedures are required to establish, renew, reestablish, or merge a discretionary advisory committee?

(a) *Consultation with the Secretariat.* The agency head must first consult with the Secretariat. As part of this consultation, agency heads should provide the Secretariat with a full understanding of the background and purpose behind the advisory committee, and the Secretariat should share its knowledge and experience with the agency.

(b) *Include required information in the consultation with the Secretariat.* Consultations covering the establishment, renewal, reestablishment, or merger of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest or why it is necessary to merge one or more advisory committees;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing or other methods of public engagement; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership, as appropriate based on the nature and functions of the advisory committee, as documented through the agency's Membership Balance Plan (MBP).

(i) *Points of view required.* During the formation of the advisory committee membership and as membership vacancies occur, agencies should ensure that they fully consider and understand the potential implications or anticipated impacts of the advisory committee's potential recommendations. This includes consideration of the groups and entities potentially include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed by the committee. The MBP shall describe the agency's conclusions regarding the points of view that would promote fairly balanced committee membership.

(ii) *Outreach.* Having identified the points of view that would promote a fairly balanced advisory committee membership, agencies should conduct broad outreach to ensure that the call for nominees reaches the targets and stakeholder groups likely to possess those points of view. Agencies should further ensure outreach to racially, ethnically, culturally, economically, and otherwise diverse groups, as appropriate to the nature and functions of the advisory committee. The MBP shall describe the agency's intended outreach efforts to accomplish these goals.

(iii) *Selection.* In the selection of members for the advisory committee and as membership vacancies occur, agencies shall ensure representation of persons with the points of view identified pursuant to this section that would promote a fairly balanced advisory committee membership. The MBP shall describe the agency's intended selection criteria and approach.

■ 15. Revise § 102–3.65 to read as follows:

§ 102–3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, or reestablished, or a new committee is established as the result of a merger of existing committees. The notices should be written in plain language and should not assume that the public has background knowledge or familiarity with an agency or the advisory committee. The agency is also strongly encouraged to make the notice available electronically in the languages represented by the affected communities on the agency's advisory committee website, if one exists, as well as use additional notification methods (such as an agency's social media accounts) to reach advisory committee stakeholders (such as professional trade or membership groups, civic groups, community-based organizations, ethnic media, representatives of affected stakeholder groups, and colleges and universities). Electronic notices must meet the requirements of Title VI and E.O. 13166, as well as obligations under section 508 of the Rehabilitation Act.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102–3.60(a), the agency must publish a notice in the **Federal Register** announcing that the advisory committee is being established (including due to a merger), renewed, or reestablished. When establishing a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of advisory committee establishment (including due to a merger) and reestablishment must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency in exceptional circumstances (such as a national emergency or natural disaster). This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

■ 16. Amend § 102–3.70 by revising the introductory text, the introductory text of paragraph (a), and paragraphs (a)(3), (b), and (c) to read as follows:

§ 102–3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the CMO or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To amend a charter, or establish (including due to a merger), renew, or reestablish a discretionary advisory committee, a charter must be filed with:

* * * * *

(3) The Library of Congress; and

* * * * *

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except that the date of establishment, renewal, or reestablishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and be chartered as a new advisory committee as they are no longer functioning as a subcommittee.

■ 17. Revise § 102–3.75 to read as follows:

§ 102–3.75 What information must be included in the charter of an advisory committee?

Purpose and contents of an advisory committee charter. An advisory committee charter is intended to

provide a description of an advisory committee's mission, goals, and objectives. The charter must contain the following information:

(a) The advisory committee's official designation (official name);

(b) The legal authority that permits the advisory committee to be established;

(c) The objectives and the scope of the advisory committee's activities;

(d) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(e) The agency or Federal officer to whom the advisory committee submits its recommendations;

(f) The agency responsible for providing the necessary support to the advisory committee, including the name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act (codified at 5 U.S.C. 1005(b)), if appropriate;

(g) The estimated annual costs to operate the advisory committee in dollars and person years (full time equivalents or FTE);

(h) The role of the DFO;

(i) The estimated number and frequency of the advisory committee's meetings;

(j) The period of time necessary to carry out the advisory committee's purpose(s);

(k) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(l) The estimated number of advisory committee members, the expertise or experience required, and the anticipated advisory committee member designations;

(m) Whether subcommittees may be created, by whom, and how they operate under the chartered advisory committee;

(n) The relevant recordkeeping disposition schedule(s); and

(o) The date the charter is filed in accordance with § 102–3.70.

■ 18. Revise § 102–3.80 to read as follows:

§ 102–3.80 How are charter amendments accomplished?

Responsibility and limitation. The agency head is responsible for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102–3.60. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee, as stated below:

(a) *Non-discretionary advisory committees.* The agency head must ensure that any changes made to current charters are consistent with the relevant authority. When Congress by law, or the President by Presidential directive (*e.g.,* E.O.), changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Presidential directive (*e.g.,* E.O.), and file the amended charter as specified in § 102–3.70, and notify the public as specified in paragraph (c) of this section.

(b) *Discretionary advisory committees.* The charter of a discretionary advisory committee must be amended when an agency head determines that provisions of a filed charter are inaccurate, specific provisions have changed or become obsolete with the passing of time, or advisory committees need to be merged. Amendments could also include changing the name of the advisory committee, advisory committee authority, number of members, estimated number or frequency of meetings, objectives and scope, duties, and estimated costs. The agency must amend the charter language as necessary and the agency must:

(1) First consult with the Secretariat and explain the purpose of the changes and why they are necessary. The Secretariat will notify the agency when the consultation process is complete.

(2) Upon receiving notice from the Secretariat that the consultation is complete, file the amended charter as specified in § 102–3.70, and notify the public as specified in paragraph (c) of this section.

(c) *Public notification of charter amendments.* Agencies must post an announcement and a copy of the charter amendment on the advisory committee website. If an advisory committee website is not available, the agency must publish a notice of amendment in the **Federal Register**. **Federal Register** notice publishing and website posting of charter amendments may be performed concurrently with the filing of the charter. The publishing requirement in the **Federal Register** does not apply to a non-discretionary advisory committee if the amendment was the result of a legislative change or Presidential directive.

§ 102–3.85 [Removed and Reserved]

■ 19. Remove and reserve § 102–3.85.

Appendix A to Subpart B of Part 102–3 [Removed]

■ 20. Remove appendix A to subpart B of part 102–3.

■ 21. Revise § 102–3.90 to read as follows:

§ 102–3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the U.S. General Services Administration (GSA), the agency head, the CMO, and the DFO under the Act.

■ 22. Revise § 102–3.95 to read as follows:

§ 102–3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support and access.* Before establishing an advisory committee, agencies should identify requirements and ensure that adequate resources are available to support anticipated activities. Considerations related to support could include work and meeting space, necessary technology, supplies and equipment (*e.g.,* adequate virtual meeting capabilities), Federal staff support, access to key decisionmakers, and member access to meetings (*e.g.,* travel reimbursement). These considerations should also include support for access to communication modes that are inclusive of individuals with limited English proficiency or individuals with disabilities (*e.g.,* adequate virtual meeting capabilities). These considerations should also include whether there are physical barriers to attending in-person meetings.

(b) *Practice openness.* Agencies should seek to be as transparent, equitable, inclusive, and timely as possible when providing public access to advisory committee activities and materials. Agencies should minimize, to the extent possible, closing or partially closing meetings, and are encouraged where appropriate to open subcommittee meetings to the public. Agencies should also create public facing websites at both the agency and advisory committee level to help the public understand an agency's advisory committee program, and use additional notification methods, as appropriate, to reach advisory committee stakeholders, pursuant to section 10 of the Act (codified at 5 U.S.C. 1009). Such websites must be in compliance with E.O. 13166, section 508 of the Rehabilitation Act, and the 21st Century Integrated Digital Experience Act (IDEA). Section 3(e) of 21st Century

IDEA requires any public Federal agency website created after December 2018 to be in compliance with the website standards of the Technology Transformation Services of the General Services Administration [GSA]. IDEA, Public Law 115–336, 132 Stat. 5025;.

(c) *Promote diversity and inclusivity.* Once the Federal advisory committee is formed, committee chairs and DFOs should foster a culture of diversity and inclusion by encouraging engagement, participation, and expression from all committee members and any members with dissenting opinions, as applicable.

(d) *Seek feedback.* Agencies should continually seek feedback from advisory committee members and the public regarding the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decision making and make this information available to the public.

■ 23. Revise § 102–3.100 to read as follows:

§ 102–3.100 What are the responsibilities and functions of GSA?

(a) The responsibilities of the Administrator under section 7 of the Act (codified at 5 U.S.C. 1006) have been delegated by the Administrator to the Committee Management Secretariat within GSA's Office of Government-wide Policy.

(b) The Secretariat carries out its responsibilities by:

(1) Engaging in consultations with agencies on the establishment, re-establishment, renewal, merger, and termination of discretionary advisory committees;

(2) Prescribing guidance applicable to advisory committees;

(3) Assisting other agencies in implementing and interpreting the Act;

(4) Conducting an annual comprehensive review of Government-wide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;

(5) Developing and providing Government-wide training regarding the Act and related statutes and principles;

(6) Supporting the Interagency Committee on Federal Advisory Committee Management and FACA Attorney Council to improve compliance with the Act;

(7) Designing and maintaining a FACA database to facilitate data collection, reporting, and use of information required by the Act;

(8) Preparing regulations on Federal advisory committees;

(9) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and

(10) Providing recommendations for transmittal by the Administrator to Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

■ 24. Amend § 102–3.105 by—

■ a. Revising the introductory text and paragraphs (a), (b) and (c);

■ b. Redesignating paragraphs (d) through (j) as paragraphs (f) through (l);

■ c. Adding new paragraphs (d) and (e);

■ d. Revising the newly designated paragraphs (f), (j), (k), and (l).

The revisions and additions read as follows:

§ 102–3.105 What are the responsibilities of an agency head?

When a committee is utilized by or established by an agency, the agency head must:

(a) Comply with the Act, this part, and other applicable laws and regulations;

(b) Issue administrative guidelines and management controls providing the details that advisory committee staff need to implement during the creation, operation, and termination of their Federal advisory committees;

(c) Designate a CMO;

(d) Designate a DFO for each advisory committee and its subcommittees;

(e) Approve the advisory committee charters for establishments, renewals, re-establishments, or mergers;

(f) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c);

* * * * *

(j) Assure that the interests and affiliations of committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics including any supplemental agency requirements, and other Federal ethics rules;

(k) Appoint or invite individuals to serve on committees, unless otherwise provided for by a specific statute or Presidential directive; and

(l) Provide the opportunity for reasonable participation, including accessibility considerations, by the public in advisory committee activities, subject to § 102–3.140 and the agency's guidelines.

■ 25. Amend § 102–3.110 by revising paragraphs (a) and (b) to read as follows:

§ 102–3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

* * * * *

(a) Comply with the Act, this part, and other applicable laws and regulations;

(b) Consult with the Secretariat concerning the designation of a CMO and DFO; and

* * * * *

■ 26. Amend § 102–3.115 by—

■ a. Revising section heading and introductory text;

■ b. Removing from paragraph (b) ''§ 102–3.175(b)'' and adding ''§ 102–3.175(b)'' in its place; and

■ c. Removing from paragraph (d) ''§ 102–3.105'' and adding ''§ 102–3.105(f)'' in its place.

The revisions read as follows:

§ 102–3.115 What are the responsibilities and functions of an agency CMO?

In addition to implementing the provisions of section 8(b) of the Act (codified at 5 U.S.C. 1007(b)), the CMO will carry out all responsibilities delegated by the agency head and manage the agency FACA program. Management includes consulting with the Secretariat on Federal advisory committees, as delegated by the agency head; tracking charter establishments, renewals, re-establishments, mergers, amendments, and terminations; coordinating the agency Annual Comprehensive Review within their agency and with the Secretariat; providing training for agency staff supporting the FACA program; working with GFOs, as appropriate, and DFOs; and attending GSA government-wide FACA training and Interagency Committee on Federal Advisory Committee Management meetings. The CMO should create and maintain a public facing CMO website to further the public's understanding of the agency's FACA program. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act (codified at 5 U.S.C. 1009(b), 1011(a), and 1012, respectively) are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to—

* * * * *

■ 27. Revise § 102–3.120 to read as follows:

§ 102–3.120 What are the responsibilities and functions of a DFO?

(a) The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for

each advisory committee and its subcommittees, who must:

(1) Ensure that their committee activities comply with the Act, this part, their agency administrative procedures, and any other applicable laws and regulations;

(2) Approve or call all meetings of the advisory committee or subcommittee;

(3) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;

(4) Attend all advisory committee and subcommittee meetings for their duration;

(5) Fulfill the requirements under section 10(b) of the Act (codified at 5 U.S.C. 1009(b));

(6) Adjourn any meeting when he or she determines it to be in the public interest;

(7) Chair any meeting when so directed by the agency head;

(8) Maintain information on advisory committee activities and provide such information to the public, as applicable; and

(9) Ensure advisory committee members and subcommittee members, as applicable, receive the appropriate training (*e.g.,* FACA overview, ethics training) for efficient operation and compliance with the Act and this part.

(b) The DFO should ensure a public facing website is created and maintained (that complies with the requirements of section 508 of the Rehabilitation Act of 1973) for each advisory committee, and include information such as: the advisory committee charter; relevant laws, regulations, and guidance; advisory committee member rosters and subcommittee member rosters, as applicable; **Federal Register** notices; meeting information (such as agendas, meeting materials, and minutes); reports and recommendations; and any other information that would increase the transparency and public understanding of advisory committee functions and activities and assist in fulfilling the requirements under section 10(b) of the Act (codified at 5 U.S.C. 1009(b)).

■ 28. Revise § 102–3.125 to read as follows:

§ 102–3.125 What is required to be included in an agency's administrative guidelines to implement an advisory committee?

An agency's administrative guidelines provide the details that advisory committee staff need to implement FACA requirements during the creation, operation, and termination of their advisory committees.

(a) *Advisory committee bylaws.* Advisory committee bylaws should be developed by the agency, with advisory committee input and buy-in. Agency guidelines should specify the content of bylaws and ensure that they provide clear operating procedures for advisory committee meetings, other committee activities, and the relationship between committee members, the DFO, and agency staff.

(b) *Advisory committee costs.* Agency guidelines must:

(1) Provide instructions on how to identify, calculate, and fully document advisory committee costs; and

(2) Ensure agency committee cost records match the data reported to Congress and the public through the FACA database.

■ 29. Revise § 102–3.130 to read as follows:

§ 102–3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members?

In developing guidelines to implement the Act, this part, and other applicable laws and regulations at the agency level, agency heads should address the following issues:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority. Agency heads are encouraged to set member term limits, where possible, so that agencies continually ensure the committee is fairly balanced throughout the life of the advisory committee.

(b) *Compensation of advisory committee members.* Agencies are not required to pay and are not prohibited from paying their advisory committee members, unless required to or prohibited from doing so by statute or Presidential authority. In determining the rate of compensation (per § 102–3.105(h)) the agency head may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)) not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(c) *Other compensation considerations.* In establishing rates of pay for advisory committee members, the agency must comply with any applicable statutes, E.O.s, regulations, and administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members, an agency must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required for the work involved.

(d) *Federal employees assigned to an advisory committee.* Federal employees serving as either an advisory committee member or as a staff person remain covered during the assignment by the compensation system of their employing agency. Federal employees serving as an advisory committee member or as a staff person must first obtain both the approval of their direct supervisor and the respective committee's DFO prior to serving in either capacity.

(e) *Other appointment considerations.* Any advisory committee staff person who is not a current Federal employee must be appointed in accordance with applicable agency procedures, in consultation with the DFO, and, as appropriate, the members of the advisory committee involved.

(f) *Travel expenses.* Advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem, per the rates established for employees by the Administrator of General Services at 5 U.S.C. 5702.

(g) *Services for advisory committee members with disabilities.* While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant as those that may be provided to employees per 5 U.S.C. 3102. Additional accommodations should be discussed in order to maximize accessibility, including technology, per section 508 of the Rehabilitation Act.

Appendix A to Subpart C of Part 102–3 [Removed]

■ 30. Remove appendix A to subpart C of part 102–3.

■ 31. Revise § 102–3.140 to read as follows:

§ 102–3.140 What policies apply to advisory committee meetings?

(a) The agency head for a discretionary or non-discretionary advisory committee established or utilized by that agency, or the chairperson for an independent

Presidential advisory committee, must ensure that:

(1) Each advisory committee meeting is held at a reasonable time and in a manner or place accessible to the public and includes consideration of affected communities, as appropriate, as well as facilities or technology that are readily accessible to and usable by persons with disabilities, consistent with the requirements set forth in section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(2) The physical meeting room is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public. If electronic forums are used, agencies should opt for technology features that are compliant with section 508 of the Rehabilitation Act, accommodate advisory committee members, advisory committee or agency staff, and allow for maximum participation by members of the public, as appropriate;

(3) Any member of the public is permitted to file a written statement with the advisory committee, whether or not the statement is related to a specific meeting;

(4) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(5) Any advisory committee meeting conducted in whole or part through any electronic medium (such as a teleconference or through a virtual platform) meets the requirements of this subpart.

(b) The **Federal Register** notices, agendas, and supporting materials should be posted on the agency advisory committee website (if one exists) as soon as they are available or at the time they are provided to the advisory committee members.

■ 32. Revise § 102–3.145 to read as follows:

§ 102–3.145 What policies apply to subcommittee meetings?

If a subcommittee provides advice or recommendations directly to a Federal officer or agency, or if its advice or recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with the requirements of this subpart.

■ 33. Revise § 102–3.150 to read as follows:

§ 102–3.150 How are advisory committee meetings announced to the public?

(a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, physical place (and/or instructions to connect electronically), and purpose of the meeting;

(3) Whether meeting registration is required;

(4) A summary of the agenda, and/or topics to be discussed and instructions on how to access meeting materials;

(5) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed in whole or in part, state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c);

(6) Instructions for submitting written comments, and oral comments if permitted;

(7) Instructions on how to submit a request for physical meeting or electronic meeting accommodations consistent with the requirements of E.O. 13166 and section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended; and

(8) The name and telephone number (or email) of the DFO or other responsible agency official, or agency electronic mailbox for the committee, to contact for additional information concerning the meeting.

(b) In exceptional circumstances, such as a national emergency or natural disaster, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.

(c) In addition to the **Federal Register**, and consistent with standard agency practice, agencies should announce meetings through additional notification methods, such as websites and social media, to reach committee stakeholders.

■ 34. Amend § 102–3.155 by revising the introductory text and paragraphs (a), (b), and (c) to read as follows:

§ 102–3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the DFO must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justifies the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by 41 CFR 102–3.150;

(b) *Seek General Counsel review.* The Office of the General Counsel (or equivalent legal office) of the agency or, in the case of an independent Presidential advisory committee, GSA's Office of the General Counsel, should review all requests to close meetings;

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, GSA, finds that the request is consistent with the provisions of the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting will be closed; and

* * * * *

■ 35. Amend § 102–3.160 by revising paragraphs (a) and (b) to read as follows:

§ 102–3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

* * * * *

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for deliberation by advisory committee or subcommittee members in a public meeting of the advisory committee or subcommittee. These meetings to conduct preparatory work do not include deliberation among advisory committee or subcommittee members; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or subcommittee (such as meeting logistics) or to receive administrative information from a Federal officer or agency (such as a briefing on ethics or FACA procedural requirements).

■ 36. Amend § 102–3.165 by revising paragraphs (b)(1) and (4) and (c) to read as follows:

§ 102–3.165 How are advisory committee meetings documented?

* * * * *

(b) * * *

(1) The time, date, and place (or electronic format) of the advisory committee meeting;

* * * * *

(4) Copies of each report or other materials received, issued, or approved by the advisory committee at the meeting.

(c) The DFO must ensure that minutes are certified for accuracy by the chairperson within 90 calendar days of the meeting to which they relate. Agencies should post the meeting minutes on the agency advisory committee website (if one exists) not later than 14 calendar days after the meeting minutes have been certified.

■ 37. Revise § 102–3.170 to read as follows:

§ 102–3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act (codified at 5 U.S.C. 1009(b)) provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA) if there is a reasonable expectation that the records sought fall within the exemptions contained in 5 U.S.C. 552(b), agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by 5 U.S.C. 552(a)(3).

■ 38. Revise § 102–3.175 to read as follows:

§ 102–3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by section 6(b) of the Act (codified at 5 U.S.C. 1005(b)) must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. These reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the Presidential advisory committee pursuant to § 102–3.75(f).

(b) Annual comprehensive review of Federal advisory committees. Per section 7(b) of the Act (codified at 5 U.S.C. 1006(b)), GSA is required to conduct an Annual Comprehensive Review (ACR) of the activities and responsibilities of each Federal advisory committee that was in existence during any part of a Federal fiscal year. The Secretariat initiates this review, provides guidance to the agencies and departments on how to conduct the review, and closes out the ACR when all reviews have been completed. Federal agencies are responsible for reporting data on each advisory committee, such as its purpose, performance measures, subcommittees (if applicable), meeting, membership, and cost, into the GSA FACA database. CMOs, DFOs, and other responsible agency officials, such as GFOs, enter this data for the advisory committees they are responsible for in their agency. The FACA database provides transparency to the public on the activities of Federal advisory committees government-wide. The database is also used by Congress to perform oversight of the FACA program, and by the general public, the media, and others to stay abreast of important developments resulting from Federal advisory committee activities.

(c) *Annual report of closed or partially closed meetings.* In accordance with section 10(d) of the Act (codified at 5 U.S.C. 1009(d)), advisory committees holding closed or partially closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, copies of each report made by an advisory committee, including any report of closed or partially closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act (codified at 5 U.S.C. 1012) for public inspection and use.

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act, 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (see 36 CFR parts 1220, 1222, 1228, and 1234), or in accordance with the Presidential Records Act, 44 U.S.C. Chapter 22.

Appendix A to Subpart D of Part 102–3 [Removed]

■ 39. Remove appendix A to subpart D of part 102–3.

■ 40. Revise § 102–3.180 to read as follows:

§ 102–3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act (codified at 5 U.S.C. 1014). Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart, NAS also includes the National Academy of Engineering, the National Academy of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

■ 41. Revise § 102–3.185 to read as follows:

§ 102–3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by NAS or NAPA under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of section 15(b) of the Act (codified at 5 U.S.C. 1014(b)); or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act (codified at 5 U.S.C. 1014(b)(1), (2), and (5), respectively).

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act (codified at 5 U.S.C. 1014) that are applicable to that academy. In addition, however, any committee created and

used by an academy in the development of any advice or recommendation to be provided by the academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act (codified at 5 U.S.C. 1014); and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures substantially have been complied with in performing the work required under the agreement.

Appendix A to Subpart E of Part 102–3 [Removed]

■ 42. Remove appendix A to subpart E of part 102–3.

■ 43. Add Subpart F, consisting of § 102–3.190, to read as follows:

Subpart F—Severability

§ 102–3.190 What portions of this part are severable?

All provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is GSA's intention that the remaining provisions shall continue in effect.

[FR Doc. 2023–24181 Filed 10–31–23; 4:15 pm]

BILLING CODE 6820–14–P

Notices

Federal Register
Vol. 88, No. 211
Thursday, November 2, 2023

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Contractor Form for Contract With an Individual for Personal Services

AGENCY: Bureau for Management, Office of Acquisition and Assistance, PSC Rules and Policy Division (M/OAA/PSC), Agency for International Development (USAID).

ACTION: Notice of information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, M/OAA/PSC has proposed revisions to form AID 309–1 Contract With An Individual For Personal Services. The purpose of this notice is to allow 30 days for public comment preceding submission of the collection to OMB.

DATES: Interested persons are invited to submit comments within 30 days of this notice.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Richard E. Spencer, Acting Division Chief, M/OAA/PSC at (202) 916–2629 or *pscpolicymailbox@usaid.gov.*

SUPPLEMENTARY INFORMATION: A proposed update to the existing form is available for public comment before M/OAA/PSC will decide to publish the revised form. The authorities for the collection of information are: Foreign Assistance Act, Public Law 87–165, as amended; 48 CFR 37.104, Personal services contracts; and 48 CFR ch. 7, app. D, Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad; and 48 CFR ch. 7, App. J, Direct USAID Contracts with a Cooperating Country National and with a Third Country National for Personal Services Abroad.

Richard E. Spencer,

Acting Division Chief, M/OAA/PSC, USAID.

[FR Doc. 2023–24209 Filed 11–1–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–22–0038]

Notice of Request for Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's intent to request approval for a new information collection from the Office of Management and Budget (OMB) under OMB control No. 0581–NEW. This notice is based on a recommendation from the California Walnut Board (Board) to establish voluntary reporting for walnuts exempt from assessments under Federal marketing order no. 984, walnuts grown in California. This action would create a new form supplied by the Board to California walnut handlers to voluntarily report deliveries of walnuts exempt from assessments. The new form will be merged with the forms currently approved under OMB No. 0581–0178 Vegetable and Specialty Crops.

DATES: Comments on this notice must be received by January 2, 2024.

ADDRESSES: Interested persons are invited to submit comments concerning this notice to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or online at *https://www.regulations.gov.* All comments should reference OMB No. 0581–NEW and the Marketing Order for Walnuts Grown in California, Marketing Order No. 984, and the date and page of the **Federal Register**, and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made available to the public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, or Email: *Joshua.R.Wilde@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on this notice by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Walnuts Grown in California, Marketing Order No. 984.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW Collection.

Type of Request: Approval of New Information Collection.

Abstract: The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' authorizes the Secretary of Agriculture to issue marketing orders that regulate the handling of any agricultural commodity specified in the Act, and to consider recommendations submitted by the administrative committees that manage the operations of such marketing orders. The individuals serving on an administrative committee are nominated by each commodity industry, are familiar with the handling of such commodity in their local area and are thus in a position to make recommendations to the Secretary.

The information requirements in this notice are essential to administer the Federal marketing order for walnuts grown in California, as amended, (7 CFR part 984), hereinafter referred to as the

''Order''. The Order authorizes quality regulations, research and promotion, and provides for the establishment of the Board, which locally administers the Order.

On October 28, 2021, the Board recommended multiple proposed amendments to the Secretary, including the elimination of mandatory inspection and certification of walnuts and the creation of a new mechanism for determining and collecting handler assessments. After reviewing the proposals and other information submitted by the Board, USDA concluded the Board's proposals will tend to effectuate the declared policy of the Act and conducted a public hearing on April 19–20, 2022. During the hearing, USDA proposed that § 984.67 be amended to include exemptions that were inadvertently omitted in a previous revision. On August 21, 2023, the Final Rule published in the **Federal Register** [88 FR 56745], with an effective date September 20, 2023.

Under the Order handler assessment obligations are incurred at the time of certification, and provisions under § 984.67 exempt certain walnut sales from assessments and quality regulations. Therefore, walnuts considered exempt are not inspected, certified, and assessed. Under the new mechanism of determining and collecting assessments, handler assessments would be based on walnuts received rather than walnuts certified. Accordingly, effective September 20, 2023, walnut receipts for deliveries that previously would have been exempt, as those walnuts would not be inspected and certified, may now be subject to assessment. To ensure that those walnuts continue to be exempt from assessment and/or that handlers can receive a refund against their current year assessments for walnut deliveries exempt under § 984.67, the Board recommended the establishment of the new information collection form described below. The form designated as OMB No. 0581–NEW is voluntary and is titled (CWB Form No. 2) Report of Walnuts Exempt from Assessments. Depending on when handlers submit the form, submission would either ensure that walnuts that are exempt from assessment are not assessed or if they are assessed, handlers would be able to receive a refund. Once approved by OMB, USDA will request permission to merge the form into OMB No. 0581–0178 Vegetable and Specialty Crops collection that includes other forms related to the Order.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Walnut handlers.

Estimated Number of Respondents: 14.

Estimated Number of Responses: 14.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.16 hours.

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.

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.

Authority: 44 U.S.C. Chapter 35.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–24220 Filed 11–1–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the District of Columbia Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of virtual panel briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the District of Columbia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual panel briefing via Zoom. The purpose of the briefing is to hear testimony on access to special education and transportation services in DC to students with disabilities.

DATES: Friday, November 21, 2023, from 12:00 p.m.–2:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): http://bit.ly/46S4uyX.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 160 065 4861#.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Director of Eastern Regional Office and Designated Federal Officer, at *ero@usccr.gov* or 1–202–539–8468.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Ivy Davis at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, District of Columbia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome and Roll Call

II. Panel Briefing

III. Public Comment

IV. Closing Remarks

V. Adjourn

Dated: October 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–24251 Filed 11–1–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 9:30 a.m. ChST on Thursday, November 2, 2023, (7:30 p.m. ET on Wednesday, November 1, 2023). The purpose of this meeting is to discuss and potentially vote on a new project topic of study.

DATES: Thursday, November 2, 2023, from 9:30 a.m.–11:00 a.m. ChST (Wednesday, November 1, 2023, from 7:30 p.m.–9:00 p.m. ET).

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1618864482.

Join by Phone (Audio Only): (833) 435–1820 USA Toll Free; Meeting ID: 161 886 4482.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Mussatt at *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Guam Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Announcements & Updates
III. Approval of Meeting Minutes
IV. Committee Discussion
V. Next Steps
VI. Public Comment
VII. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting due to the availability of staff and the Committee.

Dated: October 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–24250 Filed 11–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–887]

Carbon and Alloy Steel Threaded Rod From India: Final Results of Antidumping Duty Administrative Review, 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that carbon and alloy steel threaded rod (steel threaded rod) from India was sold in the United States at below normal value during the period of review (POR), April 1, 2021, through March 31, 2022. Commerce also determines that one mandatory respondent did not make sales of subject merchandise at below normal value during the POR.

DATES: Applicable November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Nicolas Mayora or Samuel Frost, 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) 482–3053 or (202) 482–8180, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2023, Commerce published the *Preliminary Results* of this administrative review and invited parties to comment on the *Preliminary Results.*[1] This administrative review covers 114 companies.[2] Commerce selected Kanika Exports (Kanika) and R K Fasteners (India) (RKF) as the two respondents for individual examination.[3] On August 17, 2023, Commerce extended the deadline for the final results of this review until October 31, 2023.[4] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[5]

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[6]

The merchandise covered by the scope of this *Order* is carbon and alloy

[1] *See Carbon and Alloy Steel Threaded Rod from India: Preliminary Results of Antidumping Duty Administrative Review, 2021–2022,* 88 FR 28502 (May 4, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 35165 (June 9, 2022); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 48459 (August 9, 2022) (correcting the prior initiation notice that inadvertently omitted one company).

[3] *See* Memorandum, ''Respondent Selection,'' dated August 2, 2022.

[4] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review: 2021–2022,'' dated August 17, 2023.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Carbon and Alloy Steel Threaded Rod from India; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Carbon and Alloy Steel Threaded Rod from India: Amended Final Determination of Sales at*

Continued

steel threaded rod from India. A complete description of the scope of the *Order* is provided in the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties in this review are addressed in the Issues and Decision Memorandum. A list of the issues is attached to this notice at Appendix I. The Issues and 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 *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the margin calculations for Kanika in these final results. We did not make any change to RKF's margin calculations. For a discussion of these changes, *see* the ''Discussion of the Issues'' section of the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The Act 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 and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

Where the dumping margin for individually examined respondents 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 estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

In this review, we have calculated a weighted-average dumping margins of 2.37 percent for RKF and zero percent for Kanika. Therefore, in accordance with section 735(c)(5)(A) of the Act, we are applying RKF's weighted average dumping margin of 2.37 percent to the non-examined companies (*see* Appendix II for a full list of these companies), because this is the only rate that is not zero, *de minimis,* or based entirely on facts available.

Final Results of the Review

Commerce determines that the following estimated weighted-average dumping margins exist during the period April 1, 2021, through March 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Kanika Exports	0.00
R K Fasteners (India)	2.37
Companies Not Selected for Individual Review[8]	2.37

Disclosure

Commerce intends to disclose to interested parties the calculations performed for these final results of review within five days of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) 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 of subject merchandise in accordance with the final results this review.[9]

For RKF, we calculated importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is either zero or *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. Because the weighted-average dumping margin for Kanika has been determined to be zero percent, we intend to instruct CBP to liquidate Kanika's entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2).

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Kanika or RKF for which these companies did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation of 0.00 percent,[10] if there is no rate for the intermediate company(ies) involved in the transaction.[11]

For the companies that were not selected for individual examination, we will instruct CBP to liquidate entries at the rate established in these final results of review.

We intend to issue instructions to CBP no earlier than 35 days after the publication date 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 will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed in these final results will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a 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 in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then

Less Than Fair Value and Antidumping Duty Order, 85 FR 19925 (April 9, 2020) (*Order*).

[7] *See* Issues and Decision Memorandum at ''Scope of the *Order*.''

[8] *See* Appendix II for a full list of these companies.

[9] *See* 19 CFR 351.212(b)(1).

[10] *See Order,* 85 FR at 19926.

[11] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 0.00 percent, the all-others rate established in the LTFV investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the 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 Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the 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

This notice is being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: October 26, 2023

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
Comment 1: Whether Kanika's Allocation of Zinc Coating Costs is Inaccurate
Comment 2: Whether Kanika's Allocation of Variable Overhead Costs is Inaccurate
Comment 3: Whether Kanika's Allocation of Fixed Overhead is Inaccurate
Comment 4: Whether Kanika Significantly Manipulated Its Costs
Comment 5: Whether Commerce Should Apply Total Adverse Facts Available (AFA) to Kanika
Comment 6: Whether Kanika Misreported Its Sales Information
Comment 7: Whether RKF Under-Reported Its Freight Costs
Comment 8: Whether Commerce Should Reject RKF's Claim for Freight Revenue
VI. Recommendation

Appendix II

List of Companies Not Individually Examined

1. A H Enterprises
2. Aadi Shree Fastener Industries
3. Aanjaney Micro Engy Pvt., Ltd.
4. Accurate Steel Forgings (I) Ltd.
5. Alps Industries Ltd.
6. Apex Thermocon Pvt., Ltd.
7. Ash Hammer Union
8. Astrotech Steels Pvt., Ltd.
9. Atlantic Container Line Pvt., Ltd.
10. Ats Exp. 07
11. Atz Shipping Trade & Transport Pvt.
12. BA Metal Processing
13. Babu Exports
14. Bee Dee Cycle Industries
15. Bhansali Inc.
16. Boston Exp. & Engineering Co.
17. C.H.Robinson International (India)
18. C.P.World Lines Pvt., Ltd.
19. Century Distribution Systems Inc.
20. Charu Enterprises
21. Chirag International
22. Daksh Fasteners
23. Dedicated Imp. & Exp. Co.
24. Dhiraj Alloy & Stainless Steel
25. Dsv Air and Sea Pvt., Ltd.
26. Eastman Industries Ltd.
27. Eos Precision
28. ESL Steel Ltd.
29. Everest Exp.
30. Everest Industrial Corporation
31. Farmparts Company
32. Fence Fixings
33. Fine Thread Form Industries
34. Galorekart Marketplace Pvt., Ltd.
35. Ganga Acrowools Ltd.
36. Ganpati Fastners Pvt., Ltd.
37. Gateway Engineering Solution
38. GDPA Fasteners
39. Gee Pee Overseas
40. Geodis India Pvt., Ltd. (Indel)
41. Goodgood Manufacturers
42. Idea Fasteners Pvt., Ltd.
43. Jindal Steel And Power Ltd.
44. JSW Steel Ltd.
45. Kanchan Trading Co.
46. Kanhaiya Lal Tandoor (P) Ltd.
47. Kapson India
48. Kapurthala Industrial Corporation
49. Karna International
50. Kei Industries Ltd.
51. King Exports
52. Kintetsu World Express In
53. Kova Fasteners Pvt., Ltd.
54. Linit Exp. Pvt., Ltd.
55. Mahajan Brothers
56. Maharaja International
57. Mangal Steel Enterprises Ltd.
58. Maya Enterprises
59. Meenakshi India, Ltd.
60. Metalink
61. MKA Engineers And Exporters Pvt., Ltd.
62. National Cutting Tools
63. Nishant Steel Industries
64. NJ Sourcing
65. Noahs Ark International Exp.
66. Nuovo Fastenings Pvt., Ltd.
67. Oia Global India Pvt., Ltd.
68. Otsusa India Pvt., Ltd.
69. Paloma Turning Co. Pvt., Ltd.
70. Patton International Ltd.
71. Perfect Tools & Forgings
72. Permali Wallace Pvt., Ltd.
73. Polycab India Ltd.
74. Pommada Hindustan Pvt., Ltd.
75. Poona Forge Pvt., Ltd.
76. Psl Pipe & Fittings Co.
77. R A Exp.
78. Raajratna Ventures Ltd.
79. Raashika Industries Pvt., Ltd.
80. Rajpan Group
81. Rambal Ltd.
82. Randack Fasteners India Pvt., Ltd.
83. Ratnveer Metals Ltd.
84. Rimjhim Ispat Ltd.
85. Rods & Fixing Fasteners
86. S K Overseas
87. S.M Forgings & Engineering
88. Sandip Brass Industries
89. Sandiya Exp. Pvt., Ltd.
90. Sansera Engineering Pvt., Ltd.
91. Shree Luxmi Fasteners
92. Silverline Metal Engineering Pvt. Lt
93. Singhania International Ltd.
94. Sri Satya Sai Enterprises
95. Steampulse Global Llp
96. Steel Authority Of India Ltd.
97. Suchi Fasteners Pvt., Ltd.
98. Supercon Metals Pvt., Ltd.
99. Tekstar Pvt., Ltd.
100. The Technocrats Co.
101. Tijiya Exp. Pvt., Ltd.
102. Tijiya Steel Pvt., Ltd.
103. Tong Heer Fasteners
104. Trans Tool Pvt., Ltd.
105. Universal Engineering and Fabricat
106. V.J Industries Pvt., Ltd.
107. Vidushi Wires Pvt., Ltd.
108. Vrl Automation
109. VV Marine Pvt., Ltd.
110. Yogendra International
111. Zenith Steel Pipes And Industries L
112. Zenith Precision Pvt., Ltd.

[FR Doc. 2023–24187 Filed 11–1–23; 8:45 am]

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[12] *See Order,* 85 FR at 19926.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–054]

Certain Aluminum Foil From the People's Republic of China: Final Results of Countervailing Duty Administrative; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that

countervailable subsidies were provided to certain exporters/producers of certain aluminum foil (aluminum foil) from the People's Republic of China (China) during the period of review (POR) January 1, 2021, through December 31, 2021.

DATES: Applicable November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Natasia Harrison, 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) 482–1240.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 2023, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**.[1] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The product covered by the scope of the *Order* is aluminum foil from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is provided 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.*

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the evidence on the record, we revised the calculation of the net countervailable subsidy rates for Jiangsu Zhongji Lamination Materials Co., Ltd. (f/k/a Jiangsu Zhongji Lamination Materials Stock Co., Ltd.) (Zhongji). For a discussion of these changes, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a complete description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available, pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate the all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

There are 10 companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with Zhongji, the mandatory respondent. For these non-selected companies, because the rate calculated for the only participating mandatory respondent in this review, Zhongji, was above *de minimis* and not based entirely on facts available, we are applying Zhongji's subsidy rate to the 10 non-selected companies.

This is the same methodology Commerce applied in the *Preliminary Results* for determining a rate for companies not selected for individual examination. However, due to changes in the calculation for Zhongji, we revised the non-selected rate accordingly. Consequently, for the 10 non-selected companies for which a review was requested and not rescinded, we are applying an *ad valorem* subsidy rate of 25.32 percent.[5]

Final Results of Review

We determine the following net countervailable subsidy rates exist for the period January 1, 2021, through December 31, 2021:

[1] *See Certain Aluminum Foil from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2021,* 88 FR 28496 (May 4, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Certain Aluminum Foil from the People's Republic of China; 2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 17360 (April 19, 2018); *see also Certain Aluminum Foil from the People's Republic of China: Notice of Court Decision Not in Harmony With the Amended Final Determination in the Countervailing Duty Investigation, and Notice of Amended Final Determination and Amended Countervailing Duty Order,* 85 FR 47730 (August 6, 2020) (collectively, *Order*).

[4] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[5] This reflects the net countervailable *ad valorem* subsidy rate without the entered value adjustment (EVA). *See* Issues and Decision Memorandum at 4.

[6] In the first administrative review of the *Order,* Commerce found the following companies to be cross-owned: Anhui Maximum Aluminium Industries Company Ltd.; Jiangsu Huafeng Aluminum Industry Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd. (f/k/a Jiangsu Zhongji Lamination Materials Stock Co., Ltd.); Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Shantou Wanshun Package Material Stock Co., Ltd.; and Anhui Maximum Aluminium Industries Company Ltd. The subsidy rate applies to all cross-owned companies. *See Certain Aluminum Foil from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2017–2018,* 86 FR 12171 (March 2, 2021). While the petitioners (*i.e.,* the Aluminum Association Trade Enforcement Working Group and its individual members: JW Aluminum Company, Novelis Corporation, and Reynolds Consumer Products, LLC) withdrew their review requests for Anhui Maximum Aluminium Industries Company Ltd., Jiangsu Huafeng Aluminum Industry Co., Ltd., and Shantou Wanshun Package Material Stock Co., Ltd., because these companies were previously found to be cross-owned with a company which is subject to this review, we have not rescinded the review with respect to these companies.

[7] This net countervailable *ad valorem* subsidy rate reflects an EVA. *See* Issues and Decision Memorandum at 4.

[8] The rates reflect the *ad valorem* net countervailable subsidy rate without the entered value adjustment EVA. *See* Issues and Decision Memorandum at 4.

Producer or exporter	Subsidy rate (percent *ad valorem*)
Anhui Zhongji Battery Foil Science & Technology Co., Ltd. (aka Anhui Zhongji Battery Foil Sci&Tech Co., Ltd.); Jiangsu Huafeng Aluminum Industry Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd. (f/k/a Jiangsu Zhongji Lamination Materials Stock Co., Ltd.); Jiangsu Zhongji Lamination Materials Co., (HK) Limited; and Shantou Wanshun New Material Group Co., Ltd. (f/k/a Shantou Wanshun Package Material Stock Co., Ltd.)[6]	[7] 24.49
Review-Specific Rate Applicable to the Following Companies[8]	
Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.; Hangzhou DingCheng Aluminum Co., Ltd.; Hangzhou Dingsheng Import & Export Co. Ltd.; Hangzhou Dingsheng Industrial Group Co. Ltd.; Hangzhou Five Star Aluminium Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd; Luoyang Longding Aluminum Co., Ltd.; and Walson (HK) Trading Co., Limited[9]	25.32
Luoyang Longding Aluminium Industries Co., Ltd	25.32
Shanghai Shenyan Packaging Materials Co., Ltd	25.32

Disclosure

Commerce intends to disclose calculations and analysis performed for the final results of review within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct U.S. Customs and Border Protection (CBP) to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Assessment Requirements

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and CBP shall assess, countervailing duties on all appropriate entries covered by this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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).

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an 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). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 27, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Non-Selected Companies Under Review
V. Subsidies Valuation
VI. Use of Facts Otherwise Available and Application of Adverse Inferences
VII. Analysis of Programs
VIII. Discussion of the Issues
Comment 1: Whether Commerce Should Make an Adverse Inference to Find that Jiangsu Zhongji Lamination Materials Co., Ltd. (f/k/a/Jiangsu Zhongji Lamination Materials Stock Co., Ltd.) (Zhongji) Benefited from the Export Buyer's Credit (EBC) Program
Comment 2: Whether Commerce Should Grant Zhongji an Entered Value Adjustment (EVA)
Comment 3: Whether Commerce Should Revise Zhongji's Total Sales Denominators
Comment 4: Whether the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Is Countervailable
Comment 5: Whether Commerce Should Revise the Benefit Calculation for the Provision of Electricity for LTAR
Comment 6: Whether Commerce Should Find that the Input Producers Are Government Authorities
Comment 7: Whether Commerce Should Continue to Make an Adverse Inference to Find Distortion in the Primary Aluminum and Aluminum Plate and/or Sheet and Strip Markets
Comment 8: Whether Commerce Should Modify the Benchmark for Aluminum Plate and/or Sheet and Strip
Comment 9: Whether Warehousing Fees Should Be Included in the Benchmark for Primary Aluminum
Comment 10: Whether Commerce Should Adjust the Inland Freight Benchmark for the Provision of Primary Aluminum and Aluminum Plate and/or Sheet and Strip for LTAR Programs
Comment 11: Whether Commerce Should Revise the Benchmark for the Provision of Land for LTAR
Comment 12: Whether Commerce Should Revise the Benefit Calculations for the Provision of Land for LTAR and the Import Tariff and Value-Added Tax (VAT) Exemptions on Imported Equipment in Encouraged Industries Program
Comment 13: Whether Commerce Should Apply Adverse Facts Available (AFA) to Self-Reported ''Other Subsidies''
Comment 14: Whether Commerce Should Select Hangzhou Five Star Aluminium Co., Ltd., and Its Affiliates, as an Additional Mandatory Respondent
IX. Recommendation

[FR Doc. 2023–24253 Filed 11–1–23; 8:45 am]

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[9] In the investigation, Commerce found the following companies to be cross-owned: Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd.; Hangzhou DingCheng Aluminum Co., Ltd.; Hangzhou Dingsheng Import & Export Co. Ltd.; Hangzhou Dingsheng Industrial Group Co. Ltd.; Hangzhou Five Star Aluminium Co., Ltd.; Hangzhou Teemful Aluminum Co., Ltd.; Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.; Luoyang Longding Aluminum Co., Ltd.; and Walson (HK) Trading Co., Limited. The subsidy rate applies to all cross-owned companies. *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under administrative protective order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a quantity and value questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial section D questionnaire responses.

Opportunity to Request a Review: Not later than the last day of November 2023,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

	Period
Antidumping Duty Proceedings	
ARGENTINA: Oil Country Tubular Goods, A–357–824	5/11/22–10/31/23
AUSTRIA: Strontium Chromate, A–433–813	11/1/22–10/31/23
BRAZIL: Aluminum Foil, A–351–856	11/1/22–10/31/23
BRAZIL: Circular Welded Non-Alloy Steel Pipe, A–351–809	11/1/22–10/31/23
FRANCE: Strontium Chromate, A–427–830	11/1/22–10/31/23
GERMANY: Thermal Paper, A–428–850	11/1/22–10/31/23
INDIA: Welded Stainless Pressure Pipe, A–533–867	11/1/22–10/31/23
INDONESIA: Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses, A–560–823	11/1/22–10/31/23
INDONESIA: Monosodium Glutamate, A–560–826	11/1/22–10/31/23
ITALY: Forged Steel Fittings, A–475–839	11/1/22–10/31/23
JAPAN: Thermal Paper, A–588–880	11/1/22–10/31/23
MEXICO: Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/22–10/31/23
MEXICO: Oil Country Tubular Goods, A–201–856	5/11/22–10/31/23
MEXICO: Seamless Refined Copper Pipe and Tube, A–201–838	11/1/22–10/31/23
MEXICO: Steel Concrete Reinforcing Bar, A–201–844	11/1/22–10/31/23
OMAN: Aluminum Foil, A–523–815	11/1/22–10/31/23
REPUBLIC OF KOREA: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/22–10/31/23
REPUBLIC OF KOREA: Thermal Paper, A–580–911	11/1/22–10/31/23
RUSSIA: Aluminum Foil, A–821–828	11/1/22–10/31/23
RUSSIA: Oil Country Tubular Goods, A–821–833	5/11/22–10/31/23
RUSSIA: Sodium Nitrite, A–821–836	6/28/22–10/31/23
SPAIN: Thermal Paper, A–469–824	11/1/22–10/31/23
TAIWAN: Certain Circular Welded Non-Alloy Steel Pipe, A–583–814	11/1/22–10/31/23
TAIWAN: Certain Hot-Rolled Carbon Steel Flat Products, A–583–835	11/1/22–10/31/23
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products, A–549–817	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hot Rolled Carbon Steel Flat Products, A–570–865	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Coated Paper Suitable for High-Quality Print Graphic Using Sheet-Fed Presses, A–570–958	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cut-to-Length Carbon Steel Plate, A–570–849	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Diamond Sawblades and Parts Thereof, A–570–900	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic, A–570–831	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Forged Steel Fittings, A–570–067	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Lightweight Thermal Paper, A–570–920	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Monosodium Glutamate, A–570–992	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Paper Clips, A–570–826	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Terephthalate (PET) Film, A–570–924	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium in Granular Form, A–570–864	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Refined Brown Aluminum Oxide, A–570–882	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A–570–956	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Seamless Refined Copper Pipe and Tube, A–570–964	11/1/22–10/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Gluconate, Gluconic Acid, and Derivative Products, A–570–071	11/1/22–10/31/23
THE REPUBLIC OF ARMENIA: Aluminum Foil, A–831–804	11/1/22–10/31/23
TURKEY: Aluminum Foil, A–489–844	11/1/22–10/31/23
UKRAINE: Certain Hot-Rolled Carbon Steel Flat Products, A–823–811	11/1/22–10/31/23
UNITED ARAB EMIRATES: Polyethylene Terephthalate (PET) Film, A–520–803	11/1/22–10/31/23
Countervailing Duty Proceedings	
INDIA: Welded Stainless Pressure Pipe, C–533–868	1/1/22–12/31/22
INDONESIA: Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses, C–560–824	1/1/22–12/31/22
OMAN: Aluminum Foil, C–523–816	1/1/22–12/31/22
REPUBLIC OF KOREA: Oil Country Tubular Goods, C–580–913	9/29/22–12/31/22
RUSSIA: Oil Country Tubular Goods, C–821–834	3/14/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates, C–570–991	1/1/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Coated Paper Suitable for High-Quality Print Graphic Using Sheet-Fed Presses, C–570–959	1/1/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Forged Steel Fittings, C–570–068	1/1/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Lightweight Thermal Paper, C–570–921	1/1/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, C–570–957	1/1/22–12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Gluconate, Gluconic Acid, and Derivative Products, C–570–072	1/1/22–12/31/22
TURKEY: Aluminum Foil, C–489–845	1/1/22–12/31/22
TURKEY: Steel Concrete Reinforcing Bar, C–489–819	1/1/22–12/31/22
Suspension Agreements	
UKRAINE: Certain Cut-To-Length Carbon Steel Plate, A–823–808	11/1/22–10/31/23

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping duty administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2023. If Commerce does not receive, by the last day of November 2023, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020). Additionally, note that Commerce has modified its regulations to make permanent certain changes to its service procedures that were adopted on a temporary basis due to COVID–19, as well as additional clarifications and corrections to its AD/CVD regulations. Effective October 30, 2023, these changes will apply to all AD/CVD proceedings that are ongoing on the effective date and all AD/CVD proceedings initiated on or after the effective date. *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; or (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 27, 2023.

Scot Fullerton,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–24186 Filed 11–1–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Thursday, November 16, 2023, from 9 a.m. to 4 p.m. Eastern Standard Time (EST). The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EST on Monday, November 13, 2023.

ADDRESSES: The meeting will be in-person at the Department of Commerce Herbert C. Hoover Building (1401 Constitution Ave. NW, Washington, DC 20230). Registered participants will be emailed instructions on accessing the designated meeting space. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, (email: *jonathan.chesebro@trade.gov*). Members of the public should submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 28018, 1401 Constitution Ave. NW, Washington, DC 20230. (Phone: 202–482–1297; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

to the U.S. Government regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the Thursday, November 16, 2023, CINTAC meeting will include discussions of CINTAC priorities for its 2022–2024 charter term and activities related to the U.S. Department of Commerce's Civil Nuclear Trade Initiative.

Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EST on Monday, November 13, 2023, in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting.

A limited amount of time will be available for brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 20 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Jonathan Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Monday, November 13, 2023. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to Mr. Jonathan Chesebro in the International Trade Administration's Office of Energy & Environmental Industries. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on Monday, November 13, 2023. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: October 25, 2023.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2023–24218 Filed 11–1–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–840]

Common Alloy Aluminum Sheet From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review, 2020–2021

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to certain producers and exporters of common alloy aluminum sheet (aluminum sheet) from the Republic of Turkey (Turkey). The period of review is August 14, 2020, through December 31, 2021.

DATES: Applicable November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Dan Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4313.

Background

Commerce published the *Preliminary Results* of this review on May 10, 2023.[1] On August 24, 2023, Commerce extended the final results of this review to October 26, 2023.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order [4]

The product covered by this *Order* is aluminum sheet from Turkey. For a complete description of the scope of this *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is provided 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.*

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available, pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, Commerce revised the calculations for the net countervailable subsidy rates for these final results of review.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected

[1] *See Common Alloy Aluminum Sheet from the Republic of Turkey: Preliminary Results of the 2020–2021 Administrative Review,* 88 FR 30092 (May 10, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Third Extension of Deadline for Final Results of Countervailing Duty Administrative Review,'' dated September 28, 2023.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results in the Countervailing Duty Administration Review of Common Alloy Aluminum Sheet from the Republic of Turkey; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Common Alloy Aluminum Sheet from Bahrain, India, and the Republic of Turkey: Countervailing Duty Orders,* 86 FR 22144 (April 27, 2021) (*Order*).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

There is one company for which a review was requested and not rescinded, and which was not selected as a mandatory respondent or found to be cross owned with a mandatory respondent: P.M.S. Metal Profil Aluminyum Sanayi Ve Ticaret A.S.

Assan and Teknik received countervailable subsidies that are above *de minimis* and are not based entirely on facts available for 2020.[6] Commerce calculated the all-others' rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.[7] Assan and Teknik received countervailable subsidies that are above *de minimis* and are not based entirely on facts available for 2021. Therefore, we calculated the all-others' rate using a simple average of the individual estimated subsidy rates calculated for the examined respondents.[8]

Final Results of the Administrative Review

Commerce determines the net countervailable subsidy rates for the period August 14, 2020, through December 31, 2021, to be as follows:

Company	Subsidy rate (percent *ad valorem*) 2020	Subsidy rate (percent *ad valorem*) 2021
Assan Aluminyum Sanayi ve Ticaret A.S[9]	3.29	1.15
Teknik Aluminyum Sanayi A.S	1.08	0.69
Companies Not Selected for Individual Review	2.19	0.92

Disclosure

Commerce intends to disclose the calculations and analysis performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and Customs and Border Protection shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to U.S. Customs and Border Protection (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

In accordance with section 751(a)(1) of the Act, we also intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an 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). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Changes Since the *Preliminary Results*
IV. Scope of the *Order*
V. Use of Facts Available and Application of Adverse Inferences
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Discussion of the Issues
Comment 1: Whether Commerce Should Revise Certain of Assan's Sales Denominators
Comment 2: Whether the ''Other Self-Reported Subsidies'' Remain Countervailable Subsidies

[6] *See* Memorandum, ''Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated concurrently with this memorandum.

[7] With two respondents under examination, Commerce normally calculates (A) a weighted average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted average of the estimated subsidy rates calculated for the examined respondents using each company's publicly ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). Because complete publicly ranged sales data was not available, Commerce could not follow its normal methodology.Therefore, we used a simple average of the estimated subsidy rates calculated for the examined respondents.

[8] *Id.*

[9] Commerce has found Kibar Holding to be cross-owned with Assan Aluminyum Sanayi ve Ticaret A.S., pursuant to 19 CFR 351.525(b)(6)(vi); *see Common Alloy Aluminum Sheet From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part,* 86 FR 13315 (March 8, 2021). We also note that Assan has an affiliated trading company through which it exported certain subject merchandise during the POR, Kibar Dis. Kibar Dis was not selected as a mandatory respondent, but was examined in the context of Assan. Therefore, there is not an established CVD rate for Kibar Dis. Instead, entries of subject merchandise exported by Kibar Dis will receive the rate of the producer listed on the U.S. Customs and Border Protection (CBP) entry form.

Comment 3: Whether Commerce Should Remove the Subsidy Rate Calculated for the Program Unemployment Insurance Law No. 4447
Comment 4: Whether Commerce Should Correct Certain Errors Regarding Loan Calculations
Comment 5: Whether Commerce Should Revise Certain of Teknik's Sales Denominators
Comment 6: Whether Commerce Should Revise Certain Calculations Regarding Assistance to Offset Costs Related to the Antidumping and Countervailing Duty Investigations
IX. Recommendation

[FR Doc. 2023–24254 Filed 11–1–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Artificial Intelligence Safety Institute Consortium

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST), an agency of the United States Department of Commerce, in support of efforts to create safe and trustworthy artificial intelligence (AI), is establishing the Artificial Intelligence Safety Institute Consortium (''Consortium''). The Consortium will help equip and empower the collaborative establishment of a new measurement science that will enable the identification of proven, scalable, and interoperable techniques and metrics to promote development and responsible use of safe and trustworthy AI, particularly for the most advanced AI systems, such as the most capable foundation models. NIST invites organizations to provide letters of interest describing technical expertise and products, data, and/or models to enable the development and deployment of safe and trustworthy AI systems through the AI Risk Management Framework (AI RMF). This notice is the initial step for NIST in collaborating with non-profit organizations, universities, other government agencies, and technology companies to address challenges associated with the development and deployment of AI. Many of these challenges were identified under the Executive Order of October 30, 2023 (The Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence) and the NIST AI RMF Roadmap. Much of this research will center on evaluations of and approaches towards safer, more trustworthy AI systems. Participation in the consortium is open to all interested organizations that can contribute their expertise, products, data, and/or models to the activities of the consortium. Selected participants will be required to enter into a consortium Cooperative Research and Development Agreement (CRADA) with NIST. At NIST's discretion, entities which are not permitted to enter into CRADAs pursuant to law may be allowed to participate in the Consortium pursuant to separate non-CRADA agreement.

DATES: The Consortium's collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than December 4, 2023. NIST will accept letters of interest to participate in this Consortium on an ongoing basis. NIST will announce the completion of the selection of participants and inform the public that it is no longer accepting letters of interest for this project at *https://www.nist.gov/artificial-intelligence/artificial-intelligence-safety-institute.*

ADDRESSES: Completed letters of interest must be submitted via the letter of interest webform at *https://www.nist.gov/artificial-intelligence/artificial-intelligence-safety-institute,* by email to *USAISI@nist.gov,* or via hardcopy to National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8900, Gaithersburg, MD 20899. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST. A consortium CRADA template will be made available to qualifying applicants.

FOR FURTHER INFORMATION CONTACT: J'aime Maynard, Consortia Agreements Officer, National Institute of Standards and Technology's Technology Partnerships Office, by telephone at (301) 975–8408, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, MD 20899, or by electronic mail to *Jaime.Maynard@nist.gov.* Please direct all media inquiries to Public Affairs Office (PAO), NIST via email at *inquires@nist.gov* or by phone at (301) 975–2762.

SUPPLEMENTARY INFORMATION:

Background: NIST supports the United States in developing standards around emerging technologies, including artificial intelligence and related systems. The NIST AI Risk Management Framework (AI RMF) provides a foundational set of approaches for holistically assessing risk for the use of AI systems. However, in deploying this framework, specific improvements in our ability to evaluate and validate AI systems are necessary, as detailed in the AI RMF roadmap, available at *https://www.nist.gov/itl/ai-risk-management-framework/roadmap-nist-artificial-intelligence-risk-management-framework-ai.* In addition, The Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence Executive Order articulated a broad set of priorities relevant to and directive of NIST's work related to AI safety and trust. NIST seeks to leverage the additional resources and capabilities made available through this consortium to meet the requirements of the Executive Order and fulfill those priorities in the future.

Process: NIST is soliciting responses from all sources of relevant technical capabilities (see below) to enter into a consortium Cooperative Research and Development Agreement (CRADA) to provide technical expertise and products, data, and/or models to enable safe and trustworthy artificial intelligence (AI) systems. The Consortium will help enable the identification of proven, scalable, and interoperable techniques and metrics to promote development of trustworthy AI and its responsible use. The full project can be viewed at: *https://www.nist.gov/artificial-intelligence/artificial-intelligence-safety-institute.* The project is in support of the AI RMF roadmap *https://www.nist.gov/itl/ai-risk-management-framework/roadmap-nist-artificial-intelligence-risk-management-framework-ai* and The Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence Executive Order.

Interested parties can submit a letter of interest by visiting the project website at *https://www.nist.gov/artificial-intelligence/artificial-intelligence-safety-institute* and completing the letter of interest webform; alternatively, parties can answer the questions detailed in LETTER OF INTEREST, below, and send via email or hardcopy (for reference, see **ADDRESSES** section above). NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the project objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first

come, first served basis. There may be continuing opportunity to participate even after initial activity commences for participants who were not selected initially or have submitted the letter of interest after the selection process. Selected participants will be required to enter into a consortium CRADA with NIST. At NIST's discretion, entities which are not permitted to enter into CRADAs pursuant to law may be allowed to participate in the Consortium pursuant to separate non-CRADA agreement.

Project Objective: Artificial Intelligence (AI) tools and applications are growing at an unprecedented pace, changing our way of life, and having significant impacts on society and all sectors of the economy. Yet, the potential technical and societal benefits and risks of AI require much closer examination and a more complete understanding. Aligning AI with our societal norms and values and keeping the public safe requires a broad human-centered focus, specific policies, processes, and guardrails informed by community stakeholders across various levels of our society, and bold commitment from the public sector.

To manage the broad risks of AI technologies, help to protect the public and our planet, reduce market uncertainties, and encourage even more extraordinary AI technological innovations, the National Institute of Standards and Technology (NIST) is expanding its AI measurement efforts by harnessing the broader community's interests and capabilities. NIST aims to help enable the identification of proven, scalable, and interoperable measurements and methodologies to promote development of trustworthy AI and its responsible use. This is a critical challenge at a pivotal time—not only for AI technologists but for society.

Building upon its long track record of working with the private and public sectors and its history of reliable and practical measurement and standards-oriented solutions, NIST seeks research collaborators who can support this vital undertaking. Specifically, NIST looks to

- Create a convening space for collaborators to have an informed dialogue and enable sharing of information and knowledge
- Engage in collaborative research and development through shared projects
- Enable assessment and evaluation of test systems and prototypes to inform future AI measurement efforts

To create a lasting approach for continued joint research and development, NIST will engage stakeholders via this consortium. The work of the consortium will be open and transparent and provide a hub for interested parties to work together in building and maturing a measurement science for Trustworthy and Responsible AI. Consortium members will be expected to contribute:

- Technical expertise in one or more of the following areas
- Data and data documentation
- AI Metrology
- AI Governance
- AI Safety
- Trustworthy AI
- Responsible AI
- AI system design and development
- AI system deployment
- AI Red Teaming
- Human-AI Teaming and Interaction
- Test, Evaluation, Validation and Verification methodologies
- Socio-technical methodologies
- AI Fairness
- AI Explainability and Interpretability
- Workforce skills
- Psychometrics
- Economic analysis
- Models, data and/or products to support and demonstrate pathways to enable safe and trustworthy artificial intelligence (AI) systems through the AI risk management framework
- Infrastructure support for consortium projects
- Facility space and handling of hosting consortium researchers, workshops and conferences

This project is in service of the priorities and taskings defined in The Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence Executive Order. Additionally, some of the outcomes of this project will be in support of research and development to advance the AI RMF roadmap (*https://www.nist.gov/itl/ai-risk-management-framework/roadmap-nist-artificial-intelligence-risk-management-framework-ai*). The consortium will be responsible for an array of efforts related to safe and trustworthy AI, including to:

1. Develop new guidelines, tools, methods, protocols and best practices to facilitate the evolution of industry standards for developing or deploying AI in safe, secure, and trustworthy ways

2. Develop guidance and benchmarks for identifying and evaluating AI capabilities, with a focus on capabilities that could potentially cause harm

3. Develop approaches to incorporate secure-development practices for generative AI, including special considerations for dual-use foundation models, including

a. guidance related to assessing and managing the safety, security, and trustworthiness of models and related to privacy-preserving machine learning;

b. guidance to ensure the availability of testing environments

4. Develop and ensure the availability of testing environments

5. Develop guidance, methods, skills and practices for successful red-teaming and privacy-preserving machine learning

6. Develop guidance and tools for authenticating digital content

7. Develop guidance and criteria for AI workforce skills, including risk identification and management, test, evaluation, validation, and verification (TEVV), and domain-specific expertise

8. Explore the complexities at the intersection of society and technology, including the science of how humans make sense of and engage with AI in different contexts

9. Develop guidance for understanding and managing the interdependencies between and among AI actors along the lifecycle

Requirements for Letters of Interest:

Each responding organization's letter of interest should include the address, point of contact, and following information:

1. The role(s) the organization will play in the consortium efforts.

2. The specific expertise will they intend to bring to the consortium.

3. The products, services, data, or other technical capabilities will they use in consortium activities.

Letters of interest should not include proprietary information. NIST will not treat any information provided in response to this notice as proprietary information.

NIST cannot guarantee that all submissions will be utilized, or the products proposed by respondents will be used in consortium activities. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA.

(Authority: 15 U.S.C. 3710a, 15 U.S.C. 278h–1, and 15 U.S.C. 272b and 272c)

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–24216 Filed 11–1–23; 8:45 am]

BILLING CODE 3510–13–P

CONSUMER FINANCIAL PROTECTION BUREAU

Consumer Credit Card Market Report, 2023

AGENCY: Consumer Financial Protection Bureau.

ACTION: Consumer credit card market report.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its sixth biennial Consumer Credit Card Market Report to Congress. The report reviews developments in this consumer market since the CFPB's most recent biennial report on the same subject in 2021.

DATES: The CFPB released the 2023 Consumer Credit Card Market Report on its website on October 25, 2023.

FOR FURTHER INFORMATION CONTACT: Wei Zhang, Deputy Assistant Director, Consumer Credit, Payments, and Deposits Markets, Division of Research, Monitoring, and Regulations at ((202) 435–7700 or *wei.zhang@cfpb.gov*), or Margaret Seikel, Financial Analyst, Division of Research, Monitoring, and Regulations (*margaret.seikel@cfpb.gov*). If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1.1 Background

In 2009, Congress passed the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act or Act).[1] The Act made substantial changes to the credit card market. The CARD Act mandated new disclosures and underwriting standards, curbed certain fees, and restricted interest rate increases on existing balances. Among the CARD Act's many provisions was a requirement that the Board of Governors of the Federal Reserve System (Board) report every two years on the state of the consumer credit card market. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010, that requirement transferred to the CFPB alongside broader responsibility for administering most of the CARD Act's provisions. This is the sixth report published pursuant to that obligation, building on prior reports published by the CFPB in 2013, 2015, 2017, 2019, and 2021.[2]

1.2 Publication

In addition to being delivered to Congress, the full report is available to the public on the CFPB's website at *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf.*

1.3 Summary of Report

The full 2023 report reviews the state of the consumer credit card market as of the end of 2022. In addition to mandating the CFPB's biennial review and report on the market, the Act also requires the CFPB to ''solicit comment from consumers, credit card issuers, and other interested parties'' in connection with its review.[3] As in past years, the CFPB has done so through a Request for Information (RFI) published in the **Federal Register**, and the CFPB discusses specific evidence or arguments provided by commenters throughout the report.[4]

This study represents the CFPB's sixth biennial report on the state of the consumer credit card market and continues the approach of the CFPB's previous reports. The CFPB revisits similar baseline indicators to track key market developments and consumer risks as well as the adequacy of consumer protections. Throughout this report, we continue to examine trends by card type and credit score tier, but further segment consumers with the highest scores into two new groups, prime plus (720 to 799) and superprime (800 and above). In a new section, this report examines the market dynamics, concentration, and profitability of the credit card industry in detail, complementing other regulators' examination of the safety and soundness of card issuers. We explore new topics that have become more important as the market continues to evolve. For example, the current report explores the prevalence and cost of installment plan features and the dollar value of credit card rewards. Additionally, we discuss issuer practices related to dispute resolution, minimum payments, and servicemember rate reductions.

Use of Credit

- *Use of credit:* Credit card debt at the end of 2022 surpassed $1 trillion for the first time in our data, but total outstandings remain below pre-pandemic levels when adjusted for inflation. Spending grew to new highs of $846 billion in the fourth quarter of 2022. At the same time, total payments rose, and cardholders paid significantly more of their monthly balances with a greater share of accounts entirely paid off each month. Delinquency and charge-off rates in 2022 were at lower levels than 2019 but increasing, presumably rising with the expiration of COVID–19 related financial relief.
- *Overall market size and structure:* Nearly 4,000 issuers, together with dozens of co-brand merchant partners and four major networks, provide cards to over 190 million consumers. The top ten credit card issuers still represent over four-fifths of consumer credit card loans, but the next 20 biggest issuers' market share has grown since 2016.
- *Competition and profitability:* For companies involved in credit card issuance, servicing, and debt collection, the industry remains profitable. Issuers' profitability fell in 2020 but spiked in 2021 and remained at or above 2019-levels in 2022 with an average return on assets of six percent for general purpose cards and two percent on private label portfolios. Point-of-sale; Buy Now, Pay Later (BNPL); and fintech personal loans as well as ''pay-by-bank'' options increasingly compete with traditional credit cards for purchase volume and balances.
- *Cost of credit:* By some measures, credit cards have never been this expensive, as issuers charged more than $130 billion in interest and fees in 2022 alone. By the end of 2022, interest and fees as an annualized percentage of balances, or the total cost of credit, was almost 18 percent on general purpose cards and over 21 percent on private label accounts. Many cardholders with subprime scores are now paying 30 to 40 cents in interest and fees per dollar borrowed each year. Federal Reserve rate increases triggered upward repricing on most general purpose cards, and issuers continue to price well above the prime rate, with an average annual percentage rate (APR) margin of 15.4 percentage points. Fee volume now exceeds pre-pandemic levels. Annual

[1] The Act superseded a number of earlier regulations that had been finalized, but had not yet become effective, by the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), and the Board of Governors of the Federal Reserve System (Board). Those earlier rules were announced in December of 2008 and published in the **Federal Register** the following month. *See* 74 FR 5244 (Jan. 29, 2009); 74 FR 5498 (Jan. 29, 2009). The rules were withdrawn in light of the CARD Act. *See* 75 FR 7657, 75 FR 7925 (Feb. 22, 2010).

[2] *See* CFPB, *Card Act Report* (Oct. 1, 2013) (2013 Report), *http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf;* CFPB, *The Consumer Credit Card Market* (Dec. 2015) (2015 Report), *https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf;* CFPB, *The Consumer Credit Card Market* (Dec. 2017) (2017 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf;* CFPB, *The Consumer Credit Card Market* (Aug. 2019) (2019 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf;* CFPB, *The Consumer Credit Card Market* (Sept. 2021) (2021 Report), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2021.pdf.* The Bureau also held a conference in 2011 in which numerous market stakeholders contributed information and perspective on developments in the credit card market. *See* Press Release, Bureau of Consumer Fin. Prot., *CFPB Launches Public Inquiry on the Impact of the Card Act* (Dec. 19, 2012), *https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-public-inquiry-on-the-impact-of-the-card-act.*

[3] 15 U.S.C. 1616(b) (2012).

[4] RFI Regarding Consumer Credit Card Market, 88 FR 5313 (Jan. 27, 2022).

fees grew in 2021 and 2022, while late fees returned to 2019 levels at $14.5 billion as did the cardholder cost of balance transfers and cash advances.

- *Rewards:* The dollar value of rewards earned by general purpose cardholders exceeded $40 billion for mass market issuers in 2022. Transacting accounts, or those where the cardholder pays the full statement balance each month, are increasingly benefitting from credit card use. But, when a consumer revolves a balance on their credit card, the cost of interest and fees almost always exceeds the value of rewards the consumer may have earned. Cardholders' rewards redemptions have increased, but consumers still forfeit hundreds of millions of dollars in rewards value each year.
- *New features and products:* Installment plan features which permit cardholders to convert a credit card purchase to a lower-cost, fixed-rate loan comprise a small but growing segment of the market designed to compete with BNPL. These issuer plans often offer lower finance charges than on revolving debt, but consumers may struggle to make higher monthly payments. ''Credit card-as-a-service'' platforms from fintechs to traditional banks have streamlined co-brand partnerships to improve user experience and offer novel rewards with smaller retailers. Some issuers are now approving consumers with only soft inquires on consumers' credit reports; others are underwriting consumers without credit scores using new datasets and modeling techniques outside the traditional credit reporting system. Issuers are providing cardholders with more flexible repayment terms and new payment options, including through a growing number of digital wallets.
- *Persistent debt:* With the average minimum payment due increasing to over $100 on revolving general purpose accounts in 2022, more users are incurring late fees and facing higher costs on growing debt. We find one in ten general purpose accounts are charged more in interest and fees than they pay toward the principal each year, indicating a pattern of persistent indebtedness that could become increasingly difficult for some consumers to escape. Public relief programs in 2020 and 2021 enabled some consumers to pay down credit card balances, but the number of cardholders facing persistent debt has begun to climb.
- *Availability of credit:* Most measures of credit card availability grew in 2021 and 2022 after a sharp decrease in access during 2020. Application volume for general purpose credit cards reached a new peak in 2022, as issuers increased acquisition efforts and consumer demand grew. For retail cards, in contrast, application volume fell from 2020 to 2022. Approval rates more than rebounded for all card types. The recent upticks in marketing, applications, and approvals led to significant growth in credit card originations in 2021 with even more activity in 2022. Consumers with below-prime scores opened more than 80 million new credit card accounts in 2021 and 2022 combined compared to 63 million over the two year period from 2019 through 2020. Total credit line across all consumer credit cards increased to over $5 trillion in 2022 but remained below 2017 levels in real terms. After declining in 2020, issuers initiated credit line increases more frequently in 2021 and 2022 than they did prior to the pandemic but decreased lines or closed accounts at rates similar to those seen over the past decade.
- *Disputes:* Credit card disputes spiked with pandemic-related cancellations and supply chain issues in mid-2020, declined in 2021, but then rose in 2022 as spending grew. Disputed transaction volume for mass market issuers was up 50 percent from 2019 levels to almost $10 billion in 2022, and chargebacks increased more than 80 percent from $3.2 billion to $5.9 billion.
- *Account servicing:* Cardholders increasingly use and service their cards through digital portals, including those accessed via mobile devices. Three in four general purpose accountholders are now enrolled in issuers' mobile apps, and adoption is increasing, notably for those under 65. The use of automatic payments has likewise continued to climb. New artificial intelligence (AI)/machine learning (ML) technologies are changing how providers service accounts, but concerns regarding the use and sharing of consumer data remain significant, particularly among older cardholders.
- *Debt collection:* Compared to prior surveys, the use of email in collections continued to increase in 2022, with consumers opening about one-third of messages. Issuers seemed to leverage the text messaging (or SMS) channel significantly more in 2022 than in prior years with a relatively low opt-out rate at 1.3 percent. New enrollments in loss mitigation programs and total inventory in those programs declined. Post-charge-off settlements fell significantly from their previous peaks during the pandemic. All issuers who sold debt reported deleting the charged-off tradelines from credit reports upon sale, potentially resulting in an incomplete view of consumers' debt burden, likelihood of default, and history in the credit reporting system.

Throughout this report, we highlight potential areas of concern in the consumer credit card market. Given rising balances and credit costs, more cardholders may struggle to pay their credit card bill on time, especially with amounts past-due, overlimit, or under an installment plan added to the minimum payment due. As such, the CFPB will continue to monitor assessments of late fees, reliance upon penalty repricing, and debt collection practices, alongside the disclosure of minimum payments in accordance with CARD Act requirements. Issuers' margins are increasing as they price APRs further above the prime rate, potentially signaling a lack of price competition. Instead, companies offer more generous rewards and sign-up bonuses to win new accounts, largely benefitting those with higher scores who pay their balances in full each month. The CFPB will explore ways to promote comparison shopping on purchase APRs—a major cost of credit cards that is often unknown to consumers prior to card issuance. We will also monitor changes in rewards value if issuers look to cut costs in response to lower revenue. We encourage new entrants—both bank and non-bank—to work on providing consumers with more transparency, better experiences, and greater access to credit, so long as they comply with existing consumer finance laws.

1.4 Current and Future CFPB Work in This Market

Over the past two years, the CFPB has been actively engaged in the credit card market and has taken measures to address regulatory uncertainty, identify compliance deficiencies, and research new, emerging technologies and products to ensure the adequacy of consumer protection and a transparent and competitive marketplace for all consumers. The CFPB is continuing to study and consider actions to address the areas of concern noted in the full report. Aside from a current rulemaking related to credit card penalty fees, however, the CFPB is not currently proposing to add or revise regulations related to the topics covered in the 2023 Consumer Credit Card Market Report.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–24132 Filed 11–1–23; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, November 8, 2023—10 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: *Decisional Matter:* FY24 Operating Plan.

A live webcast of the meeting can be viewed at the following link: *https://cpsc.webex.com/cpsc/j.php?MTID=mb0c2a231d7aa95760a62dfa8f6b9d1c1.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: October 31, 2023.

Elina Lingappa,

Paralegal Specialist.

[FR Doc. 2023–24379 Filed 10–31–23; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2017–0010]

Notice of Availability of Updated ASTM Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rule, Safety Standard Mandating ASTM F963 for Toys, incorporates by reference ASTM F963–17, *Standard Consumer Safety Specifications for Toy Safety.* The Commission has received notice of a revision to this incorporated voluntary standard. CPSC seeks comment on whether the revision improves the safety of the consumer products covered by the standard.

DATES: Comments must be received by November 16, 2023.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2017–0010, 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. 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. CPSC typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Confidential Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479.

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.* 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: *cpsc-os@cpsc.gov.*

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–2017–0010, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Mordecai, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2506; email: *bmordecai@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 106(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), mandated that ASTM F963–07ε1, *Standard Consumer Safety Specifications for Toy Safety,* shall be considered a mandatory consumer product safety standard issued by the CPSC.[1] 15 U.S.C. 2056b(a). After compliance with ASTMF963 became mandatory in 2009, there were revisions to the voluntary standard in 2008, 2011, 2016, and 2017. Currently, ASTM F963–17, with certain exceptions, is considered a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (CPSA). 16 CFR part 1250.

On October 23, 2023, ASTM notified CPSC of ASTM's approval and publication of revisions to ASTM F963 in a revised standard, numbered ASTM F963–23, approved on August 1, 2023. Under section 106(g) of the CPSIA, if ASTM proposes revisions to ASTM F963, ASTM must notify the Commission. 15 U.S.C. 2056b(g). The revised standard shall be considered a consumer product safety standard issued by the CPSC under section 9 of the CPSA (15 U.S.C. 2058), effective 180 days after the date on which ASTM notifies the Commission of the revision, unless, within 90 days after receiving that notice, the Commission notifies ASTM that it has determined that the proposed revision does not improve the safety of toys. 15 U.S.C. 2056b(g).

CPSC is assessing the revised voluntary standard to determine whether the revisions in ASTM F963–23 meet the requirements of CPSIA section 106(g). The Commission invites public comment on that question, to inform staff's assessment and any subsequent Commission consideration of the revisions in ASTM F963–23.[2]

ASTM F963–23 is available for review in several ways. ASTM has provided on its website (at *https://www.astm.org/CPSC.htm*), at no cost, a read-only copy of the 2023 revisions to ASTM F963 including a red-lined version that identifies the changes made to ASTM F963–17. A read-only copy of the existing mandatory standard (ASTM F963–17) is available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* Interested parties can download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479.

Comments must be received by November 16, 2023. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 106(g) of the CPSIA, CPSC

[1] Section 106(a) of the CPSIA does not require CPSC to incorporate section 4.2 and Annex 4 of ASTM F963–07ε1, or any provision that restated or incorporated an existing mandatory standard or ban promulgated by the Commission or by statute.

[2] The Commission voted 4–0 to publish this notification.

will not consider comments received after this date.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–24189 Filed 11–1–23; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2024–7001, FRL–11528–01–R4]

U.S. Finishing, LLC and Cone Mills Corporation Superfund Site, Greenville, South Carolina; Proposed Settlements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into an Administrative Settlement Agreement for Remedial Design/Remedial Action by Prospective Purchaser with Cone Mills Acquisition Group, LLC, concerning the U.S. Finishing, LLC and Cone Mills Corporation Superfund Site. The settlement agreement addresses a Remedial Design/Remedial Action to be performed at the site by Cone Mills Acquisition Group, LLC, a Prospective Purchaser.

DATES: The Agency will consider public comments on the proposed settlement until December 4, 2023. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlements if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the proposed settlements are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.

Email: Painter.Paula@epa.gov.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Maurice Horsey,

Branch Manager, Enforcement Branch, Superfund & Emergency Management Division.

[FR Doc. 2023–24204 Filed 11–1–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11523–01–OW]

National Drinking Water Advisory Council; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water is announcing a meeting of the National Drinking Water Advisory Council (NDWAC or Council) as authorized under the Safe Drinking Water Act (SDWA). The primary purposes of the meeting are: for EPA to consult with the NDWAC as required by the SDWA on a final National Primary Drinking Water Regulation: Lead and Copper Rule Improvements; and for the NDWAC to review the report of the Microbial and Disinfection Byproducts (MDBP) Rule Revisions Working Group to the Council and to develop advice and recommendations from the Council to the EPA Administrator on issues included in EPA's November 2021 charge to the Council on potential revisions to MDBP rules. Additional details will be provided in the meeting agenda, which will be posted on EPA's NDWAC website prior to the meeting. See the **SUPPLEMENTARY INFORMATION** section of this announcement for more information.

DATES: The meeting will be held on November 28, 2023, from 10:30 a.m. to 5:30 p.m., eastern time; on November 29, 2023, from 10:30 a.m. to 5:30 p.m., eastern time; and on November 30, 2023, from 10:30 a.m. to 5:30 p.m., eastern time.

ADDRESSES: This will be a virtual meeting. There will be no in-person gathering for this meeting. For more information about attending, providing oral statements, and accessibility for the meeting, as well as sending written comments, see the **SUPPLEMENTARY INFORMATION** section of this announcement.

FOR FURTHER INFORMATION CONTACT: Elizabeth Corr, NDWAC Designated Federal Officer, Office of Ground Water and Drinking Water (Mail Code 4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–3798; email address: *corr.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Attending the Meeting: The meeting will be open to the general public. The meeting agenda and information on how to register for and attend the meeting online will be provided on EPA's website at: *https://www.epa.gov/ndwac* prior to the meeting.

Oral Statements: EPA will allocate one hour for the public to present oral comments during the meeting. Oral statements will be limited to three minutes per person during the public comment period. It is preferred that only one person present a statement on behalf of a group or organization. Persons interested in presenting an oral statement should send an email to *NDWAC@epa.gov* by noon, eastern time, on November 21, 2023.

Written Statements: Any person who wishes to file a written statement can do so before or after the Council meeting. Send written statements by email to *NDWAC@epa.gov* or see the **FOR FURTHER INFORMATION CONTACT** section if sending statements by mail. Written statements received by noon, eastern time, on November 21, 2023, will be distributed to all members of the Council prior to the meeting. Statements received after that time will become part of the permanent file for the meeting and will be forwarded to the Council members after conclusion of the meeting. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the NDWAC website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Elizabeth Corr by email at *corr.elizabeth@epa.gov,* or by phone at (202) 564–3798, preferably at least 10 days prior to the meeting to allow as much time as possible to process your request.

National Drinking Water Advisory Council: The NDWAC was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The NDWAC was established to advise, consult with, and

make recommendations to the EPA Administrator on matters relating to activities, functions, policies, and regulations under the SDWA. General information concerning the NDWAC is available at: *https://www.epa.gov/ndwac.*

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2023–24244 Filed 11–1–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11427–01–R9]

Notice of Availability of Preliminary Designation of Certain Stormwater Discharges Within Two Watersheds in Los Angeles County, California Under the National Pollutant Discharge Elimination System of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Regional Administrator of the Environmental Protection Agency (EPA) Region 9 is providing notice of availability and soliciting comment on the preliminary designation of stormwater discharges from certain commercial, industrial, and institutional (CII) sites in two watersheds in Los Angeles County, California for regulation under the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permitting program. This action, if finalized by EPA, will regulate stormwater discharges that contribute to a water quality standard violation or that are a significant contributor of pollutants to waters of the United States. EPA intends to make a final decision after consideration of all comments submitted.

DATES: Written comments must be received on or before December 4, 2023.

ADDRESSES: Comments should be submitted via email to the following address: *R9RPA@epa.gov* and include ''Comments on the 2023 Preliminary Designation'' in the subject line. Documents and further instructions for submitting comments related to this preliminary designation are available for public inspection online at: *https://www.epa.gov/npdes-permits/residual-designation-authority-address-stormwater-quality-problems-epas-pacific.* If there are issues accessing the website, please contact EPA via the contact information below.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, EPA Region 9, Water Division, NPDES Permits Section; telephone (415) 972–3510; email address: *bromley.eugene@epa.gov.*

Administrative Record: The preliminary designation and other related documents in the administrative record are on file and may be inspected between 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays, at the following address: U.S. EPA Region 9, NPDES Permits Section, Water Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

Entities potentially regulated by this action include a wide variety of privately owned CII facilities such as shopping centers, supermarkets, office complexes, hotels, warehouses, manufacturers, cargo and trucking terminals, schools, hospitals, and nursing homes. Entities potentially regulated by this action also include privately operated CII facilities at the Ports of Long Beach and Los Angeles. Entities affected by this action are located within either of two watersheds in Los Angeles County, in California: the Los Cerritos Channel/Alamitos Bay Watershed or the Dominquez Channel/Los Angeles/Long Beach Harbor Watershed. This description of affected activities is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This description of affected activities includes the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not included could also be affected. To determine whether your entity is affected by this action, you should also review the description of EPA's action in documents online at the website listed in the **ADDRESSES** section above. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Summary of Preliminary Designation

CWA section 402(p)(2)(E) and (6) and EPA's implementing regulations at 40 CFR 122.26(a)(9)(i) authorize EPA to designate stormwater discharges for regulation under the NPDES permitting program. Those provisions authorize the Agency to regulate stormwater discharges that contribute to a water quality standard violation or that are a significant contributor of pollutants to waters of the United States, or where controls are needed based on wasteload allocations that are part of total maximum daily loads. This authority is often referred to as ''residual designation authority'' or RDA. EPA is providing notice of and soliciting comment on its preliminary designation for NPDES permitting of unregulated stormwater discharges from certain commercial, industrial and institutional (CII) facilities in the Los Cerritos Channel/Alamitos Bay and Dominquez Channel/Los Angeles/Long Beach Harbor Watersheds in Los Angeles County, including privately operated CII facilities at the Ports of Long Beach and Los Angeles. EPA is also taking comment on whether privately operated CII facilities at municipal airports located within the watersheds should be included.

This preliminary designation is in response to a 2018 District Court order in *Los Angeles Waterkeeper* v. *Pruitt,* as well as two September 15, 2015 petitions entitled ''Petition For A Determination That Stormwater Discharges From Commercial, Industrial, And Institutional Sites Contribute To Water Quality Standards Violations in Dominguez Channel and the Los Angeles/Long Beach Inner Harbor (Los Angeles County, California) and Require Clean Water Act Permits,'' and ''Petition For A Determination That Stormwater Discharges From Commercial, Industrial, And Institutional Sites Contribute To Water Quality Standards Violations in the Alamitos Bay/Los Cerritos Watershed (Los Angeles County, California) And Require Clean Water Act Permits.''

C. How can I submit comments?

Submit comments by the deadline identified in this **Federal Register** notice. Information on how to submit comments and documents related to this preliminary designation are available for public inspection online at **ADDRESSES** above. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out by email or telephone to the **FURTHER INFORMATION CONTACT** listed above in this notice.

Once submitted, comments cannot be edited or removed from the administrative record. The EPA may publish any comment received as part of documentation (*e.g.,* response to comments document) associated with its final decision. Do not submit in your comment any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video,

etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system).

Dated: October 25, 2023.

Martha Guzman Aceves,

Regional Administrator, EPA Region 9.

[FR Doc. 2023–24249 Filed 11–1–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2023–2530(b) et al.; FRL–11526–01–R4]

Bennett Landfill Fire Superfund Site, Chester, South Carolina; Proposed Settlements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlements.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into individual settlements with three parties concerning the Bennett Landfill Fire Site located in Chester, South Carolina. The proposed settlements address recovery of CERCLA costs for a cleanup that was performed at the Site and costs incurred by EPA. The individual proposed settlements are as follows: Perrigo Company, CERCLA–04–2023–2530(b); Brookland Lakeview Empowerment Center, CERCLA–04–2023–2531(b); and Spartanburg County School District 4, CERCLA–04–2023–2534(b).

DATES: The Agency will consider public comments on the proposed settlements until December 4, 2023. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlements if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the proposed settlements are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.

Email: Painter.Paula@epa.gov.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Maurice Horsey,

Branch Manager, Enforcement Branch, Superfund & Emergency Management Division.

[FR Doc. 2023–24208 Filed 11–1–23; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: EIB–2023–0015]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP089513XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public the Export-Import Bank of the United States (''EXIM'') has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before November 27, 2023 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV*. To submit a comment, enter EIB–2023–0015 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2023–0015 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP089513XX.

Purpose and Use:

Brief description of the purpose of the transaction: To support the export of U.S.-manufactured commercial aircraft to Ethiopia.

Brief non-proprietary description of the anticipated use of the items being exported: To be used for passenger and cargo air transport services between Ethiopia and other countries.

To the extent that EXIM is reasonably aware, the items being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Ethiopian Airlines Group.

Guarantor(s): N/A.

Description of Items Being Exported: Boeing commercial jet aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *https://www.exim.gov/news/meeting-minutes*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Authority: Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)).

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–24197 Filed 11–1–23; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0015]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB Control No. 3064–0015).

DATES: Comments must be submitted on or before January 2, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones, Regulatory Counsel, MB–3078, Federal Deposit

Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Regulatory Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3078, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Interagency Bank Merger Application.

OMB Number: 3064–0015.

Form Number: 6220/01

Affected Public: FDIC-insured depository institutions.

Burden Estimate:

Information collection description	Type of burden	Obligation to Respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Interagency Bank Merger Act Application—Affiliated Transactions.	Reporting	Mandatory	103	On Occasion ..	19	1,957
Interagency Bank Merger Act Application—Nonaffiliated Transactions.	Reporting	Mandatory	117	On Occasion ..	31	3,627
Total Estimated Annual Burden	.....	.....	.....	.....	.....	5,584

General Description of Collection: Section 18(c) of the Federal Deposit Insurance Act (FDI Act) requires an insured depository institution (IDI) that wishes to merge or consolidate with any other IDI or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other IDI, to apply for the prior written approval of the responsible agency (the FDIC; the Board of Governors of the Federal Reserve (FRB); or the Office of the Comptroller of the Currency (OCC)).[1] Section 18(c) further requires FDIC approval in connection with any merger transaction involving an IDI and a non-insured entity.

The Interagency Bank Merger Act Application Form (Application Form) is used by the FDIC, the FRB, and the OCC for applications under section 18(c) of the FDI Act. The Application Form may be used for any merger transaction subject to section 18(c). There is a different level of burden for each of the two types of merger transactions, nonaffiliated and affiliated. An affiliate transaction refers to a merger, consolidation, other combination, or transfer of any deposit liabilities, between an IDI and another entity controlled by the same parent company, regardless of whether the other entity is FDIC-insured. It includes a business combination between an IDI and an affiliated interim institution. Applicants proposing affiliate transactions are not required to complete questions 12 through 14 of the Application Form. If the merging entities are not controlled by the same parent company, the merger transaction is considered nonaffiliated, and the applicant must complete the entire application form.

The FDIC Supplement to the Interagency Bank Merger Act Application Form (Supplement) requires each applicant to provide information that delineates the relevant geographic market(s) and describes the competition in the relevant geographic market(s). The information collected focuses on the relevant geographic market(s) where the applicant and the entity to be acquired provide banking products or services. The Supplement includes specific instructions to facilitate a comprehensive competitive analysis relative to transactions between nonaffiliated entities.

There is no change in the method or substance of the collection. The 62-hour decrease in burden hours is the result of updated data available.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

[1] 12 U.S.C. 1828(c). The FDIC is the responsible agency if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank or a State savings association.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 30, 2023.

Debra A. Decker,

Executive Secretary.

[FR Doc. 2023–24252 Filed 11–1–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

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 December 4, 2023.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *Mutual Bancorp MHC, Hyannis, Massachusetts;* to merge with Fidelity Mutual Holding Company Leominster, Massachusetts, and thereby indirectly acquire Life Design Holding Company, Hyannis, Massachusetts, and Fidelity Co-Operative Bank, Leominster, Massachusetts.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–24243 Filed 11–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Trauma Informed Care

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submission.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Trauma Informed Care,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before December 4, 2023.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Trauma Informed Care.* AHRQ is conducting this review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Trauma Informed Care.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/trauma-informed-care/protocol.*

This is to notify the public that the EPC Program would find the following information on *Trauma Informed Care* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

TIC for Adult Patients/Clients

- KQ 1. What is the evidence of benefits and/or harms of TIC on outcomes for patients/clients?
  - KQ 1a. Which components (*e.g.,* education and training of providers about trauma, screening patients, delivering point-of-care interventions [note this is not meant to include established evidence-based treatments for trauma-related disorders], referring patients/clients for various forms of additional assessment and treatment for indicated needs) of TIC models, and organizational and practice characteristics, are associated with benefits and/or harms?
  - KQ 1b. Do outcomes vary by patient/client or clinical or organizational characteristics, including the nature, extent and timing of exposure (*e.g.,* recent or ongoing vs. prior exposure in childhood)?

TIC for Child and Adolescent Patients/Clients

- KQ 2. What is the evidence of benefits and/or harms of TIC on outcomes for patients/clients?
  - KQ 2a. Which components (*e.g.,* education and training of providers about trauma, screening patients, delivering point-of-care interventions [note this is not meant to include indicated evidence-based treatments for trauma-related disorders], referring clients for various forms of additional assessment and treatment for indicated needs) of TIC models, organizational and practice characteristics, are associated with benefits and/or harms?

○ KQ 2b. Do outcomes vary by patient/client (as well as parent) or clinical or organizational characteristics including the nature, extent, and timing of exposure (*e.g.,* recent or ongoing vs. prior exposure)?

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTING)

PICOTS	KQ1	KQ2
Population	Adults 18 years and older, regardless of trauma exposure. 1b. Patient/client and clinical characteristics including type, time since, and duration of trauma exposure; gender; race/ethnicity; age; clinical condition; or disorder (*e.g.,* anxiety, depression, substance use).	Youth <18 years, regardless of trauma exposure. 2b. Patient/client and clinical characteristics including type, time since, and duration of trauma exposure; gender; race/ethnicity; age; clinical condition; or disorder, (*e.g.,* anxiety, depression, ADHD, conduct disorder, substance use).
Intervention	TIC models/components of care (*e.g.,* education and training of providers about trauma, screening patients/clients for trauma exposure using ACEs or other tools, screening for symptoms, delivering point-of-care interventions, referring patients/clients for various forms of additional assessment and treatment for indicated needs). 1a. single or multi-component, individual or group, targeting organizations, providers, patients/clients, caregivers, or a combination, training, screening.	TIC models/components of care (*e.g.,* education and training of providers about trauma, screening patients/clients for trauma exposure using ACEs or other tools, screening for symptoms, delivering point of care interventions, referring patients/clients for various forms of additional assessment and treatment for indicated needs). 2a. single or multi-component, individual or group, targeting organizations, providers, patients/clients, caregivers, or a combination, training, screening.
Comparator	No TIC model of care/usual or routine care (CAU) Other TIC model or component(s) of care, evidence-based therapies for trauma-related conditions (*e.g.,* prolonged exposure, cognitive processing therapy) or approaches (*e.g.,* Collaborative Care).	No TIC model of care/usual or routine care (CAU). Other TIC model or component(s) of care, evidence-based therapies for trauma-related conditions (*e.g.,* trauma-focused CBT) or approaches (*e.g.,* Collaborative Care).
Outcome	*Trauma-Specific:* Additional or repeat trauma exposure from the point-of-care in the course of care/service delivery (*e.g.,* retraumatization). *Process outcomes:* Health care outcomes/utilization/referral, provider burnout/mental health. *Organizational/practice/systems outcomes:* Intake and referral processes (*e.g.,* wait times), disseminated policies, trainings, staffing (*e.g.,* scribes), administrative requirements, access to treatment, workforce diversity. *Patient/client-centered outcomes:* Physical and mental health outcomes, functioning, clinical improvement, patient/client engagement, trust, comfort or satisfaction, and strengths-based outcomes (*e.g.,* quality of life). *Harms:* Includes displacement of evidence based care (*e.g.,* screening for anxiety, depression, substance use, suicide risk), increase in patient/client aggression or other behavioral misconduct.	*Trauma-Specific:* Additional or repeat trauma exposure from the point-of-care in the course of care/service delivery (*e.g.,* retraumatization). *Process outcomes:* Healthcare outcomes/utilization/referral, provider outcomes burnout/mental health. *Organizational/practice/systems outcomes:* Intake and referral processes (*e.g.,* wait times), disseminated policies, trainings, staffing (*e.g.,* scribes), administrative requirements, access to treatment, workforce diversity, anti-racism principles. *Patient/client-centered outcomes:* Physical and mental health outcomes, functioning, clinical improvement, patient/client engagement, trust, comfort or satisfaction, and strengths-based outcomes (*e.g.,* quality of life). *Harms:* Includes displacement of evidence based care (*e.g.,* screening for developmental milestones, ADHD, depression, anxiety, suicide risk, substance use), increase in patient/client aggression or other behavioral misconduct.
Timing	Any	Any.
Setting	Routine or emergency healthcare in any setting that provides human or social services, including in non-traditional settings (*e.g.,* HIV clinics providing behavioral health care).	Routine or emergency healthcare in any setting that provides human or social services, including in non-traditional settings (*e.g.,* school-based clinics providing behavioral health care).

Dated: October 27, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–24214 Filed 11–1–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–TS24–010, Identify and Evaluate Potential Risk Factors for Amyotrophic Lateral Sclerosis (ALS).

Date: April 9, 2024.

Time: 8:30 a.m.–5 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Mikel L. Walters, Ph.D., Scientific Review Officer, National Center for

Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341. Telephone: (404) 639–0913; Email: *MWalters@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–24242 Filed 11–1–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–CE24–030, Research Grants for Preventing Violence and Violence Related Injury (R01).

Dates: April 2–3, 2024.

Times: 8:30 a.m.–5 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Carlisha Gentles, Pharm.D., B.C.P.S., C.D.C.E.S., Scientific Review Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341. Telephone: (770) 488–1504; Email: *CGentles@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–24241 Filed 11–1–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–CE22–003, Rigorously Evaluating Programs and Policies to Prevent Child Sexual Abuse (CSA).

Date: April 11, 2024.

Time: 8:30 a.m.–5 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Mikel L. Walters, Ph.D., Scientific Review Officer, National Center for Injury Prevention and Control, Centers for Disease and Prevention, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341. Telephone: (404) 639–0913; Email: *MWalters@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–24239 Filed 11–1–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–CE24–012, Rigorous Evaluation of Policy-Level Interventions to Prevent Overdose.

Date: March 26, 2024.

Time: 8:30 a.m.–5 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341. Telephone (404) 639–6473; Email: *AWilkes@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–24240 Filed 11–1–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Performance Review Board Membership

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice of Performance Review Board membership.

FOR FURTHER INFORMATION CONTACT: Lei Lonni Giroux, 410–786–4175 or *leilonni.giroux@cms.hhs.gov.*

The statutes at 5 U.S.C. 4314(c)(1) through (5) require each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) Performance Review Boards (PRBs).

The PRB shall review and evaluate the initial summary rating of a senior executive's performance, the executive's response, and the higher-level official's comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The statutes at 5 U.S.C. 4314(c)(4) require the appointment of board members to be published in the **Federal Register**. The following persons comprise a standing roster to serve as members of the SES PRB for the Centers for Medicare & Medicaid Services:

Jonathan Blum, Principal Deputy Administrator and Chief Operating Officer (serves as the Chair)
Tia Butler, Director, Office of Human Capital (serves as co-chair)
John Czajkowski, Deputy Chief Operating Officer
Elizabeth Fowler, Deputy Administrator and Director, Center of Medicare and Medicaid Innovation
Jeffrey Wu, Deputy Director for Operations, Center for Consumer Information and Insurance Oversight
Timothy Engelhardt, Director, Federal Coordinated Health Care Office
George Hoffman, Deputy Director, Office Information Technology and Deputy Chief Information Officer
Kathleen Cantwell, Office of Strategic Operations and Regulatory Affairs
Jean Moody-Williams, Deputy Director, Center for Clinical Standards and Quality
Ing-Jey Cheng, Director, Chronic Care Policy Group, Center for Medicare

The Deputy Administrator and Chief Operating Officer of the Centers for Medicare & Medicaid Services (CMS), Jonathan Blum, having reviewed and approved this document, authorizes Evell Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: October 27, 2023.

Evell Barco Holland,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–24162 Filed 10–30–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Advance Planning Document (APD) Process (Office of Management and Budget #0970–0417)

AGENCY: Office of Child Support Services, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families' (ACF) Office of Child Support Services (OCSS) is requesting a 3-year extension for the Advance Planning Document (APD) process (OMB #0970–0417). No changes are proposed.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: State child support agencies are required to establish and operate a federally approved statewide Automated Data Processing (ADP) and information retrieval system to assist in child support services. The APD process, established at 45 CFR part 95, subpart F, is the procedure by which states request and obtain approval for Federal Financial Participation (FFP) in their cost of acquiring ADP equipment and services. The ACF OCSS Division of State and Tribal Systems (DSTS) oversees this process.

States are required to submit an initial APD, containing information to assist the Secretary of the Department of Health and Human Services (HHS) in determining if the state computerized support enforcement project planning and implementation meets Federal certification requirements needed for the approval of FFP. States are then required to submit annual APD updates to HHS to report project status and request ongoing FFP for systems development, enhancements, operations, and maintenance. As-needed APDs are also submitted to acquire FFP when major milestones are missed or significant changes to project schedules occur. Based on an assessment of the information provided in the APD, states that do not meet the Federal requirements necessary for approval are required to conduct periodic independent verification and validation services for high-risk project oversight.

In addition to the APDs providing HHS/ACF/OCSS with the information necessary to determine the allowable level of Federal funding for state systems projects, states also submit associated procurement and data security documents, such as requests for proposals (RFPs), contracts, contract amendments, and the biennial security review reports.

Respondents: State child support agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
RFP and Contract	50	4.5	4	900	300
Emergency Funding Request	21	1	2	42	14
Biennial Reports	54	1.5	1.5	121.5	40.5
Advance Planning Document	44	3.6	120	19,008	6,336
Operational Advance Planning Document	10	3	30	900	300
Independent Verification and Validation (ongoing)	3	12	10	360	120
Independent Verification and Validation (semiannually)	4	6	16	384	128
Independent Verification and Validation (quarterly)	10	12	30	3,600	1,200
System Certification	3	3	240	2,160	720

Estimated Total Annual Burden Hours: 9,158.50.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 45 CFR part 95, subpart F.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–24211 Filed 11–1–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; State Plan for Grants to States for Refugee Resettlement (Office of Management and Budget #0970–0351)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) is requesting a 3-year extension of the State Plan for Grants to States for Refugee Resettlement (Office of Management and Budget #0970–0351, expiration 6/30/2024). ORR is proposing changes to the form.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: A State Plan is a required comprehensive narrative description of the nature and scope of a state's or Replacement Designee's (RD) Refugee Resettlement Program and provides assurances that the program will be administered in conformity with the specific requirements stipulated in 45 CFR 400.4–400.9. The State Plan must include all applicable state or RD procedures, designations, and certifications for each requirement as well as supporting documentation. The plan assures ORR that the state or RD is capable of administering refugee assistance and coordinating employment and other social services for eligible caseloads in conformity with specific requirements.

ORR proposes the following changes to the previously approved State Plan for Grants to States for Refugee Resettlement:

- streamlining/formatting multiple sections of the form, including technical corrections
- enhancing requirements for collaboration and engagement and expanding the non-discrimination aspects
- standardizing sections of the template related to health to reduce burden by clarifying text and removing duplicative parts
- streamlining sections related to the unaccompanied children to reduce burden by providing better options for responses and selections and by removing unnecessary and confusing text to ensure consistency regarding assurances

Respondents: State agencies and RDs under 45 CFR 400.301(c) administering or supervising the administration of programs.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
State Plan for Grants to States for Refugee Resettlement	59	1	18	1,062

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 8 U.S.C. 1522 of the Immigration and Nationality Act (the Act) [Title IV, Sec. 412 of the Act] for each state agency requesting federal funding for refugee resettlement under 8 U.S.C. 524 [Title IV, Sec. 414 of the Act].

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–24185 Filed 11–1–23; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2809]

Advisory Committee; Patient Engagement Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the renewal of the Patient Engagement 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 Patient Engagement Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the October 6, 2025, expiration date.

DATES: Authority for the Patient Engagement Advisory Committee would have expired on October 6, 2025, unless the Commissioner had formally determined that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Letise Williams, Office of the Center Director, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5407, Silver Spring, MD 20993–0002, 301–796–8398, *Letise.Williams@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 Patient Engagement Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Patient Engagement Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective devices for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee provides advice to the Commissioner of Food and Drugs or designee on complex scientific, issues relating to medical devices, the regulation of devices, and their use by patients. Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient reported outcomes, and device-related quality of life measures or health status issues are among the topics that may be considered by the Committee. The Committee provides relevant skills and perspectives to improve communication of benefits, risks, and clinical outcomes, and increase integration of patient perspectives into the regulatory process for medical devices. It performs its duties by identifying new approaches, promoting innovation, recognizing unforeseen risks or barriers, and identifying unintended consequences that could result from FDA policy.

Pursuant to its Charter, 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 who are knowledgeable in areas such as clinical research, patient experience, and healthcare needs of patient groups in the United States, or who are experienced in the work of patient and health professional organizations, methodologies for patient reported outcomes and eliciting patient preferences, and strategies for communicating benefits, risks, and clinical outcomes to patients and research subjects, as well as other relevant areas. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as either as Special Government Employees or non-voting representatives. Federal members will serve as Regular Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who serves as an individual, but who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. The Commissioner or designee shall also have the authority to select from a group of individuals nominated by industry to serve temporarily as nonvoting members who are identified with industry interests. The number of temporary members selected for a particular meeting will depend on the meeting topic.

The Commissioner or designee shall also have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members); or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/committees-and-meeting-materials/patient-engagement-advisory-committee* 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: October 30, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–24212 Filed 11–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4595]

Enforcement Policy for Certain Supplements for Approved Premarket Approval or Humanitarian Device Exemption Submissions; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the final guidance entitled ''Enforcement Policy for Certain Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions.'' This guidance outlines FDA's policies and regulatory review expectations after the COVID–19 public health emergency (PHE) for certain limited modifications affecting the safety and effectiveness of a device required to have an approved PMA or the safety and probable benefit of a device required to have an approved HDE. This guidance has been implemented without prior comment, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on November 2, 2023.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2023–D–4595 for ''Enforcement Policy for Certain Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Enforcement Policy for Certain Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Jhumur Banik, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2448, Silver Spring, MD 20993–0002, 240–402–5239 or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance entitled ''Enforcement Policy for Certain Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions.'' This guidance describes FDA's general recommendations for limited modifications to devices required to have an approved PMA or HDE to help address manufacturing limitations or supply chain disruptions. This guidance supersedes ''Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions During the Coronavirus Disease 2019 (COVID–19) Public Health Emergency (Revised)'', issued in May 2020 and updated in May 2022 (COVID–19 PMA/HDE guidance). In the **Federal Register** of March 13, 2023 (88 FR 15417), FDA announced that COVID–19 PMA/HDE guidance was being revised to continue in effect for 180 days after the expiration of the COVID–19 PHE declaration issued under the Public Health Service Act, during which time FDA intended to further revise the guidance.

Following expiration of the PHE declaration on May 11, 2023, FDA has continued to observe supply chain challenges and shortages of medical devices remain widespread. Therefore, consistent with the **Federal Register** of March 13, 2023, FDA is issuing this final guidance. Although this guidance has been revised to remove any expiration date for the enforcement policy, the Agency will continue to monitor the situation and may make further revisions to the guidance, withdraw the guidance, or pursue other regulatory actions, as appropriate.

FDA has determined that this guidance document presents a less burdensome policy that is consistent with public health. This guidance is being implemented without prior public comment because FDA has determined that prior public participation for this less burdensome policy is neither feasible nor appropriate (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 371(h)(1)(C)) and 21 CFR 10.115(g)(2)) because delaying this policy is likely to exacerbate ongoing supply chain issues. This guidance document is being implemented immediately, but it remains subject to comment in accordance with the Agency's good guidance practices.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Enforcement Policy for Certain Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics.* Persons unable to download an electronic copy of ''Enforcement Policy for Certain Supplements for Approved Premarket Approval (PMA) or Humanitarian Device Exemption (HDE) Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00020028 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
814, subparts A through E	Premarket approval	0910–0231
814, subpart H	Humanitarian Use Devices; Humanitarian Device Exemption.	0910–0332
800, 801, and 809	Medical Device Labeling Requirements; Unique Device Identification.	0910–0485
820	Current Good Manufacturing Practice; Quality Systems.	0910–0073
807, subparts A through D	Medical Device Registration and Listing	0910–0625
''Fostering Medical Device Improvement: FDA Activities and Engagement with the Voluntary Improvement Program''.	Medical Devices—Voluntary Improvement Program.	0910–0922

Dated: October 30, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–24213 Filed 11–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

2023 Publication of Senior Executive Service Candidates for Health and Human Services Performance Review Board

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is publishing the names of the Performance Review Board Members (PRB) who are reviewing performance of Senior Executive Service members, title 42 executives, Senior Level, and Scientific Professional employees for fiscal year 2023

FOR FURTHER INFORMATION CONTACT: Monique Pollard, Program Manager, Executive Performance Management, Department of Health and Human

Services, 330 C Street SW, Washington, DC 20201, (202) 729–8797.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**. The following individuals are being appointed to a roster, from which the PRB members will be appointed to serve on the HHS PRB from CY 2023 through CY 2025. The PRB provides performance rating and rating-based compensation recommendations to the HHS Secretary based on the individual performance appraisals for Senior Executive Service, Senior Level/Senior Technical, and Title 42 executive equivalent employees and the organizational assessments of the Operating and Staff Divisions they serve.

Last name	First name
ADAMS	STEVEN.
AKPA	STEPHANIE.
ALTMAN	BRIAN.
ALVAREZ	KATHRYN.
AMES	KAREN.
ANOKA	JEFFERY.
ANTHONY	ELISE.
ARNOLD	SHARON.
BACKFIELD	KATLIN.
BALLANCE	CHRISTINA.
BARKOFF	ALISON.
BARLOW	AMANDA.
BARRY	DANIEL.
BELL	WILLIAM.
BENFORD	JOFFREY.
BHARGAVA	DEEPAK.
BLACKWELL	EDITH.
BLUM	JONATHAN.
BOATENG	SARAH.
BODDEN	CHERYL.
BOTTICELLA	ANGELA.
BRATCHER-BOWMAN.	NIKKI.
BRAXTON	MAKOTO.
BRISBON	HENRIETTA.
BROWN	MARK.
BRUCE	DUANE.
BURNS	SAMIRA.
BURNSZYNSKI	JENNIFER.
BUSH	LAINA.
CABEZAS	MIRIAM.
CALSYN	MAURA.
CAMPBELL	CHERYL.
CANNISTRA	JENNIFER.
CARNIVAL	DANIELLE.
CHA	STEPHEN.
CHAMBERS	GEORGE.
CHAMP-GELBMANN	JANE.
CHESLEY	FRANCIS.
CHESSEN	SONIA.
CLIFFORD	CHAD.
COCHRAN	NORRIS.
COMFORT	KAREN.
CONLEY	MARY.
COOPER	RENEE.
CRONIN	KELLY.
CURTIS	MICHAEL.
DALY	MADELINE.
DAVIS	MICHELLE.
DEL VECCHIO	PAOLO.
DELEW	NANCY.
DESPRES	SARAH.
DISRAELLY	DEENA.
DOOLEY	SEAN.
DORN	ALAN.
DRIGGS	SCOTT.
DUNN MARCOS	ROBIN.
DUPRE	BRIAN.
ESPINOSA	KIMBERLY.
FIGUEROA	MARVIN.
FINK	DOROTHY.
FITZGERALD	DENIS.
FLAGG	ANN.
FORBER–PRATT	ANJALI.
FRIEDMAN	RUTH.
FROHBOESE	ROBINSUE.
FROSS	CAITLIN.
FRYE	EUGENE.
GALLOWAY	SUMMER.
GARRITY	SHEILA.
GARVIN	KHARI.
GOLDHABER	BEN.
GOLDSTEIN	ANDREA.
GOTTLICH	VICKI.
GOULDING	MICHAEL.
GRAF	ALEXANDER.
GRAMLING	ELIZABETH.
GRAY	TANGULER.
GREENBERG	MARK.
GREENE	JONATHAN.
GRIFFIN	ELIZABETH.
GROSSMAN	JORDAN.
GUERRERO	BERTHA.
HAFFAJEE	REBECCA.
HALL	RANDALL.
HALL	WAYNE.
HAMAMOTO	PAMELA.
HAMM	KATHLEEN.
HANDERHAN	LAWRENCE.
HARPER	VICTOR.
HAYES WALLER	BERNITA.
HENDERSON	GRAEME.
HERNANDEZ	PATRICK.
HILD	STEVEN.
HILL	KRISTI.
HOFFMAN	JANICE.
HOLLAND	HOWARD.
HOLZERLAND	WILLIAM.
HORN	DAVID.
HOWARD	LANIKQUE.
HUTCHINSON	KIM.
JACKSON	SHANNON.
JACOBS	JILL.
JEE	LAUREN.
JOHN	KURT.
JOHNSON	DAVID.
JOHNSON	DEBRA.
JOHNSON	JENNIFER.
JONES	CHRISTINE.
JONES	KAMARA.
JONES	WANDA.
JOYNER	ARLENE.
KACHINSKI	KEVIN.
KADISH	ANDREA.
KENNEDY	GAVIN.
KEVENEY	SEAN.
KIM	HANNAH.
KIM	SUSAN.
KOSSALLY	CONSTANCE.
KRAM	ANTHONY.
KRAMER	DEBORAH.
LANKFORD	DAVID.
LEAVITT	WILLIAM.
LEE	PAULA.
LESKO	MAX.
LIMAGE	JULIA.
LONNERDAL	NILS.
LOPEZ	ELIZABETH.
LYNCH-SMITH	MIRANDA.
LYONS	SUSAN.
MALONEY	CAROL.
MARCELLA	JESSICA.
MATAKA	ARSENIO.
MATHIAS	KARL.
MAZANEC	BRIAN.
MCCLUSKIE	SEAN.
MCDANIEL	EILEEN.
MCIFF	COLIN.
MIRANDA	TERESA.
MOHIUDDIN	SYED.
MOTSIOPOULOS	CHRISTOS.
MUSE	AVERY.
NAIMON	DAVID.
NICHOLLS	RICHARD.
NOLAN	JANET.
NOONAN	TIMOTHY.
NOVY	STEVEN.
PACE	LOYCE.
PARK	RACHEL.
PARKER HALVERSON.	PAMELA.
PECK	JOSHUA.
PEREZ	LUIS.
PERSON	LISA.
PETILLO	JOHN.
PIERCE	JULIA.
POSNACK	STEVEN.
PRYOR	RACHEL.
PURDUE	MICHELE.
RABIN	BRIAN.
RAINER	MELANIE.
RAMIREZ	ANGELA.
RATHGEB	COLLEEN.
RECHTER	PETER.
ROBINSON	WILMA.
RODRIGUEZ	PAUL.
ROSENTHAL	SARAH.
SANDERS	STACY.
SAUNDERS	MICHAEL.
SCHOMBURG	AYSHA.
SCHUHAM	AARON.
SCOTT	MARIE.
SESHASAI	KARUNA.
SHA	LYNN.
SHANBHAG	KRISHNAKANT.
SHERRY	TISAMARIE.
SKEADAS	CHRISTOS.
SMITH	JENNIFER.
SMITH	JESSICA.
STEIDE	KIMBERLY.
SULLIVAN	MEG.
SULLIVAN	ROSE.
SUPPLEE	LAUREN.
TAYLOR	CAROLYN.
TOBIAS	CONSTANCE.
TOMOYASU	NAOMI.
TOVEN	JEFFREY.
TRAUTMAN	TRACEY.
TRESS	DEBORAH.
TRIPATHI	SUHAS.
VALDEZ	ROBERT.
WALKER	EDWIN.
WALLER	KIMBERLY.
WEAVER	GRETCHEN.
WEBB	SANDRA.

Last name	First name
WENDEL	JENNIFER.
WESLEY	KENYATA.
WILLIAMS	CARLIS.
WILLIAMS	RASHEED.
WULFF	KATHARINE.
YARBOROUGH	LA MONTE.

Michelle Monroe,

Director, Executive Resources.

[FR Doc. 2023–24207 Filed 11–1–23; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: April 19–20, 2024.

Open: April 19, 2024, 10:00 a.m. to 10:20 a.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: April 19, 2024, 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual Investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael W. Krause, Ph.D., Scientific Director, NIDDK, National Institute of Diabetes and Digestive and Kidney Diseases, National Institute of Health, Building 5, Room B104, Bethesda, MD 20892–1818, (301) 402–4633, *mwkrause@helix.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24139 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 1009 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: National Cancer Institute Special Emphasis Panel; Molecular and Cellular Analysis Technologies.

Date: December 14–15, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Survivorship Needs of Individuals Living with Advanced Cancer (R01).

Date: January 11, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland 20850, 240–276–6343, *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; IMAT Biospecimen Research.

Date: January 11, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Rockville, Maryland 20850, 240–276–5460, *jfang@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Technologies for Cancer Research.

Date: January 25–26, 2024.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Rockville, Maryland 20850, 240–276–5856, *nadeem.khan@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Transition Career Development Award and Institutional Research Training and Education Grants.

Date: January 25, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850, 240–276–6368, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review SEP–II.

Date: February 1–2, 2024.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Rockville, Maryland 20850, 240–276–5085, *tandlea@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–B.

Date: February 6–7, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: E. Tian, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Rockville, Maryland 20850, 240–276–6611, *tiane@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Institutional Training and Education Study Section (F).

Date: February 21–22, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W234, Rockville, Maryland 20850, 240–276–6368, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–A.

Date: February 21–22, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP–C.

Date: February 22–23, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850, 240–276–6611, *mukesh.kumar3@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) Review SEP–IV.

Date: February 28, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W522, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NCI, 9609 Medical Center Drive, Room 7W522, Rockville, Maryland 20850, 240–276–5413, *klaus.piontek@nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Career Development Study Section (J).

Date: February 28–29, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Tushar Deb, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W624, Rockville, Maryland 20850, 240–276–6132, *tushar.deb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 30, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24225 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Center for Advancing Translational Sciences Advisory Council.

This meeting is being held virtually only. The open session will be videocast and may be accessed by the public from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*). Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: January 18, 2024.

Closed: 11:00 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Room 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Open: 12:30 p.m. to 6:00 p.m.

Agenda: Report from the Center Director, Program Update(s), Clearance of Concept(s), Special Topic presentation.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, One Democracy Plaza, 9th Floor, Conference Room 987/989, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, One Democracy Plaza, Room 1072, Bethesda, MD 20892, (301) 435–0809, *anna.ramseyewing@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice no later than 15 days after the meeting at *NCATSCouncilInput@mail.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles

will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(National Center for Advancing Translational Sciences, National Institutes of Health, HHS Assistance Listing Number (formerly Catalog of Federal Domestic Assistance (CFDA) numbers) No. 93.350.)

Dated: October 30, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24224 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Mutant IDH1 Inhibitors Useful for Treating Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Center for Advancing Translational Sciences, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this Notice to Platform Pharmaceuticals, Inc. (''Platform Pharma''), headquartered in New York, NY.

DATES: Only written comments and/or applications for a license which are received by the National Center for Advancing Translational Sciences' Office of Strategic Alliances on or before November 17, 2023 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Sury Vepa, Ph.D., J.D., Senior Licensing and Patenting Manager, Office of Strategic Alliances, Telephone: (301)–642–0460; Email: *sury.vepa@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. U.S. Provisional Patent Application No. 62/095,322 filed on 12/22/2014 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' (HHS Ref. No. E–243–2014–0–US–01);
2. International Patent Application No. PCT/US2015/067406 filed on 12/22/2015 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' (HHS Ref. No. E–243–2014–0–PCT–02);
3. Australian Patent Application No. 2015369712 filed on 12/22/2015 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which was issued as Patent No. 2015369712 on 8/20/2020 (HHS Ref. No. E–243–2014–0–AU–03);
4. Canadian Patent Application No. 2971872 filed on 12/22/2015 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' (HHS Ref. No. E–243–2014–0–CA–04);
5. Chinese Patent Application No. 2015800763284 filed on 12/22/2015 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which was issued as Patent No. ZL2015800763284 on 4/13/2021'' (HHS Ref. No. E–243–2014–0–CN–05);
6. European Patent Application No. 15823901.2 filed on 12/22/2015 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which issued as Patent No. 3237385 on 11/24/2021 and validated in Germany, Spain, France, Great Britain, and Italy (HHS Ref. No. E–243–2014–0–EP–06);
7. Japanese Patent Application No. 2017534314 filed on 6/22/2017 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which was issued as Patent No. 6901394 on 6/21/2021 (HHS Ref. No. E–243–2014–0–JP–07);
8. U.S. Patent Application No. 15/538,570 filed on 12/12/2015 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which issued as Patent No. 10,703,746 on 7/7/2020 (HHS Ref. No. E–243–2014–0–US–08);
9. U.S. Provisional Patent Application No. 62/353,298 filed on 6/22/2016 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' (HHS Ref. No. E–189–2016–0–US–01);
10. International Patent Application No. PCT/US2017/038549 filed on 6/21/2017 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' (HHS Ref. No. E–189–2016–0–PCT–02);
11. Australian Patent Application No. 2017281088 filed on 6/21/2017 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which was issued as Patent No. 2017281088 on 9/9/2021 (HHS Ref. No. E–189–2016–0–AU–04);
12. Canadian Patent Application No. 3028999 filed on 6/21/2017 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' (HHS Ref. No. E–189–2016–0–CA–05);
13. Chinese Patent Application No. 2017800514100 filed on 6/21/2017 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which was issued as Patent No. 201780051410.0 on 9/20/2022 (HHS Ref. No. E–189–2016–0–CN–06);
14. European Patent Application No. 17735296.0 filed on 6/21/2017 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which issued as Patent No. 3475276 on 3/31/2021 and validated in Germany, Spain, France, Great Britain, and Italy (HHS Ref. No. E–189–2016–0–EP–07);
15. Japanese Patent Application No. 2018–567108 filed on 6/21/2017 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which was issued as Patent No. 6987798 on 12/3/2021(HHS Ref. No. E–189–2016–0–JP–08); and
16. U.S. Patent Application No. 16/312,206 filed on 12/20/2018 which is entitled ''Mutant IDH1 Inhibitors Useful for Treating Cancer'' which was issued as Patent No. 10,836,759 on 11/17/2020 (HHS Ref. No. E–189–2016–0–US–03).

The patent rights in these inventions have been either assigned and/or exclusively licensed to the government of the United States of America and the University of North Carolina at Chapel Hill.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

''Use of mutant isocitrate dehydrogenase 1 (mIDH1) inhibitors, as claimed in the licensed patent rights, for the treatment of cancers (such as acute myeloid leukemia, glioma, cholangiocarcinoma, glioblastoma multiforme (GBM) and other solid tumors) and rare diseases.''

The inventions relate to a series of novel compounds that potently and selectively inhibit mIDH1. These compounds reduce 2–HG levels in cell lines in vitro as well as in human cancer cells grown in mouse xenografts in vivo.

These compounds show greater than 250-fold selectivity for the mutant enzyme over the wild-type, show favorable in vitro stability (in mouse, rat, dog and human hepatocyte exposure studies), are AMES negative, and exhibit no significant metabolic CYP liabilities. These compounds possess very favorable in vivo rodent pharmacokinetics and bioavailability and are well tolerated in rodents, even when dosed at high levels.

Thus, the compounds of the subject inventions can be used individually or in combination to develop new therapies to treat diseases which result from mutant IDH1 activity. The diseases caused by mutant IDH1 activity include cancer (*e.g.,* acute myeloid leukemia, glioma, cholangiocarcinoma and potentially other solid tumors) and selected rare diseases, such as Ollier Disease.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National

Center for Advancing Translational Sciences receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Joni L. Rutter,

Director, Office of the Director, National Center for Advancing Translational Sciences.

[FR Doc. 2023–24229 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://videocast.nih.gov/watch=52746*).

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/or contract proposals 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 and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: February 16, 2024.

Open: 8:00 a.m. to 3:00 p.m.

Agenda: Presentation of the NEI Director's report, discussion of NEI programs, and concept clearances.

Place: National Eye Institute, 1st Floor, Room A/B/C, 6700B Rockledge Drive, Bethesda, MD 20892.

Closed: 3:15 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Eye Institute, 1st Floor, Room A/B/C, 6700B Rockledge Drive, Bethesda, MD 20892.

Contact Person: Kathleen C. Anderson, Ph.D. Director, Division of Extramural Activities 6700B Rockledge Drive, Room 3440 Bethesda, MD 20892 (301) 451–2020 *kanders1@nei.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed above before the meeting or within 15 days after the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 27, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24133 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging National Advisory Council on Aging.

Date: September 18–19, 2024.

Closed: September 18, 2024, 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate review of Applications.

Place: National Institutes of Health Natcher Building 45 Natcher Drive Bethesda, MD 20892.

Open: September 19, 2024, 9:00 a.m. to 1:10 p.m.

Agenda: Call to Order and Director's Status Report; Staff Introduction; Future Meeting Dates, Consideration of Minutes from Last Meeting; Task Force on Minority Aging Research; Working Group on Program and NOFO Concept Clearances; A Word from Retiring Members, Dr. Manly and Weir; Program Highlights; Council Speaker, Dr. Matthew Gillman, M.D., SM.; Meeting Adjourned.

Place: National Institutes of Health, Natcher Building 45, Natcher Drive, Bethesda, MD 20892.

Contact Person: Kenneth Santora, Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *ksantora@nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/about/naca,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24134 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 8–9, 2024.

Open: May 08, 2024, 8:30 a.m. to 12:00 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conference Room, 31 Center Drive, Bethesda, MD 20892.

Open: May 08, 2024, 1:00 p.m. to 2:30 p.m.

Agenda: DDN Open session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892.

Open: May 08, 2024, 1:00 p.m. to 2:30 p.m.

Agenda: KUH Open session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room B (KUH), 31 Center Drive, Bethesda, MD 20892.

Open: May 08, 2024, 1:00 p.m. to 2:30 p.m.

Agenda: DEM Open Session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892.

Closed: May 08, 2024, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room B (KUH), 31 Center Drive, Bethesda, MD 20892.

Closed: May 08, 2024, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892.

Closed: May 08, 2024, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31 C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892.

Closed: May 08, 2024, 3:45 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conference Room, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24135 Filed 11–1–23; 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 1009 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; Small Business: Topics in Microbial Diagnostics and Anti-Infective Therapeutics.

Date: December 1, 2023.

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) 594–0331, *baski.thyagarajan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Neuroendocrinology, Sleep, Alcohol and Neurobiology of Motivated Behavior.

Date: December 1, 2023.

Time: 11:00 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: John N. Stabley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0566, *stableyjn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–213: Interactive Digital Media (IDM) Biomedical Science Resources for Pre-College Students and Teachers (SBIR).

Date: December 1, 2023.

Time: 11:00 a.m. to 8:30 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: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, *lystranne.maynard-smith@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–22–151,152, 153 Panel: Fogarty HIV Training Programs.

Date: December 5–6, 2023.

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: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@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: October 27, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24169 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 11–12, 2024.

Open: September 11, 2024, 8:30 a.m. to 12:00 p.m.

Agenda: Call to order and report from the Director; Discussion of future meeting dates; Consideration of minutes of last meeting; Reports from Task Force on Minority Aging Research, Working Group on Program; Council Speaker; Program Highlights.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Open: September 11, 2024, 1:00 p.m. to 1:30 p.m.

Agenda: KUH Open session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room B (KUH), 31 Center Drive, Bethesda, MD 20892.

Open: September 11, 2024, 1:00 p.m. to 2:30 p.m.

Agenda: DEM Open Session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892.

Open: September 11, 2024, 1:00 p.m. to 2:30 p.m.

Agenda: DDN Open session.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892.

Closed: September 11, 2024, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room B (KUH), 31 Center Drive, Bethesda, MD 20892.

Closed: September 11, 2024, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892.

Closed: September 11, 2024, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892.

Closed: September 11, 2024, 3:45 p.m. to 4:00 p.m.

Agenda: To review and evaluate reports of Subcommittees and Consideration of Applications.

Place: National Institutes of Health, Building 31, C Wing 6th Floor Conference Room, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24138 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental and Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: November 29, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institute of Dental and Craniofacial Research, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lynn M King, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892, (301) 594–5006, *lynn.king@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 30, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24226 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 1009 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: National Institute of Mental Health Special Emphasis Panel; RFA Review: Biobehavioral Research Awards for Innovative New Scientists (NIMH BRAINS).

Date: November 30, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742, *nick.gaiano@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; HIV/AIDS Review (P30, R25, T32, K01).

Date: November 30, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, 301–500–5829, *serena.chu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 30, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24227 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute Of Diabetes And Digestive And Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: September 26–27, 2024.

Open: September 26, 2024, 10:00 a.m. to 10:20 a.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: September 26, 2024, 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael W. Krause, Ph.D. Scientific Director, NIDDK, National Institute of Diabetes and Digestive and Kidney Diseases, National Institute of Health, Building 5, Room B104, Bethesda, MD 20892–1818 (301) 402–4633 *mwkrause@helix.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 27, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–24137 Filed 11–1–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0306]

Policy Letter for Covered Small Passenger Vessel Fire Safety Interim Rule Implementation

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of Office of Commercial Vessel Compliance (CG–CVC) Policy Letter 23–03, titled '' 'Covered Small Passenger Vessel' Fire Safety Interim Rule Implementation''. The policy letter describes how the U.S. Coast Guard plans to enforce multiple regulatory requirements found in the Fire Safety of Small Passenger Vessels interim rule, including means of escape requirements.

DATES: The policy letter announced in this notice was issued on October 26, 2023.

ADDRESSES: Items mentioned as being available in the docket, including CG–CVC Policy Letter 23–03 and the interim rule, can be found on the Federal Decision-Making Portal at *https://www.regulations.gov.* Search for docket number ''USCG–2021–0306''.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Jonathan Duffett, Office of Commercial Vessel Compliance (CG–CVC), telephone 202–372–1221, *cgcvc@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Discussion

The Coast Guard announces the availability of CG–CVC Policy Letter 23–03. The new policy clarifies the Coast Guard's interpretation of several regulatory changes promulgated in the interim rule titled, Fire Safety of Small Passenger Vessels, published December 27, 2021 (86 FR 73160).

The interim rule implemented requirements mandated by the Elijah E. Cummings Coast Guard Authorization Act of 2020, which amended title 46 U.S. Code section 3306(n). Section 3306(n) directs the Secretary of Homeland Security to prescribe fire

safety regulations for ''covered small passenger vessels,'' defined as small passenger vessels with overnight accommodations for passengers or operating on an oceans or coastwise route, excluding fishing vessels and ferries. Topics in the new policy include means of escape, special consideration by the Officer in Charge, Marine Inspection, and excursion permits.

In particular, the interim rule eliminated the option for ''existing vessels'' (as defined in 46 CFR subchapters K and T) to comply with the means of escape requirements applicable to them on March 10, 1996, bringing all covered small passenger vessels, regardless of age, up to current standards for means of escape design and arrangement. CG–CVC developed Policy Letter 23–03 in response to numerous inquiries requesting clarification on the correct application of the interim rule to the wide variety of small passenger vessel arrangements.

A copy of CG–CVC Policy Letter 23–03 issued on October 26, 2023 is available in the docket where indicated in the **ADDRESSES** section of this document and on CG–CVC's website, at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/CG-CVC-Policy-Letters/.*

This notice is issued under authority of 5 U.S.C. 552(a) and 46 U.S.C. 3306(n).

M. Neeland,

Captain, U.S. Coast Guard, Chief, Commercial Vessel Compliance.

[FR Doc. 2023–24235 Filed 11–1–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Telecommunications Service Priority System

AGENCY: Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Reinstatement, 1670–0005.

SUMMARY: The Cybersecurity and Infrastructure Agency, (CISA), Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on approved information collection request (ICR) OMB 1670–0005, Telecommunications Service Priority (TSP) System. CISA is soliciting comments for the approved information collection request.

DATES: Comments are encouraged and will be accepted until December 4, 2023.

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.

The Office of Management and Budget is particularly interested in comments which:

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.

FOR FURTHER INFORMATION CONTACT: Deborah Bea, 703–217–4118, *tsp@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: Telecommunications Service Priority (TSP) is authorized by E.O. 12472, E.O. 13618 and 47 CFR part 64. The Emergency Communications Division (ECD) of the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA), uses the TSP Program to authorize national security and emergency preparedness organizations to receive priority treatment for vital voice and data circuits or other telecommunications service, under National Security or Emergency Preparedness telecommunications (NS/EP). The TSP Program provides service vendors a Federal Communications Commission (FCC) mandate to prioritize requests by identifying those services critical to national security and emergency preparedness. A TSP assignment ensures that it will receive priority attention by the service vendor before any non-TSP service.

Four broad categories serve as guidelines for determining whether a circuit or telecommunications service is eligible for priority provisioning or restoration. TSP service user organizations may be in the Federal, State, local, or tribal government, critical infrastructure sectors in industry, non-profit organizations that perform critical NS/EP functions, or foreign governments. Typical TSP service users are responsible for the command-and-control functions critical to management of and response to NS/EP situations, particularly during the first 24 to 72 hours following an event.

Information to request a priority, to obtain a sponsor for requesting a priority, and for other administrative requirements of the program is required from any person or organization having an NS/EP service for which they wish priority restoration from the vendor providing the service. Information is also required to allow immediate installation of a new service to support NS/EP requirements. Information is required from vendors to allow the ECD to track and identify the telecommunications services that are being provided priority treatment.

The forms used are the SF314 (Revalidation for Service Users), SF315 (TSP Request for Service Users), SF317 (TSP Action Appeal for Service Users), SF318 (TSP Service Confirmation for Service Vendors), and the SF319 (TSP Service Reconciliation for Service Vendors).

The SF314 is for users to request that their existing TSP codes be revalidated for three more years.

The SF315 is used to request restoration and/or provisioning for an organization's critical circuits.

The SF317 is for organizations to appeal the denial of TSP restoration and/or provisioning.

The SF318 is for service vendors to provide circuit ID information associated with TSP codes they've been given by their customers.

The SF319 is for service vendors to provide data to the program office in order to reconcile their TSP data with the TSP database.

Participants request TSP priorities via email in order to reduce the use of the paper forms. The paper forms will also be available for download via the CISA website.

There have been no changes to the information being collected. The annual government cost has increased due to increased wage rates/compensation factors and IT system security requirements.

This is a reinstatement of an approved information collection that was

approved on 7/31/2020. The initial 60-Day Notice and request for comments was published on 4/10/2023. No comments were received.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Telecommunications Service Priority System.

OMB Number: 1670–0005.

Frequency: Information is required when an organization decides they want TSP priority on their critical circuits. These requests are situational and made at the discretion of the telecommunications user therefore the program office is not able to determine when or how often such requests will occur.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector.

Number of Respondents: 25,911.

Estimated Time per Respondent: 0.28 hours.

Total Annualized Burden Hours: 7,165 hours.

Total Annualized Respondent Opportunity Cost: $372,408.

Total Annualized Government Cost: $1,145,896.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2023–24215 Filed 11–1–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6396–N–02]

Notice of HUD Vacant Loan Sales (HVLS 2024–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of sales of reverse mortgage loans.

SUMMARY: This notice announces HUD's intention to competitively offer approximately 1,610 reverse mortgage notes secured by vacant properties with a loan balance of approximately $395 million. The sale will consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse. The Secretary will prioritize up to 50 percent of the offered assets for award to nonprofit organizations or governmental entity bidders with a documented housing mission. This notice also generally describes the bidding process for the sale and certain entities who are ineligible to bid. This is the eleventh sale offering of its type and will be held on December 5, 2023.

DATES: For this sale action, the Bidder's Information Package (BIP) will be made available to qualified bidders on or about October 31, 2023. Bids for the HVLS 2024–1 sale will be accepted on the Bid Date of December 5, 2023 prior to 12:00 ET (Bid Date). HUD anticipates that award(s) will be made on or about December 8, 2023 (the Award Date).

ADDRESSES: To become an eligible bidder and receive the BIP for the December sale, prospective bidders must complete, execute, and submit a Confidentiality Agreement and Qualification Statement acceptable to HUD. The documents will be available in preview form with free login on the Transaction Specialist (TS), Falcon Capital Advisors, website: *http://www.falconassetsales.com.* This website contains information and links to register for the sale and electronically complete and submit documents.

If you cannot submit electronically, please submit executed documents via mail or facsimile to Falcon Capital Advisors: Falcon Capital Advisors, 427 N Lee Street, Alexandria, VA 22314, Attention: Glenn Ervin, HUD HVLS Loan Sale Coordinator. eFax: 1–202–393–4125.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Office of Asset Sales, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone 202–708–2625, extension 3927 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: This notice announces HUD's intention to sell in HVLS 2024–1 due and payable Secretary-held reverse mortgage loans. HUD is offering 1,610 reverse mortgage notes with a loan balance of approximately $395 million. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

In this offering, HUD also intends to awarda single asset pool consisting of a reverse mortgage loan secured by a New York single family property (''Mark House'') in Albany County that was listed on the National Register of Historic Places on August 29, 2022. This single asset pool has a loan balance of approximately $325 thousand. For the single asset pool, HUD will only accept bids from nonprofit organizations or units of State or local government with a housing mission that qualify as Priority Bidders in this sale.

A listing of the mortgage loans will be included in the due diligence materials made available to eligible bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer eligible bidders an opportunity to bid competitively on the mortgage loans.

The Bidding Process

The BIP describes in detail the procedure for bidding in HVLS 2024–1. The BIP also includes the applicable standardized non-negotiable Conveyance, Assignment and Assumption Agreements for HVLS 2024–1 (CAAs). The CAAs will contain first look requirements and mission outcome goals.

HUD will evaluate the bids submitted and determine the successful bids, in terms of the best value to HUD, in its sole and absolute discretion. If a bidder is successful, it will be required to submit a deposit which will be calculated based upon the total dollar value of the bidder's potential award. Award will be contingent on receiving the deposit in the timeframe outlined in the deposit letter. The deposit amount will be applied towards the purchase price at settlement.

This notice provides some of the basic terms of sale. The CAAs will be released in the BIP or BIP Supplement, as applicable. These documents provide comprehensive contractual terms and conditions to which eligible bidders will acknowledge and agree. To ensure a competitive bidding process, the terms of the bidding process and the CAAs are not subject to negotiation.

Due Diligence Review

The BIP describes how eligible bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove mortgage loans from a sale at any time prior to the Award Date and the settlement date for the mortgage loans. HUD also reserves the right to reject any and all bids, in whole or in part, and include any reverse mortgage loans in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer no later than 60 days after the Award Date.

The reverse mortgage loans offered for sale were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to HUD's authority in section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the reverse mortgage loans for this specific sale transaction. For the HVLS 2024–1 sale, HUD has determined that this method of sale optimizes HUD's return on the sale of these reverse mortgage loans, affords the greatest opportunity for all eligible bidders to bid on the reverse mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the due and payable reverse mortgage loans.

Bidder Ineligibility

In order to bid in HVLS 2024–1 as an eligible bidder, a prospective bidder must complete, execute, and submit a Confidentiality Agreement, a Qualification Statement (HUD–9611), and an Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), as applicable (collectively, for these bidders, the Qualification Statement (HUD–9611) and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), as applicable, shall be defined as the Qualification Statement) that is acceptable to HUD. Eligible bidders seeking to be awarded loans on a priority basis must submit the Confidentiality Agreement, Qualification Statement (HUD–9611), and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), and Housing Mission Supplemental Certification (collectively, for these bidders, the Qualification Statement (HUD–9611) and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), and Housing Mission Supplemental Certification shall be defined as the Qualification Statement), that is acceptable to HUD. In the Qualification Statement, the prospective bidder must provide certain representations and warranties regarding the prospective bidder, including (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or sub-contractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the ''Related Entities''), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans included in HVLS 2024–1 if the prospective bidder, its Related Entities, or its repurchase lenders, are any of the following, unless other exceptions apply as provided for in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred, or otherwise restricted by any department or agency of the Federal Government or of a State government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any Federal, State, or local government agency, division, or department;

4. An entity that has had its right to act as a Government National Mortgage Association (''Ginnie Mae'') issuer terminated and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a Conveyance, Assignment and Assumption Agreement executed for any previous mortgage loan sale of HUD;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor, and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

10. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 10 to assist in preparing any of its bids on the mortgage loans.

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid, or

(b) Is any principal of any entity or individual described in the preceding sentence;

(c) Any employee or subcontractor of such entity or individual during that six-month period; or

(d) Any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan.

In addition, for those eligible bidders seeking to be awarded mortgage loans on a priority basis and signing the Housing Mission Supplemental Certification, each prospective bidder must provide documentation and certify that its charitable or government purpose has a qualifying housing mission and that its participation in the sale is a furtherance of that housing mission.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2024–1, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the mortgage loans. Even if HUD elects not to publicly disclose any information relating to HVLS 2024–1, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HVLS 2024–1 and does not establish HUD's policy for the sale of other mortgage loans.

Julia R. Gordon,

Assistant Secretary for Housing FHA Commissioner.

[FR Doc. 2023–24163 Filed 11–1–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–NWRS–2023–0169; FF09M21200–234–FXMB1231099BPP0; OMB Control Number 1018–New]

Agency Information Collection Activities; Perspectives on Manatee Ecotourism

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 2, 2024.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference ''OMB Control No. 1018—Manatees'' in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–NWRS–2023–0169.
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. 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: In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) place importance on public education and outreach regarding manatee conservation. Researchers conducting noninvasive surveys can raise awareness about manatees and the importance of responsible ecotourism. Furthermore, the data collected from noninvasive surveys can inform management decisions and policies related to manatee conservation and ecotourism. Authorities and policymakers can also use this data to develop evidence-based strategies that balance the interests of stakeholders while safeguarding the well-being of manatees and their habitats.

Ecotourism is broadly defined as traveling to an undisturbed area with the objective of admiring and studying the wildlife (Wallace and Pierce 1996). Tourism-based activities can provide economic benefits for the community, improve conservation, and be used as a tool for education (Ambe, Tsi, Chi, Siri, and Tita 2010; Hill and Gale 2009; Honey 2008; Masud, Aldakhil, Nassani, and Azam 2017; Snyman 2014; Stronza and Gordillo 2008; Cardenas et al. 2021). For ecotourism to be sustainable, it should encompass the dynamics between recreation and conservation of wildlife (Catlin et al. 2011). A conceptual framework provides managers and researchers a tool to assist them in achieving the best outcomes for both environmental conservation and the provision of wildlife tourism experiences (Catlin et al. 2011). The conceptual framework developed by Duffus and Dearden (1990) is referenced as nonconsumptive wildlife tourism in

which ''a human recreational engagement with wildlife wherein the focal organism is not purposefully removed or permanently affected by the engagement'' (Duffus and Dearden 1990, p. 215). Their framework identifies three major dimensions of wildlife tourism interaction: the wildlife user, the focal species and its habitat, and the historical relationships between them (Duffus and Dearden 1990; Catlin et al. 2011). This study will focus on the wildlife user, which encompasses the visitor, the tourism operators, and the surrounding community that engage in ecotourism with manatees in Crystal River, Florida.

Crystal River is a coastal city located in Citrus County, Florida. The City of Crystal River is adjacent to Kings Bay and the Kings Bay Springs Group, also referred to as the Crystal River/Kings Bay spring complex (Florida Department of Environmental Protection 2018). The Crystal River/Kings Bay spring complex (Springs Complex) is a first magnitude spring system composed of more than 70 springs; these 70 springs account for 99 percent of the freshwater entering Kings Bay (Hammett et al. 1996). The most notable spring in the complex is Three Sisters Springs, which is located within the Crystal River National Wildlife Refuge, referred to hereon as the Refuge (Howard T. Odum Florida Springs Institute 2016). The Refuge was established in 1983 for the protection of the then endangered Florida Manatee, which gather in larger numbers at several of the spring vents during the wintertime to thermoregulate (Hartman 1979). Manatees also rely on the warm, calm, clear waters of Kings Bay to forage, rest, mate, and nurse. Due to the importance of this area for manatee survival, the Service designated this area as critical habitat for manatees under the ESA. During the colder months of the year, from November to March, several areas within the Refuge are roped off, and access to the public is restricted (manatee refuges) or completely prohibited (manatee sanctuaries).

Manatee ecotourism has been a significant part of the Crystal River community for over 50 years. This ecotourism takes many forms, including but not limited to swim-with programs, guided kayak tours, boat tours, and guests who visit the Refuge on foot to view manatees gathered at the springs. Swim-with-manatee tours are by far the most popular ecotourism activity in Crystal River, with tours running from the early morning until sunset each day. To operate a tour within the Refuge, commercial operators must apply for a Special Use Permit (SUP; OMB Control No. 1018–0102). As of 2022, there were 27 permitted operators in Crystal River, and the Refuge estimates that they manage over 400,000 guests recreating within Refuge waters each year (FWS 2022). Despite the popularity of manatee ecotourism in the area growing over the last few decades, only one study has investigated the perceptions surrounding ecotourism in Crystal River. Sorice et al. (2006) interviewed State and wildlife employees, the business community, resource managers, and advocacy groups. The study revealed overriding concerns from all stakeholders regarding water quality, overcrowding, education, harassment, and enforcement (Sorice et al. 2006). However, the study also reported the lack of agreement between stakeholders on each issue. One of the suggestions to resolve conflict was to create a participatory management approach, to organize tour operators into an association that would work with governing officials to establish best practices for ecotourism (Sorice et al. 2006). As such, the Manatee Ecotourism Association was created in Crystal River in 2011 to create standardization for swim-with tours, mainly by practicing passive observation with the goal of following Refuge regulations and reducing manatee harassment.

The purpose of the surveys is to interview manatee tour operators, kayak and paddlecraft outfitters, boat rental companies, their employees, visitors, and the Crystal River community, to obtain their perspectives on manatee ecotourism in Crystal River. We propose to collect the following information to determine the effect of tour operations on the manatee population:

A. Swim-With Tour Operator Survey (Owners/Employees)—

This online survey gathers general information from business owners and tour operators regarding the preparation, size, frequency, nature, and content of ''swim-with-manatee'' tours, including specific questions about interactions with manatees. No sensitive or non-sensitive personally identifiable information is requested from respondents.

B. Guided Kayak Tours (Owners/Employees)—

This online survey gathers general information from business owners and tour operators regarding the preparation, size, frequency, nature, and content of guided kayak tours. Questions also work to build an understanding of how these tour firms view their business and the regulations surrounding them in relation to manatees. No sensitive or non-sensitive personally identifiable information is requested from respondents.

C. Business Owners of Unguided Boat/Kayak Rental or Lacking Special Use Permit—

This online survey gathers general information from tour firm owners regarding their business practices, preparation, frequency, nature, and content of unguided boat or kayak tours. Questions also work to build an understanding of how these tour firms view their business and the regulations surrounding them in relation to manatees. No personally identifiable information is requested from respondents.

D. For Visitors on Trip (Guided Swim With Manatees Boat Tour)—

This online survey gathers general information from tour consumers regarding their experiences on guided boat tours. Questions include respondents' motivations, preparations, and overall satisfaction with their tour experiences. Apart from zip/postal code, no other sensitive or non-sensitive personally identifiable information is requested from respondents.

E. Visitors on Guided Trip (Kayak)—

This survey gathers general information from tour consumers regarding their experiences on guided kayak tours. Questions include respondents' motivations, preparations, and overall satisfaction with their tour experiences. Apart from zip/postal code, no other sensitive or non-sensitive personally identifiable information is requested from respondents.

F. Visitors on Unguided/Self-Tours—

This survey gathers general information from tour consumers regarding their experiences on unguided/self-guided ''swim-with-manatee'' tours. Questions include respondents' motivations, preparations, and overall satisfaction with their tour experiences. Apart from zip/postal code, no other sensitive or non-sensitive personally identifiable information is requested from respondents.

G. Land-Based Visitors at Refuge—

This survey gathers general information from Crystal River National Wildlife Refuge visitors regarding their experience and perceptions of ecotourism and local tour operations. Questions also directly address respondents' feelings towards manatee conservation and education programs. Apart from zip/postal code, no other sensitive or non-sensitive personally

identifiable information is requested from respondents.

H. Crystal River Community Perceptions on Manatee Ecotourism—

This survey gathers general information from the Crystal River community regarding their perceptions of ecotourism, manatee education, and local tour operations' impact on both manatees in general as well as on Crystal River residents and businesses specifically. Apart from zip/postal code, no other sensitive or non-sensitive personally identifiable information is requested from respondents.

The data collected from tour operators, guests, and Crystal River residents will be utilized for several purposes. First, the information will be analyzed to gain insight into the perspectives of tour operators. This understanding will enable the identification of areas for improvement and the development of sustainable practices in ecotourism. Secondly, the perceptions of guests participating in ecotours will be evaluated to gather valuable feedback. This feedback will serve as a crucial resource for tour operators to incorporate into their operations. By considering guest feedback, operators can establish best practices for activities conducted during ecotours.

Moreover, a comprehensive framework for sustainable ecotourism should not solely focus on the interests and perceptions of guests and tour boat operators. It is equally important to involve the local community, including businesses such as hotels, restaurants, and gift shops, as well as Crystal River residents. This inclusive approach aims to ensure that the benefits of ecotourism are balanced with the concerns and needs of the local community. This comprehensive approach will contribute to the development of sustainable ecotourism practices that benefit all stakeholders involved.

The public may request copies of any form or document contained in this information collection by sending a request to the Service Information Collection Clearance Officer (see **ADDRESSES**).

Title of Collection: Perspectives on Manatee Ecotourism.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals/households and private sector.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (minutes)	Estimated annual burden hours *
Group A: Swim-With Tour Operator Survey (Private Sector):					
Private Sector	10	1	10	20	3
Group B: Guided Kayak Tours (Private Sector):					
Private Sector	5	1	5	20	2
Group C: Business Owners of Unguided Boat/Kayak Rental or Lacking SUP Permit (Private Sector):					
Private Sector	1	1	1	8	0
Group D: Visitors on Trip (Individuals):					
Individuals	3	1	3	8	0
Group E: Visitors on Guided Trip (Private Sector):					
Individuals	3	1	3	10	1
Group F: Visitors on Unguided/Self-Tours (Private Sector):					
Individuals	13	1	13	10	2
Group G: Land-Based Visitors at Refuge (Private Sector):					
Individuals	30	1	30	5	3
Group H: Crystal River Community (Private Sector):					
Individuals	42	1	42	8	6
Total	107		107		17

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–24192 Filed 11–1–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–NEW; Docket ID: BOEM–2023–0004]

Agency Information Collection Activities; Piloting an Approach to Community-Informed Characterization of Communities With Environmental Justice Concerns

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) proposes this new information collection request (ICR) to the Office of Management and Budget (OMB).

DATES: Comments must be received by BOEM no later than January 2, 2024.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–NEW in the subject line of your comments. You may also view and comment on the ICR and its related documents by searching the docket number BOEM–2023–0004 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov,* or by telephone at 703–787–1025. 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 of 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: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on the proposed ICR described below. BOEM is especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in its ICR to OMB for approval of this information collection. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time. Even if BOEM withholds your information in the context of this ICR, your comment is subject to the Freedom of Information Act (FOIA). If your comment is requested under the FOIA, your information will only be withheld if BOEM determines that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

In order for BOEM to consider withholding from disclosure your personally identifiable information, you must identify, in a cover letter, any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Note that BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

BOEM protects proprietary information in accordance with FOIA and the Department's implementing regulations. Items of a sensitive nature are not intended to be collected.

Title of Collection: ''Piloting an Approach to Community-Informed Characterization of Communities with Environmental Justice Concerns.''

Abstract: Various Federal statutes, including the National Environmental Policy Act (NEPA), require BOEM to examine the social and economic impacts of BOEM-authorized activities at the community level. Additionally, Federal policy and guidance state that agencies should meaningfully engage communities with environmental justice (EJ) concerns in their decision making. (Executive Orders 12898, 13985, and 14008).

BOEM plans to pilot an approach to community-informed characterization of communities with EJ concerns potentially impacted by BOEM-authorized activities by selecting nine communities to participate in the study. The goal of this initiative is to improve BOEM's decision making through more detailed environmental analyses that include information on the communities with EJ concerns that may be affected by BOEM-authorized activities. Sections within NEPA documents currently discuss potential EJ impacts in a general sense. To improve its analyses, BOEM proposes to obtain information about specific potential impacts, unique contextual considerations, and the potential for detailed mitigation measures designed based on the affected community.

Baseline information to support community characterization is available but could be better applied in analyses

to identify local contexts and reflect local input. BOEM plans to prepare community characterization summaries using information obtained from members of selected communities with EJ concerns to pilot such an approach. Community characterizations would summarize a community's history, demographics, economic conditions, coastal and marine resource use, coastal land use, identification of key leaders and organizations, and other baseline conditions and trends. With these summaries readily accessible, BOEM analysts will continue improving their understanding of the selected affected communities with EJ concerns and the potential impacts from BOEM-approved activities.

As appropriate, these summaries may be included in the relevant environmental analyses that inform BOEM's decisions. Furthermore, conducting community-informed research could advance earlier community awareness of BOEM activities and increase trust. Gaining first-hand information will help ''ground-truth'' some of the existing information that would be collated into the selected community characterization summaries.

BOEM plans to use various methods, such as interviews and focus groups, to collect information from members of approximately three communities with EJ concerns in each of the three chosen study areas. BOEM seeks comments on, and suggestions of, appropriate information collection methods and study areas.

BOEM proposes to collect information on topics such as those listed below in order to inform community characterization summaries highlighting vulnerabilities, themes, issues, or concerns of each selected community. Each community summary would include relevant history, demographics, economics, coastal and marine resource use, coastal land use including existing facilities, outreach approaches that are locally appropriate for that specific community with EJ concerns, identification of key community leaders and organizations, and other baseline conditions that will enable BOEM analysts to better incorporate specific community interests into environmental reviews and the decision-making process. BOEM is also seeking comments on whether other topics should be included in the selected community characterization summaries.

OMB Control Number: 1010–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: 9–15 Selected Communities (including community leaders, key informants, and community organizations).

Total Estimated Number of Annual Responses: 135–225 community responses.

Total Estimated Number of Annual Burden Hours: 540–900 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Non-Hour Burden Cost: None.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Karen Thundiyil,

Chief, Office of Regulations, Bureau of Ocean Energy Management.

[FR Doc. 2023–24188 Filed 11–1–23; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–650–651 (Final) (Remand)]

Phosphate Fertilizers From Morocco and Russia; Notice of Remand Proceedings; Correction

AGENCY: U.S. International Trade Commission.

ACTION: Notice; correction.

SUMMARY: Correction is made to the effective date.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 27, 2023 (88 FR 73873) in FR Doc. 2023–23774, on page 73873, in the first column, in the **DATES** section, the date should be October 23, 2023.

Issued: October 27, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–24182 Filed 11–1–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–053]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 9, 2023 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA1103 (Third Review)(Activated Carbon from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on November 17, 2023.
5. Commission vote on Inv. Nos. 701–TA–694 and 731–TA–1641–1642 (Preliminary) (Aluminum Lithographic Printing Plates from China and Japan). The Commission currently is scheduled to complete and file its determinations on November 13, 2023; views of the Commission currently are scheduled to be completed and filed on November 20, 2023.
6. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 31, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–24363 Filed 10–31–23; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–583 and 731–TA–1381 (Review)]

Cast Iron Soil Pipe Fittings From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping and countervailing duty orders on cast iron soil pipe fittings from China would be likely to lead to continuation or

recurrence of material injury within a reasonably foreseeable time.

DATES: October 6, 2023.

FOR FURTHER INFORMATION CONTACT: Alexis Yim (202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 6, 2023, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 42753, July 3, 2023) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on November 21, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before 5:15 p.m. on November 30, 2023, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 30, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 27, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–24183 Filed 11–1–23; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Commissioner Stayin did not participate in the vote on these reviews.

[3] The Commission has found the response submitted on behalf of the Cast Iron Soil Pipe Institute and its two individual members to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 22–36]

Osmin A. Morales, M.D.; Decision and Order

On May 25, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Osmin A. Morales, M.D., (Respondent) of Florida seeking to deny his application for a DEA Certificate of Registration, Control No. W20125906C, and alleging that his registration ''would be inconsistent with the public interest.'' OSC, at 1 (citing 21 U.S.C. 823(g)(1)[1]).

A hearing was held before DEA Chief Administrative Law Judge John J. Mulrooney, II (the Chief ALJ). On February 8, 2023, the Chief ALJ issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (RD), which recommended that the Agency deny Respondent's application. RD, at 22. Respondent did not file exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety[2] of the Chief ALJ's rulings, credibility findings,[3] findings of fact,

[1] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[2] See footnotes 4 and 6, *infra.*

[3] The Agency adopts the Chief ALJ's summary of each of the witnesses' testimonies as well as the Chief ALJ's assessment of each of the witnesses' credibility. *See* RD, at 3–10. The Agency agrees with the Chief ALJ that the Diversion Investigator's (DI) testimony, which focused on the investigative steps completed in the case and establishing the foundations for exhibits received into the record, was sufficiently detailed, plausible, and internally consistent to be afforded full credibility. *See id.* at 3–4. The Agency also agrees with the Chief ALJ's assessment of the testimony provided by a Task Force Agent (TFA) on investigative assistance provided to DEA and non-controversial introduction of documentary evidence. *See id.* at 4. The testimony was sufficiently detailed, plausible, and internally consistent to be afforded full credibility. *Id.* M.L., mother of Patient K.L, primarily testified about her observations of K.L. during the time period in which Respondent issued K.L. controlled substance prescriptions, as well as an interaction with Respondent at his medical office. *Id.* at 5–6. Despite M.L.'s apparent anger toward Respondent for the role that she believed he played in her daughter's addiction to pain medication, the Agency agrees with the Chief ALJ that M.L.'s testimony was sufficiently consistent, plausible, and detailed to be afforded credibility. *See id.* at 6. Further, the Agency agrees with the Chief ALJ that Dr. Mark Rubenstein, M.D., the Government's expert witness, provided opinions on

Continued

conclusions of law, and recommended sanction in the RD and summarizes and expands upon portions thereof herein.

I. Findings of Fact

The Agency finds from clear, unequivocal, convincing, and unrebutted evidence that Respondent committed numerous failures in his prescribing conduct that fell below the standard of care in Florida. Overall, the Agency finds that Respondent issued at least 252 prescriptions [4] to patients from September 27, 2017, through November 25, 2020, without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 18–19.

Florida Standard of Care

Dr. Rubenstein provided expert testimony on the applicable standard of care for prescribing controlled substances in Florida.[5] RD, at 7–8; Tr. 637. According to Dr. Rubenstein, a physician is required to conduct ''an appropriate history and physical examination to establish an appropriate medical diagnosis, [and] review appropriate medical records,'' prior to prescribing a controlled substance. RD, at 7 (quoting Tr. 638). Dr. Rubenstein further explained that while the nature and depth of the physical examination may vary depending on the location of the pain, it should include an assessment tailored to the patient's particular complaints. RD, at 7; Tr. 639–40. He clarified that while the physical examination at the initial visit is usually the most thorough, physicians must still conduct additional physical examinations at subsequent visits. RD, at 7; Tr. 641. Dr. Rubenstein emphasized that ''[t]o prescribe controlled substances, you must establish an appropriate and valid medical diagnosis.'' RD, at 7 (quoting Tr. 646).

Dr. Rubenstein also testified that prior to issuing a controlled substance prescription, a physician should query the state prescription monitoring program (PMP), which, in Florida, is the Electronic-Florida Online Reporting of Controlled Substance Evaluation Program (E–FORCSE). RD, at 7–8; Tr. 638, 650, 835–36. The physician should also assess and document signs of misuse or noncompliance. RD, at 8; Tr. 647, 651–52. Notably, Dr. Rubenstein stressed the importance of maintaining ''full and appropriate records'' that include patient history, physical examinations, medical records, diagnostic studies, and controlled substance prescriptions. RD, at 8 (quoting Tr. 646); Tr. 650, 813.

The Patients

Patient K.L.

Regarding Patient K.L., the Agency finds that Respondent issued at least 110 controlled substance prescriptions from July 9, 2018, through November 25, 2020, without a legitimate medical purpose, outside the usual course of professional practice, and beneath the applicable standard of care.[6] *See* RD, at 18–19; GX 7, 12; Tr. 670–71, 852–54. Based on Dr. Rubenstein's testimony and the record as a whole, these prescriptions were issued without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care because Respondent failed to appropriately establish or document a medical indication (RD, at 8; GX 11; Tr. 689–90, 705, 708–10, 714, 719, 722, 725, 736–37, 853), altered prescriptions without any documented justification (RD, at 8; GX 11; Tr. 825–34), maintained Patient K.L. on high doses and high-risk combinations of controlled substances without any established or documented medical indication (RD, at 8–9; GX 11; Tr. 671, 687, 706, 710, 712–13, 717–19, 725–26, 729, 737, 853), issued prescriptions on dates prior to correlating patient visits (RD, at 9; GX 11–12; Tr. 758–61, 801–810), failed to resolve or adequately address signs of potential diversion prior to issuing prescriptions (RD, at 9; GX 11; Tr. 825–27, 839, 841, 843–48, 853–54), failed to document and maintain copies of certain prescriptions (RD, at 9; GX 11–12; Tr. 814–19) created patient records with inconsistent information (RD, at 9; GX 11–12; Tr. 745–50, 756–58, 851–52, 957–58), and/or failed to conduct in-person examinations of the patient, including a purported office visit noted in Patient K.L.'s file when evidence indicated that Respondent was not in the country (RD, at 9; GX 11–12, 20; Tr. 542, 745–50, 756–58, 851–52, 957–58).

Patient R.J.

Regarding Patient R.J., the Agency finds that Respondent issued at least 83 controlled substance prescriptions from August 2, 2018, to October 26, 2020, without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 18–19; GX 14; 857, 925–26. Based on Dr. Rubenstein's testimony and the record as a whole, these prescriptions were issued beneath the standard of care and outside the usual course of professional practice because Respondent failed to appropriately establish or document a medical indication (RD, at 8; GX 13; Tr. 863, 868–69, 885, 896–97, 904–06), maintained Patient R.J. on high doses and high-risk combinations of controlled substances without any established or documented medical indication (RD, at 8–9; GX 13; Tr. 866–67, 898, 905–06, 925), issued prescriptions on dates prior to correlating patient visits (RD, at 9; GX 13–14; Tr. 914–17), failed to resolve or adequately address signs of potential diversion prior to issuing prescriptions (RD, at 9; GX 13; Tr. 920–23, 925), failed to document and maintain copies of certain prescriptions (RD, at 9; GX 13–14; Tr. 917–20), and/or created patient records with inconsistent information (RD, at 9; GX 13–14; Tr. 882, 911, 914).

Patient A.H.

Regarding Patient A.H., the Agency finds that Respondent issued at least 19 controlled substance prescriptions from June 26, 2019, through November 11, 2020, without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 18–19; GX 16; Tr. 927–28, 931. Based on Dr. Rubenstein's testimony and the record as a whole, these prescriptions were issued beneath the standard of care and outside the usual course of professional practice because Respondent failed to appropriately establish or document a medical indication (RD, at 8; GX 15; Tr. 927–29), maintained Patient A.H. on high doses and high-risk combinations of controlled substances without any established or documented medical indication (RD, at 8–9; GX 15; Tr. 927–

Florida's standard of care and Respondent's prescribing history that ''gave every appearance of being comprehensive and well-reasoned,'' were unrefuted and uncontroverted, and merited controlling weight. *Id.* at 10. Respondent did not present a case. *Id.* at 3; Tr. 1,124–25.

[4] In addition to the misconduct discussed in this Decision, the Chief ALJ found misconduct related to 23 prescriptions Respondent issued to patients on November 18, 2020, that the Government alleged were either (a) signed and dated prior to their issuance date, (b) fraudulently written by Respondent's staff, and/or (c) issued after Respondent surrendered his prior DEA registration. RD, at 4, 18–19. Based on the overwhelming nature of the evidence establishing Respondent's other misconduct in his prescribing of controlled substances, the Agency need not reach a factual finding with regard to these 23 prescriptions.

[5] The Agency adopts and incorporates by reference the entirety of the Chief ALJ's findings regarding the standard of care in Florida and the related summary of Dr. Rubenstein's expert testimony.

[6] Based on the overwhelming evidence of misconduct related to Respondent's prescribing to K.L., the Agency need not issue findings regarding prescriptions issued to K.L. on July 5, 2016, and July 15, 2016.

29), and/or failed to conduct and document a physical examination, obtain and document a medical history, monitor and document compliance, and/or create and document a treatment plan (RD, at 9–10; GX 15; Tr. 928–31).

Patient R.H.

Regarding Patient R.H., the Agency finds that Respondent issued at least 37 controlled substance prescriptions from September 27, 2017, through November 4, 2020, without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. *See* RD, at 18–19; GX 18; Tr. 934, 941. Based on Dr. Rubenstein's testimony and the record as a whole, these prescriptions were issued beneath the standard of care and outside the usual course of professional practice because Respondent failed to appropriately establish or document a medical indication (RD, at 8; GX 17; Tr. 939), maintained Patient R.H. on high doses and high-risk combinations of controlled substances without any established or documented medical indication (RD, at 8–9; GX 17; Tr. 712, 933–34), and/or failed to conduct and document a physical examination, obtain and document a medical history, monitor and document compliance, and/or create and document a treatment plan (RD, at 9–10; GX 17; Tr. 934–35, 939–41).

Patients M.P., C.C., and C.A.

The Agency finds that Respondent issued one controlled substance prescription each to Patients M.P., C.C., and C.A.—on January 3, 2019, January 2, 2019, and December 26, 2018, respectively—without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida.[7] *See* RD, at 18–19; Tr. 945–46, 949–50, 956, 959–60. Although office visit notes indicated that Respondent had conducted in-person examinations of these patients, testimony by the DI and TFA, as well as U.S. Customs and Border Protection records, established that Respondent was not in the United States when he issued these controlled substance prescriptions. RD, at 5; GX 20, 22–27; Tr. 141–48, 608–25. Based on this evidence and related testimony by Dr. Rubenstein, these controlled substance prescriptions were issued to M.P., C.C., and C.A. without a legitimate medical purpose, outside the usual course of professional practice, and beneath the standard of care in Florida. RD, at 9; Tr. 941–56, 960.

II. Discussion

According to the CSA, a practitioner's application for a DEA registration may be denied upon a determination that ''the issuance of such registration . . . would be inconsistent with the public interest.'' 21 U.S.C. 823(g)(1). In the case of a practitioner, the CSA requires that the Agency consider the following factors in determining whether an applicant's registration would be inconsistent with the public interest:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(C) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(g)(1).

DEA considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1), the Government's evidence in support of its *prima facie* case for denying Respondent's application is confined to Factors B and D. *See* RD, at 13, n.24 (finding that Factors A, C, and E do not weigh for or against the sanction sought by the Government).

Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.,* 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). DEA regulations require that for a prescription for a controlled substance to be effective, it must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice. 21 CFR 1306.04(a); *see also* 21 U.S.C. 829.

Based on Dr. Rubenstein's uncontroverted expert opinion, the Agency finds that Respondent issued more than 250 prescriptions outside of the usual course of professional practice and beneath the Florida standard of care in violation of Federal law. *See supra* I. Additionally, the Agency finds that Respondent violated Fla. Stat. section 456.44(3) with regard to patients K.L., R.J., A.H., and R.H., by failing to obtain and/or document a medical history, establish and/or document a medical indication for prescribing, conduct and/or document a physical examination, create and/or document a treatment plan, monitor and document compliance, and/or maintain accurate and complete medical records.

The Agency finds that for each of the seven patients at issue, Respondent failed to maintain sufficiently detailed medical records that were accurate and complete and, among other things, justified the course of medical treatment, thereby violating Fla. Stat. section 456.44(3), Fla. Stat. section 458.331(1)(m), and Fla. Admin. Code r. 64B8–9.003. Lastly, the Agency finds that Respondent violated Fla. Stat. section 458.331(1)(k) by preparing office visit notes stating that he had conducted in-person examinations of patients K.L., M.P., C.C., and C.A., when in fact he was not in the United States. This conduct violated Florida law and further rendered Respondent's dispensing outside the usual course of professional practice.

In sum, and in agreement with the RD, the Agency finds that the record contains substantial evidence that Respondent prescribed and dispensed controlled substances in violation of both Federal and State law. RD, at 18; *see* 21 U.S.C. 829; 21 CFR 1306.04(a); Fla. Stat. sections 456.44(3), 458.331(1)(k), 458.331(1)(m); Fla. Admin. Code r. 64B8–9.003. In weighing Factors B and D, the Agency finds that the Government has established a *prima facie* case that Respondent committed acts that render his registration inconsistent with the public interest and support denial of his registration application. *See* 21 U.S.C. 823(g)(1).

III. Sanction

Where, as here, the Government has established grounds to deny Respondent's application, the burden shifts to the respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). When a respondent has committed acts inconsistent with the public interest, he must both accept responsibility and

[7] Respondent also issued four controlled substance prescriptions to Patient K.L. when Respondent was not in the country. *See supra,* Patient K.L.

demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33738, 33746 (2021).

When a respondent declines to testify and ''neither [takes] responsibility for his misconduct nor provid[es] any assurances that he has implemented remedial measures to ensure such conduct is not repeated,'' the respondent's silence weighs against registration. *Zvi H. Perper, M.D.,* 77 FR 64131, 64142 (2012) (citing *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008)); *see also Jeanne E. Germeil,* M.D., 85 FR 73786, 73803 (2020). Such silence also warrants an adverse inference against the respondent. *MacKay* v. *Drug Enf't Admin,* 664 F.3d 808, 820 (10th Cir. 2011) (upholding the Agency's finding that a respondent's failure to testify warranted an adverse inference because there was ''no evidence that [respondent] recognized the extent of his misconduct and was prepared to remedy his prescribing practices''); *T.J. McNichol, M.D.,* 77 FR 57133, 57153–54 (2012) (stating that ''it is appropriate to draw an adverse inference from Respondent's failure to testify'').

Here, Respondent has failed to accept responsibility or offer any basis for the Agency to trust him, despite his past misconduct, with the responsibility of a registration. RD, at 21. In light of Respondent's silence, he has not sufficiently demonstrated that he can be entrusted with a DEA registration. *See id.; MacKay,* 664 F.3d at 820; *Jeanne E. Germeil, M.D.,* 85 FR at 73803; *Zvi H. Perper, M.D.,* 77 FR at 64142.

In addition to acceptance of responsibility, the Agency looks to the egregiousness and extent of the misconduct, *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases), and considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74810 (2015). Here, Respondent's blatant and repeated disregard for the laws relating to controlled substances warrants a sanction. Respondent's inappropriate and unlawful prescribing of controlled substances placed multiple patients, and the public, at risk of harm. In this case, the Agency believes that denial of Respondent's application would deter Respondent and the general registrant community from disregarding controlled substance laws and engaging in the pattern of misconduct that permeated Respondent's actions as a registrant. *See* RD, at 22. As the Chief ALJ noted, ''[t]he misconduct established was sufficiently egregious that a denial is strongly supported.'' RD, at 22. Further, there is no evidence that Respondent's behavior is unlikely to recur in the future such that the Agency can entrust him with a registration.

In sum, the public interest factors weigh in favor of denial as a sanction; accordingly, the Agency shall order the sanctions the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny the DEA registration application of Osmin A. Morales, M.D. (Control No. W20125906C) and any other pending application of Osmin A. Morales, M.D., for a DEA registration in Florida. This Order is effective December 4, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–24151 Filed 11–1–23; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1228P]

Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to establish the 2024 aggregate production quotas (APQ) for controlled substances in schedules I and II of the Controlled Substances Act (CSA) and the assessment of annual needs (AAN) for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. For the 2024 quota year, DEA intends to allocate procurement quotas to DEA-registered manufacturers of schedule II controlled substances on a quarterly basis. In order to address domestic drug shortages of controlled substances, procurement quota allocations will be divided between quantities authorized for domestic sales and quantities authorized for export sales.

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before December 4, 2023. Interested persons may file written comments on this notice in accordance with 21 CFR 1303.11(c) and 1315.11(d). Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2024 aggregate production quotas for schedule I and II controlled substances, and an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–1228P'' on all correspondence, including any attachments. DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted, and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority

Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish production quotas for each basic class of controlled substances listed in schedules I and II, and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of DEA pursuant to 28 CFR 0.100.

Analysis for Proposed 2024 Aggregate Production Quotas and Assessment of Annual Needs

The proposed 2024 aggregate production quotas (APQ) and assessment of annual needs (AAN) represent those quantities of schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States (U.S.) in 2024 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine, but do not include imports of controlled substances for use in industrial processes.

Aggregate Production Quotas

In determining the proposed 2024 APQ, the Administrator has taken into account the criteria of 21 U.S.C. 826(a) and 21 CFR 1303.11, including the following seven factors:

(1) Total net disposal of the class by all manufacturers during the current and two preceding years;

(2) Trends in the national rate of net disposal of the class;

(3) Total actual (or estimated) inventories of the class and of all substances manufactured from the class, and trends in inventory accumulation;

(4) Projected demand for such class as indicated by procurement quotas requested pursuant to [21 CFR] 1303.12;

(5) The extent of any diversion of the controlled substance in the class;

(6) Relevant information obtained from the Department of Health and Human Services (HHS), including from the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the Centers for Medicare and Medicaid Services (CMS), and relevant information obtained from the states; and

(7) Other factors affecting medical, scientific, research, and industrial needs in the United States and lawful export requirements, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the class or the substances manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires. 21 CFR 1303.11(b)

DEA formally solicited input from FDA and CDC in February of 2023 and from the states in April 2023, as required by 21 U.S.C. 826 and 21 CFR part 1303. DEA did not solicit input from CMS for reasons discussed in previous notices.[1] DEA requested information on trends in the legitimate use of select schedule I and II controlled substances from FDA and rates of

[1] Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2021, 85 FR 54414 (Sept. 1, 2020) and Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2021, 85 FR 54407 (Sept. 1, 2020).

overdose deaths for covered controlled substances from CDC. DEA's request for information from the states was made directly to the Prescription Drug Monitoring Program (PDMP) Administrators in each state as well as through the National Association of State Controlled Substances Authorities (NASCSA).

Assessment of Annual Needs

In similar fashion, in determining the proposed 2024 AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, the Administrator has taken into account the criteria of 21 U.S.C. 826(a) and 21 CFR 1315.11, including the five following factors:

(1) Total net disposal of the chemical by all manufacturers and importers during the current and two preceding years;

(2) Trends in the national rate of net disposal of each chemical;

(3) Total actual (or estimated) inventories of the chemical and of all substances manufactured from the chemical, and trends in inventory accumulation;

(4) Projected demand for each chemical as indicated by procurement and import quotas requested pursuant to [21 CFR] 1315.32; and

(5) Other factors affecting medical, scientific, research, and industrial needs in the United States, lawful export requirements, and the establishment and maintenance of reserve stocks, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the chemicals or the substances manufactured from them, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

21 CFR 1315.11(b)

In determining the proposed 2024 AAN, DEA used the calculation methodology previously described in the 2010 and 2011 assessments of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

Estimates of Medical Need for Schedule II Opioids and Stimulants

In accordance with 21 CFR part 1303, 21 U.S.C. 826, and 42 U.S.C. 242, HHS continues to provide DEA with estimates of the quantities of select schedule I and II controlled substances and three list I chemicals that will be required to meet the legitimate medical needs of the United States for a given calendar year. The responsibility to provide these estimates of legitimate domestic medical needs resides with FDA. FDA provides DEA with predicted estimates of domestic medical usage for selected controlled substances based on information available to them at a specific point in time in order to meet statutory requirements.

FDA predicts that levels of medical need for schedule II opioids in the United States in calendar year 2024 will decline on average 7.9 percent from calendar year 2023 levels. These declines are expected to occur across a variety of schedule II opioids including fentanyl, hydrocodone, hydromorphone, oxycodone, and oxymorphone. DEA considered the potential for diversion of schedule II opioids, as required by 21 CFR 1303.11(b)(5), as well as a potential increase in demand for certain opioids identified as being necessary to support the previously postponed elective surgeries now that the COVID–19 public health emergency has ended, pursuant to 21 CFR 1303.11(b)(7), in developing the proposed 2024 APQ.

FDA predicted an average of a 3.1 percent increase in domestic medical use of the schedule II stimulants amphetamine, methylphenidate (including dexmethylphenidate), and lisdexamfetamine, which are prescribed to treat patients with attention deficit hyperactivity disorder (ADHD) and more recently prescribed off-label to treat patients diagnosed with long-COVID symptoms commonly known as brain fog where fatigue and cognitive impairment persist 4 to 12 weeks after a COVID infection.[2] FDA also raised concerns over drug shortage notifications it received from patients for specific ADHD medications containing methylphenidate and amphetamine. FDA's stated reasons for these specific shortages include increased prescribing potentially related to the growth in telemedicine, supply chain issues, manufacturing and quality issues, and business decisions of manufacturers. DEA considered FDA's concerns when determining the APQ for these substances. DEA believes that manufacturers will be able to meet the increase in domestic medical need with the APQs proposed in this notice.

DEA Projected Trends for Certain Schedule I Controlled Substances

There has been a significant increase in the use of schedule I hallucinogenic controlled substances for research and clinical trial purposes. DEA has received and subsequently approved new registration applications for schedule I researchers and new applications for registration from manufacturers to grow, synthesize, extract, and prepare dosage forms containing specific schedule I hallucinogenic substances for research and clinical trial purposes. DEA supports regulated research with schedule I controlled substances, as evidenced by the higher APQ proposed for 2024 as compared with APQ for these substances in 2023. Further, DEA published the final rule, ''Controls to Enhance the Cultivation of Marihuana for Research in the United States'' in December 2020, and the Medical Marijuana and Cannabidiol Research Expansion Act (Pub. L. 117–215) was enacted in December 2022. The agency continues to review and approve applications for schedule I manufacturers of marihuana that conform to the federal requirements contained in the CSA. *See* 21 CFR part 1318.

Thus, DEA is proposing APQ for ibogaine, psilocyn, psilocybin, delta-9-tetrahydrocannabinol (d-9-THC), and all other tetrahydrocannabinols to support manufacturing activities related to the increased level of research and clinical trials with these schedule I controlled substances. Additionally, DEA proposes APQs for d-9-THC and all other tetrahydrocannabinols for 2024 to reflect the relocation of manufacturing of these controlled substances from abroad to the United States.

Information Received for Consideration of the Remaining Factors

For the factors listed in 21 CFR 1303.11(b)(3) and (4), DEA registered manufacturers of controlled substances in schedules I and II provide information such as inventory, distribution, manufacturing, sales forecasts and quota requests to the DEA database systems. *See* 21 CFR 1303.12, 1303.22, and part 1304.

The regulation at 21 CFR 1303.11(b)(5) requires DEA to consider the extent of diversion of controlled substances.[3] Diversion is defined as all distribution, dispensing, or other use of controlled substances for other than legitimate medical purposes. In order to

[2] New Long-Haul COVID Clinics Treat Mysterious and Ongoing Symptoms, Scientific American, June 30, 2021; Successful Treatment of Post-COVID–19 ADHD-like Syndrome-A case Report, J Atten Disord., 2023 Aug; 27(10): 1092–1098.

[3] The estimates of diversion for five ''covered controlled substances'' as required by 21 U.S.C. 826(i) are discussed later in the document.

consider the extent of diversion, DEA analyzed reports of diversion of controlled substances from 2022 submitted to its Theft Loss Report database. This database is comprised of DEA registrant reports documenting diversion from the legitimate distribution chain, including employee thefts, break-ins, armed robberies, and material lost in transit. The data was categorized by basic drug class, and the amount of active pharmaceutical ingredient (API) in the dosage form was delineated with an appropriate metric for use in proposing aggregate production quota values (*i.e.,* weight).

In this proposed 2024 APQ, DEA also considered the lingering effects of the COVID–19 pandemic on the global supply chain, pursuant to 21 CFR 1303.11(b)(7), and specifically the continued impacts on the availability of raw materials for use in the domestic manufacturing process. Additionally, DEA considered the impact of the demand for surgical care for elective surgeries that were deferred during the COVID–19 public health emergency.

Estimates of Diversion of Covered Controlled Substances

In establishing any quota . . . , or any procurement quota established by [DEA] by regulation, for fentanyl, oxycodone, hydrocodone, oxymorphone, or hydromorphone (in this subsection referred to as a ''covered controlled substance''), [DEA] shall estimate the amount of diversion of the covered controlled substance that occurs in the United States.

21 U.S.C. 826(i)(1)(A)

In estimating diversion under that provision, DEA:

(i) shall consider information . . . , in consultation with the Secretary of Health and Human Services, [it] determines reliable on rates of overdose deaths and abuse and overall public health impact related to the covered controlled substance in the United States; and

(ii) may take into consideration whatever other sources of information [it] determines reliable.

21 U.S.C. 826(i)(1)(B)

The statute further mandates that DEA ''make appropriate quota reductions, as determined by [DEA], from the quota [it] would have otherwise established had such diversion not been considered.'' [4]

In estimating the amount of diversion of each covered controlled substance that occurs in the United States, DEA considered information from state PDMP Administrators and from legitimate distribution chain participants.

Consideration of Information From Certain State PDMPs and From National Sales Data

Pursuant to 21 CFR 1303.11(b)(6), DEA requested state PDMP data for the purpose of establishing its APQ. DEA believes state PDMPs to be an essential, reliable source of information for use in effectively estimating diversion of the five covered controlled substances. In April 2023, DEA sent a letter to NASCSA requesting its assistance in obtaining aggregated PDMP data for the five covered controlled substances from each state covering the years 2020–2022. The letter indicated that DEA was specifically interested in an analysis of prescription data from each state's PDMP that would assist DEA in estimating diversion and setting appropriate quotas in compliance with 21 U.S.C. 826(i). In its request, DEA provided specific questions, discussed in detail below, based on common indicia of potential diversion known as ''red flags'' by physicians, pharmacists, manufacturers, distributors, and federal and state regulatory and law enforcement agencies.[5] DEA investigators and administrative prosecutors also rely on Agency case law in which these red flags of diversion have been upheld as indicia of potential diversion.[6] Certain state regulations now include red flag circumstances as potential indicators of illegitimate prescriptions, and thus of potential abuse and diversion of controlled substances.[7] *See* The Pharmacy Place Order, 86 FR 21008, 21012 (Apr. 21, 2021) (citing 22 Tex. Admin. Code 291.29(c)(4), specifying the geographical distance between the practitioner and the patient or between the pharmacy and the patient as a red flag).

DEA requested responses from state PDMP Administrators by June 15, 2023. NASCSA disseminated DEA's request to its PDMP Administrators and provided them with a report tool to ensure that responses to DEA's questions were extracted consistently across all responsive states. Thirty states and two territories provided DEA with summarized PDMP data between May 3, and June 15, 2023, utilizing the standardized report developed by NASCSA.[8] See Table 1a below.

TABLE 1a—STATES/TERRITORIES THAT RESPONDED TO DEA'S DATA REQUEST

State/territory
1. Alabama
2. Alaska
3. Arizona
4. Arkansas
5. Connecticut
6. Delaware
7. District of Columbia
8. Hawaii
9. Idaho
10. Indiana
11. Iowa
12. Kansas
13. Kentucky
14. Louisiana
15. Maine
16. Maryland
17. Michigan
18. Minnesota
19. Mississippi
20. Montana
21. Nevada
22. New Jersey
23. North Carolina
24. North Dakota
25. Ohio
26. Oklahoma
27. Puerto Rico
28. Rhode Island
29. South Carolina
30. South Dakota
31. Texas
32. Utah

Pharmacies are required by state law to enter controlled substance dispensing data into the state's PDMP database, including the prescriber's name, registered address and DEA number; prescription information (such as drug name); dispensing date; dosage dispensed; pharmacy registered address; and patient name and address. DEA considers PDMP data to be an accurate representation of dispensing activities in states. DEA received data for the following red-flag metrics:

- The total number of patients who saw three or more prescribers in a 90-day period and were dispensed an opioid following each visit. For this metric, DEA requested and was provided the number of prescriptions for the five covered controlled substances dispensed to these patients, as a percentage of the total prescriptions dispensed for that particular covered controlled substance, as well as the corresponding quantity of the covered

[4] 21 U.S.C. 826(i)(1)(C).

[5] National Association of Boards of Pharmacy (NABP) coalition consensus document ''Stakeholders' Challenges and Red Flag Warning Signs Related to Prescribing and Dispensing Controlled Substances'' (2015). *www.nabp.pharmacy/resources/reports.*

[6] The Medicine Shoppe, 79 FR 59504, 59507, 59512–13 (2014); Holiday CVS, L.L.C., d/b/a CVS Pharmacy Nos. 219 and 5195, 77 FR 62316 (Oct. 12, 2012).

[7] The mere indicia of red flags alone is not proof of violation of 21 U.S.C. 824 or any other provision of the CSA. This rule discusses only their use by DEA as an analytical tool to estimate diversion.

[8] NASCSA formatted DEA's request into an analytics model developed by one of its associates, Appriss Inc.

controlled substance dispensed. This metric (patients being prescribed covered controlled substances from three or more prescribers in a 90-day period) is used to identify potential doctor shopping, a common technique to obtain a high number of controlled substances, which may lead to abuse or diversion of controlled substances. DEA has long considered doctor shopping to be an indicator of potential diversion.[9]

- The number of patients that were dispensed prescriptions for each of the five covered controlled substances that exceeded 240 morphine milligram equivalents (MME) daily. States provided the raw number of such prescriptions dispensed, the number of prescriptions as a percentage of the total covered controlled substance prescriptions dispensed, and the corresponding quantity of the covered controlled substance dispensed. DEA believes that accounting for quantities in excess of 240 MME daily allows for consideration of oncology patients with legitimate medical needs for covered controlled substance prescriptions with high MME. Higher dosages place individuals at higher risk of overdose and death. Prescriptions involving dosages exceeding 240 MME daily may indicate diversion, such as illegal distribution of controlled substances or prescribing outside the usual course of professional practice.

- The number of patients that paid cash for covered controlled substance prescriptions, without submitting for insurance reimbursement.[10] States also provided the number of prescriptions paid entirely with cash as a percentage of the total prescriptions for the five covered controlled substances dispensed, as well as the corresponding quantity of the covered controlled substances dispensed. When investigating potential diversion, cash payments are one element considered in identifying prescriptions filled for nonmedical purposes. Unusually high percentages of cash payments made to a prescriber or pharmacy for controlled substances may indicate diversion.[11]

[9] Frank's Corner Pharmacy, 60 FR 17574 (1995); Holiday CVS, L.L.C., d/b/a CVS Pharmacy Nos. 219 and 5195, 77 FR 62316 (Oct. 12, 2012).

[10] This total does not include insurance co-payments made with cash.

[11] Suntree Pharmacy and Suntree Medical Equipment, LLC, 85 FR 73753 (2018) (finding that the pharmacy filled prescriptions despite the presence of multiple unresolved red flags, including cash payments); Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy, 83 FR 10876 (Mar. 13, 2018) (revoking pharmacy's registration for filling prescriptions that raised the red flag of customers paying cash for their prescriptions, among other red flags).

DEA received PDMP data from the states in a standardized format that allowed DEA to aggregate the data. The PDMP data sample represents a population of approximately 150.7 million people, which is approximately 45 percent of the U.S. population. DEA believes this sample is sufficient to derive a reasonable nationwide estimate.

While PDMP data is useful in estimating diversion, it is not conclusive. Further investigation would be required before concluding that any of the subject prescriptions were actually diverted. DEA continues to evaluate its methodologies in estimating diversion in an effort to adjust quotas more efficiently. State participation is crucial to accurate data analysis, and DEA anticipates working closely with states, as well as other federal and state entities, in future quota determinations.

To calculate a national diversion estimate for each of the covered controlled substances from the responses received from state PDMP Administrators, DEA relied upon the number of individuals who received a prescription for a covered controlled substance that met any of the three red-flag metrics for each of calendar years 2020–2022. Using the population of the states responding to DEA's request, DEA then calculated the percentage of the population issued a prescription with a red flag. Using this estimated percentage for 2020–2022, DEA analyzed trends in the data to predict the estimated percentage of patients who would be expected to be included in these red-flag metrics for 2024.

DEA also reviewed aggregate sales data for each of the covered controlled substances, which it extracted from IQVIA's National Sales Perspective.[12] IQVIA sales data was selected to help quantify diversion at the national level because it reflects the best national estimate for all prescriptions written and filled, including the total quantity available for diversion or misuse. DEA analyzed trends in IQVIA sales data from January 2020—April 2023, in order to predict the estimated national sales for 2024.

To estimate diversion for each of the covered controlled substances, DEA multiplied the forecasted percentage of patients likely to receive a prescription for a covered controlled substance that meet any of the three red-flag metrics in 2024 by the forecasted sales data from IQVIA for 2024. The resulting estimate of diversion from data submitted by state PDMP Administrators is summarized below in Table 1b. This data contributed to the final diversion estimate set forth in Table 3.

[12] DEA has purchased this data from IQVIA for decades and routinely uses this information to administer several regulatory functions, including the administration of DEA's quota program.

TABLE 1B—DIVERSION ESTIMATES FOR 2024 BASED ON STATE PDMP DATA FOR COVERED CONTROLLED SUBSTANCES FROM 2020–2022

Controlled substance	(g)
Fentanyl	18
Hydrocodone	83,823
Hydromorphone	356
Oxycodone	150,684
Oxymorphone	0

Consideration of Registrant Reported Diversion in the Legitimate Distribution Chain

DEA extracted data from its Theft Loss Report database and categorized it by each basic drug class. DEA calculated the estimated amount of diversion by multiplying the quantity of API in each finished dosage form by the total amount of units reported stolen or lost to estimate the metric weight in grams of the controlled substance being diverted. This estimate of diversion from the legitimate supply chain for each of the covered controlled substances is displayed in Table 2. This data contributed to the final diversion estimates set forth in Table 3.

TABLE 2—DIVERSION ESTIMATES BASED ON SUPPLY CHAIN DIVERSION DATA FOR COVERED CONTROLLED SUBSTANCES

Controlled Substance	(g)
Fentanyl	74
Hydrocodone	12,454
Hydromorphone	481
Oxycodone	31,698
Oxymorphone	252

In accordance with 21 U.S.C. 826(i), DEA's estimate of diversion for the five controlled substances was calculated by combining the values in Tables 1b and 2. DEA reduced the APQ for each covered controlled substance by the quantities listed in Table 3.

TABLE 3—TOTAL ESTIMATES OF DIVERSION FOR COVERED CONTROLLED SUBSTANCES TO BE APPLIED TO THE 2024 APQS

Controlled substance	(g)
Fentanyl	92
Hydrocodone	96,277
Hydromorphone	838

TABLE 3—TOTAL ESTIMATES OF DIVERSION FOR COVERED CONTROLLED SUBSTANCES TO BE APPLIED TO THE 2024 APQS—Continued

Controlled substance	(g)
Oxycodone	182,382
Oxymorphone	252

Forthcoming Regulatory Changes and Administration of Individual Quotas for 2024

DEA is committed to ensuring that all Americans can access appropriately prescribed medications. As part of this commitment, DEA undertook work to understand the supply chain dynamics for controlled substances subject to quotas over the last year and a half, especially in highly genericized markets. Based on that review, DEA observed various challenges in the quota allocation process stemming from the lack of real-time inventory and sales data accessible to DEA, the lack of information on manufacturers' production lead times, and issues of timeliness in ARCOS reporting.

Relatedly, beginning in the latter half of 2022, the DEA and FDA observed an increase in the number of drug shortages reported by manufacturers of schedule II stimulants including mixed-salt amphetamine products starting in April 2022 and lisdexamfetamine and methylphenidate starting in July 2023. As DEA and FDA stated in their open letter,[13] we remain committed to doing all we can to prevent stimulant drug shortages, limit their impact, and resolve them as quickly as possible.

DEA commissioned two reports by IQVIA [14] in order to understand the demographic shifts impacting the prescribing of schedule II stimulants. The reports provided valuable insights. Chief among those insights was the observed increase in prescriptions dispensed for mixed-salt amphetamine products to adults between the ages of 31–40 years, particularly women, and older patients (71–80 years old), particularly during the COVID–19 pandemic (*i.e.* 2020 and 2021). In contrast, during 2022, dispensed prescriptions for products containing methylphenidate HCl and dexmethylphenidate HCl had a higher annual increase in 2022 (than in 2021) as compared to mixed-salt amphetamine products which may be indicative of product switching from amphetamine to methylphenidate and dexmethylphendiate. Neither DEA nor FDA anticipated these changes.

In addition to these demographic shifts in prescribing, DEA also evaluated inventory, manufacturing, and sales data submitted by manufacturers through ARCOS and through reports submitted to DEA's Quota Management System. That analysis revealed that dosage manufacturers of amphetamine did not utilize the full extent of their authorized quotas. DEA authorized amphetamine medication dosage form manufacturers across the entire market to purchase and use 38,418 kilograms of amphetamine but those manufacturers initially [15] reported the purchase of only 31,539 kg. Of that quantity, dosage manufacturers only shipped 26,953 kg of amphetamine medications.

This ongoing work has led DEA to conclude that changes to its regulations likely will be useful in developing more precise quotas that will provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks, while also reducing opportunities for diversion. For instance, DEA believes that changes to reporting requirements are necessary to improve both the type of data collected and the timeliness of that data, allowing DEA to be more nimble in its administration of the quota program. Future regulatory changes may seek to address the lack of real-time inventory and sales data accessible to DEA, the lack of information on production lead times, and issues of timeliness in ARCOS reporting, by considering, for example, requiring manufacturers to provide anticipated production timelines and monthly ARCOS reporting. DEA is not seeking comments on these concepts through this notice, but will publish detailed proposals for comment in the future.

DEA also will seek additional information that will assist the agency to more accurately forecast export requirements, especially for those substances that are not controlled internationally.[16] DEA understands that manufacturers have contractual obligations that dictate business decisions regarding the quantities of finished dosage forms they will produce under a single DEA-issued quota, which applies to products manufactured with an active ingredient, whether for domestic or foreign markets. DEA also is exploring the purchase of third-party data to improve its understanding of the dynamic changes in foreign markets. Building off the recently issued quota management rule,[17] DEA also intends to add new subcategories to individual manufacturing quotas and procurement quotas, to distinguish between domestic requirements and export requirements.

DEA also is considering methods by which it might increase transparency in its quota setting process. Future regulatory proposals may define additional steps, including such concepts as public notification and an opportunity for public input when prescribing rates for controlled substances deviate substantially from FDA's estimate of future use. Furthermore, DEA is considering regulatory changes which will authorize it to reduce a manufacturer's individual manufacturing or procurement quota in order to apportion it to another manufacturer. As with the regulatory changes mentioned above, DEA will welcome comment on detailed proposals in the future, and is not requesting comment on these general concepts in this notice.

The abovementioned regulatory changes will take time. In the meantime, for the 2024 quota year, DEA intends to allocate procurement quotas to DEA-registered manufacturers of schedule II controlled substances on a quarterly basis. In order to address domestic drug shortages of controlled substances, procurement quota allocations for schedule II controlled substances will be divided between quantities authorized for domestic sales and quantities authorized for export sales. DEA will be sending a letter to each manufacturer with instructions on the data that will be necessary to allow DEA to process subsequent quarterly procurement quota allocations. DEA may publish or post how many companies have been allocated quota in

[13] Both DEA and FDA released this letter on Aug. 1, 2023. It is available at: *https://www.dea.gov/sites/default/files/2023-08/DEA%20and%20FDA%20Issue%20Joint%20Letter%20to%20the%20Public.pdf.*

[14] Both reports are available at: *https://www.deadiversion.usdoj.gov/drug_chem_info/stimulants/.*

[15] In July 2023, several manufacturers who—according to their reporting to DEA—had failed to use their full amphetamine procurement quotas in 2022 received correspondence from DEA and FDA asking them to confirm that they would use their full 2023 procurement quotas. Upon receiving that correspondence—approximately seven months after the close of calendar year 2022—one such manufacturer then revised its 2022 reporting to DEA to reflect that it had, in fact, used nearly all of its 2022 amphetamine procurement quota.

[16] While amphetamine and methylphenidate are currently recognized as schedule II controlled substances under the Convention on Psychotropic Substances of 1971, lisdexamfetamine is not. Additional details may be found at: *https://www.incb.org/incb/en/psychotropics/1971_convention.html.*

[17] Management of Quotas for Controlled Substances and List I Chemicals, 88 FR 60117 (Aug. 31, 2023) (effective Nov. 29, 2023).

a given calendar year, and how many of those companies have utilized their allocated quota. Further, DEA may publish or post the names of the companies that have been allocated quota.

The Administrator, therefore, proposes to establish the 2024 APQ for certain schedule I and II controlled substances and AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Proposed 2024 quotas (g)
Schedule I	
-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20
1-(1-Phenylcyclohexyl)pyrrolidine	30
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30
1-[1-(2-Thienyl)cyclohexyl]piperidine	15
2′-fluoro 2-fluorofentanyl	30
1-Benzylpiperazine	25
1-Methyl-4-phenyl-4-propionoxypiperidine	10
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)	30
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)	30
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C–P)	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)	100
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B–NBOMe; 2C–B–NBOMe; 25B; Cimbi-36)	30
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C–NBOMe; 2C–C–NBOMe; 25C; Cimbi-82)	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I–NBOMe; 2C–I–NBOMe; 25I; Cimbi-5)	30
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25
2,5-Dimethoxy-4-n-propylthiophenethylamine	25
2,5-Dimethoxyamphetamine	25
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)	30
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)	30
3,4,5-Trimethoxyamphetamine	30
3,4-Methylenedioxyamphetamine (MDA)	12,000
3,4-Methylenedioxymethamphetamine (MDMA)	12,000
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40
3,4-Methylenedioxy-N-methylcathinone (methylone)	5,200
3,4-Methylenedioxypyrovalerone (MDPV)	35
3–FMC; 3-Fluoro-N-methylcathinone	25
3-Methylfentanyl	30
3-Methylthiofentanyl	30
4,4′-Dimethylaminorex	30
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	5,100
4-Chloro-alpha-pyrrolidinovalerophenone (4-chloro-alpha-PVP)	25
4–CN-Cumyl-Butinaca	25
4-Fluoroisobutyryl fentanyl	30
4F–MDMB–BINACA	30
4–FMC; Flephedrone	25
4–MEC; 4-Methyl-N-ethylcathinone	25
4-Methoxyamphetamine	150
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25
4-Methylaminorex	25
4-Methyl-N-methylcathinone (mephedrone)	45
4-Methyl-alpha-ethylaminopentiophenone (4–MEAP)	25
4-Methyl-alpha-pyrrolidinohexiophenone (MPHP)	25
4′-Methyl acetyl fentanyl	30
4-Methyl-α-pyrrolidinopropiophenone (4-MePPP)	25
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47,497 C8-homolog)	40
5F–AB–PINACA; (1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25
5F–ADB; 5F–MDMB–PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	25
5F–CUMYL–P7AICA; 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3carboximide	25
5F–CUMYL–PINACA	25
5F–EDMB–PINACA	25
5F–MDMB–PICA	25
5F–AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	25
5F–APINACA; 5F–AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	25
5-Fluoro-PB–22; 5F–PB–22	25
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1Hindol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	25
5-Methoxy-3,4-methylenedioxyamphetamine	25

Basic class	Proposed 2024 quotas (g)
5-Methoxy-N,N-diisopropyltryptamine	25
5-Methoxy-N,N-dimethyltryptamine	11,000
AB–CHMINACA	30
AB–FUBINACA	50
AB–PINACA	30
ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	30
Acetorphine	25
Acetyl Fentanyl	100
Acetyl-alpha-methylfentanyl	30
Acetyldihydrocodeine	30
Acetylmethadol	25
Acryl Fentanyl	25
ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	50
AH–7921	30
All other tetrahydrocannabinol	790,010
Allylprodine	25
Alphacetylmethadol	25
alpha-Ethyltryptamine	25
Alphameprodine	25
Alphamethadol	25
alpha-Methylfentanyl	30
alpha-Methylthiofentanyl	30
alpha-Methyltryptamine (AMT)	25
alpha-Pyrrolidinobutiophenone (α-PBP)	25
alpha-pyrrolidinoheptaphenone (PV8)	25
alpha-pyrrolidinohexabophenone (alpha-PHP)	25
alpha-Pyrrolidinopentiophenone (α-PVP)	25
Amineptine	30
Aminorex	25
Anileridine	20
APINCA, AKB48 (N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	25
Benzethidine	25
Benzylmorphine	30
Betacetylmethadol	25
beta-Hydroxy-3-methylfentanyl	30
beta-Hydroxyfentanyl	30
beta-Hydroxythiofentanyl	30
beta-Methyl fentanyl	30
beta′-Phenyl fentanyl	30
Betameprodine	25
Betamethadol	4
Betaprodine	25
Brorphine	30
Bufotenine	15
Butonitazene	30
Butylone	25
Butyryl fentanyl	30
Cathinone	40
Clonitazene	25
Codeine methylbromide	30
Codeine-N-oxide	192
Crotonyl Fentanyl	25
Cyclopentyl Fentanyl	30
Cyclopropyl Fentanyl	20
Cyprenorphine	25
d-9–THC	900,610
Desomorphine	25
Dextromoramide	25
Diapromide	20
Diethylthiambutene	20
Diethyltryptamine	25
Difenoxin	9,300
Dihydromorphine	639,954
Dimenoxadol	25
Dimepheptanol	25
Dimethylthiambutene	20
Dimethyltryptamine	3,000
Dioxyaphetyl butyrate	25
Dipipanone	25
Drotebanol	25
Ethylmethylthiambutene	25

Basic class	Proposed 2024 quotas (g)
Ethylone	25
Etodesnitazene	30
Etonitazene	25
Etorphine	30
Etoxeridine	25
Eutylone	30
Fenethylline	30
Fentanyl carbamate	30
Fentanyl related substances	600
Flunitazene	30
FUB–144	25
FUB–AKB48	25
Fub-AMB, MMB-Fubinaca, AMB-Fubinaca	25
Furanyl fentanyl	30
Furethidine	25
gamma-Hydroxybutyric acid	29,417,000
Heroin	150
Hydromorphinol	40
Hydroxypethidine	25
Ibogaine	150
Isobutyryl Fentanyl	25
Isotonitazine	25
JWH–018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	45
JWH–073 (1-Butyl-3-(1-naphthoyl)indole)	45
JWH–081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole)	30
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30
Ketobemidone	30
Levomoramide	25
Levophenyacylmorphan	25
Lysergic acid diethylamide (LSD)	1,200
MAB–CHMINACA; ADB–CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	30
MDMB–CHMICA; MMB–CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	30
MDMB–FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
MMB–CHMICA-(AMB–CHIMCA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate	25
Mesocarb	30
Metodesnitazene	30
Metonitazene	30
Marijuana	6,675,000
Marijuana extract	1,000,000
Mecloqualone	30
Mescaline	1,200
Methaqualone	60
Methcathinone	25
Methiopropamine	30
Methoxetamine	30
Methoxyacetyl fentanyl	30
Methyldesorphine	5
Methyldihydromorphine	25
Morpheridine	25
Morphine methylbromide	5
Morphine methylsulfonate	5
Morphine-N-oxide	150
MT–45	30
Myrophine	25
NM2201: Naphthalen-1-yl 1-(5-fluorpentyl)-1H-indole-3-carboxylate	25
N,N-Dimethylamphetamine	25
Naphyrone	25
N-Ethyl-1-phenylcyclohexylamine	25
N-Ethyl-3-piperidyl benzilate	10
N-Ethylamphetamine	24
N-Ethylhexedrone	25
N-Ethylpentylone, ephylone	30
N-Hydroxy-3,4-methylenedioxyamphetamine	24
Nicocodeine	25
Nicomorphine	25

Basic class	Proposed 2024 quotas (g)
N-methyl-3-piperidyl benzilate	30
N-Pyrrolidino Etonitazene	30
Noracymethadol	25
Norlevorphanol	2,550
Normethadone	25
Normorphine	40
Norpipanone	25
Ocfentanil	25
ortho-Fluoroacryl fentanyl	30
ortho-Fluorobutyryl fentanyl	30
Ortho-Fluorofentanyl,2-Fluorofentanyl	30
ortho-Fluoroisobutyryl fentanyl	30
ortho-Methyl acetylfentanyl	30
ortho-Methyl methoxyacetyl fentanyl	30
Para-Chlorisobutyrl fentanyl	30
Para-flourobutyryl fentanyl	25
Para-fluorofentanyl	25
para-Fluoro furanyl fentanyl	30
Para-Methoxybutyrl fentanyl	30
Para-methoxymethamphetamine	30
para-Methylfentanyl	30
Parahexyl	5
PB–22; QUPIC	20
Pentedrone	25
Pentylone	25
Phenadoxone	25
Phenampromide	25
Phenomorphan	25
Phenoperidine	25
Phenyl fentanyl	30
Pholcodine	5
Piritramide	25
Proheptazine	25
Properidine	25
Propiram	25
Protonitazene	30
Psilocybin	15,000
Psilocyn	24,000
Racemoramide	25
SR–18 and RCS–8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45
SR–19 and RCS–4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30
Tetrahydrofuranyl fentanyl	15
Thebacon	25
Thiafentanil	25
Thiofentanyl	25
Thiofuranyl fentanyl	30
THJ–2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30
Tilidine	25
Trimeperidine	25
UR–144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25
U–47700	30
Valeryl fentanyl	25
Zipeprol	30
Schedule II	
1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile	25
4-Anilino-N-phenethyl-4-piperidine (ANPP)	866,746
Alfentanil	5,000
Alphaprodine	25
Amobarbital	20,100
Bezitramide	25
Carfentanil	20
Cocaine	60,492
Codeine (for conversion)	942,452
Codeine (for sale)	19,262,957
d-amphetamine (for sale)	21,200,000
d,l-amphetamine	21,200,000
d-amphetamine (for conversion)	20,000,000
Dexmethylphenidate (for sale)	6,200,000

Basic class	Proposed 2024 quotas (g)
Dexmethylphenidate (for conversion)	4,200,000
Dextropropoxyphene	35
Dihydrocodeine	115,227
Dihydroetorphine	25
Diphenoxylate (for conversion)	14,100
Diphenoxylate (for sale)	770,800
Ecgonine	60,492
Ethylmorphine	30
Etorphine hydrochloride	32
Fentanyl	676,062
Glutethimide	25
Hydrocodone (for conversion)	1,250
Hydrocodone (for sale)	27,143,545
Hydromorphone	1,951,801
Isomethadone	30
L-amphetamine	30
Levo-alphacetylmethadol (LAAM)	25
Levomethorphan	30
Levorphanol	20,000
Lisdexamfetamine	26,500,000
Meperidine	681,184
Meperidine Intermediate-A	30
Meperidine Intermediate-B	30
Meperidine Intermediate-C	30
Metazocine	15
Methadone (for sale)	25,619,700
Methadone Intermediate	27,673,600
d,l-Methamphetamine	150
d-methamphetamine (for conversion)	485,020
d-methamphetamine (for sale)	47,000
l-methamphetamine	587,229
Methylphenidate (for sale)	53,283,000
Methylphenidate (for conversion)	19,975,468
Metopon	25
Moramide-intermediate	25
Morphine (for conversion)	2,393,200
Morphine (for sale)	20,805,957
Nabilone	62,000
Norfentanyl	25
Noroxymorphone (for conversion)	22,044,741
Noroxymorphone (for sale)	1,000
Oliceridine	25,100
Opium (powder)	250,000
Opium (tincture)	530,837
Oripavine	33,010,750
Oxycodone (for conversion)	437,827
Oxycodone (for sale)	53,658,226
Oxymorphone (for conversion)	28,204,371
Oxymorphone (for sale)	464,464
Pentobarbital	33,843,337
Phenazocine	25
Phencyclidine	35
Phenmetrazine	25
Phenylacetone	100
Piminodine	25
Racemethorphan	5
Racemorphan	5
Remifentanil	3,000
Secobarbital	172,100
Sufentanil	4,000
Tapentadol	10,390,226
Thebaine	57,137,944
List I Chemicals	
Ephedrine (for conversion)	41,100
Ephedrine (for sale)	3,933,336
Phenylpropanolamine (for conversion)	14,878,320
Phenylpropanolamine (for sale)	7,990,000
Pseudoephedrine (for conversion)	1,000
Pseudoephedrine (for sale)	170,360,314

The Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

These proposed 2024 quotas reflect the quantities that DEA believes are necessary to meet the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements; and the establishment and maintenance of reserve stocks. DEA remains committed to conducting continuous surveillance on the supply of schedule II controlled substances and list I chemicals necessary to treat patients with COVID–19, and, pursuant to her authority, the Administrator will move swiftly and decisively to increase any 2024 APQ that she determines is necessary to address an unforeseen increase in demand, should that occur.

In accordance with 21 CFR 1303.13 and 1315.13, upon consideration of the relevant factors, the Administrator may adjust the 2024 APQ and AAN as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will issue and publish in the **Federal Register** a final order establishing the 2024 APQ for controlled substances in schedules I and II and establishing an AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, as directed by 21 CFR 1303.11(c) and 1315.11(f).

Signing Authority

This document of the Drug Enforcement Administration was signed on October 30, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–24282 Filed 11–1–23; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–17]

Isaac Sved, M.D.; Decision and Order

On December 8, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Isaac Sved, M.D. (Respondent) of Buford, Georgia. OSC/ISO, at 1. The OSC/ISO informed Respondent of the immediate suspension of his DEA Certificate of Registration, Control No. BS4103610, pursuant to 21 U.S.C. 824(d), alleging that Respondent's continued registration constitutes '' 'an imminent danger to the public health or safety.' '' *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Respondent's registration, alleging that Respondent has ''committed such acts as would render [his] registration inconsistent with the public interest.'' *Id.* at 1, 4 (citing 21 U.S.C. 823(g)(1),[1] 824(a)(4)).

A hearing was held before DEA Administrative Law Judge Teresa A. Wallbaum (the ALJ) who, on June 20, 2023, issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or RD), which recommended revocation of Respondent's registration. RD, at 27. Respondent did not file exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings,[2] findings of fact, conclusions of law, sanctions analysis, and recommended sanction as found in the RD.

I. Findings of Fact

Georgia Standard of Care

DEA hired Dr. Lobel to testify as an expert in the standard of care for the practice of medicine and the prescribing of controlled substances in the state of Georgia, with a focus on pain management. RD, at 4; Tr. 105.[3] Dr. Lobel defined ''standard of care'' as a ''minimum level of competence or care so as not to harm the patient,'' and described how the Georgia standard of care requires a practitioner to, prior to prescribing controlled substances, obtain a patient's prior medical records; obtain a medical history, including family medical history and mental health history; conduct an appropriate physical examination; obtain a urine drug screen; check the PDMP; obtain informed consent from the patient; and document all information. RD, at 11; Tr. 120, 128–129, 134, 136. Further, the physical examination must be appropriate to the complaint, and for patients who have spinal pain, the practitioner should also conduct a complete neurologic exam. RD, at 11; Tr. 129–130. In addition, the Georgia standard of care requires that a practitioner determine and document the severity of pain. RD, at 11; Tr. 135–136.

Dr. Lobel testified that under the Georgia standard of care, opioids ''are not first-line treatment for chronic pain,'' so a practitioner must ''weigh the risks and benefits at every visit,'' as well as look out for adverse effects, side effects, and aberrant behavior. RD, at 11; Tr. 132–133, 136–137. According to Dr. Lobel, under the Georgia standard of care, a practitioner should consider taking a patient off of opioids when there is a ''lack of functional benefit, toxic effects of the medicine where they're having end organ damage, . . . [or] someone [] showing any signs or symptoms of addiction,'' and patients

[1] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC/ISO, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[2] The Agency adopts the ALJ's summary of each of the witnesses' testimonies as well as the ALJ's assessment of each of the witnesses' credibility. *See* RD, at 3–17. The Agency agrees with the ALJ that the Diversion Investigator's testimony, which was focused on the uncontroversial introduction of documentary evidence and her contact with the case, was credible in that it was sufficiently detailed, plausible, and internally consistent. *Id.* at 4. Further, the Agency agrees with the ALJ that the testimony from the Government's expert witness, Dr. Steven Lobel, M.D., which was focused on the Georgia standard of care and Respondent's prescribing to the patients listed in the OSC/ISO, was credible in that it was consistent with Georgia statutes governing the prescribing of controlled substances, especially in the pain management context, and was clear, direct, substantial, and consistent with regards to the individual patients. *Id.* at 4–5. Finally, the Agency agrees with the ALJ that although Respondent's testimony was credible as to general facts, including Respondent volunteering information regarding prior disciplinary actions, on the issue of whether his prescriptions were within the usual course of professional practice and for a legitimate medical purpose, Respondent's testimony was not fully credible in that his interpretations of the Georgia standard of care were inconsistent with the Georgia state statutes. *Id.* at 9–10.

[3] During the hearing, both Government counsel and Dr. Lobel initially referenced a national standard of care established by the CDC Guidelines, *see* RD, at 10, but Dr. Lobel ultimately testified that the Georgia standard of care, upon which this decision is based, is grounded in the state medical board's publications and Georgia state statutes, with the CDC Guidelines incorporated to the extent that they deal with the prescriptions of opioids. RD, at 10; Tr. 114–115, 119, 125.

should be tapered off of opioids if they are not in pain or if they are abusing the opioid prescription. RD, at 11–12; Tr. 140, 146–147. Regarding the relevant red flags of abuse and diversion, Dr. Lobel testified that under the Georgia standard of care, there is never a legitimate medical purpose for prescribing the ''Holy Trinity'' because ''[e]ach medicine synergistically affects the other to augment a high'' and it produces ''respiratory drive'' as a side effect. RD, at 12; Tr. 148–149, 173. Moreover, Dr. Lobel testified that duplicative therapies, that is, prescriptions for the same drugs in different strengths at high quantities, are not legitimate medical practice and fall out of the standard of care, with Dr. Lobel differentiating between prescribing ''two dose units of the same medication to get a higher dose unit at high quantities'' and prescribing a separate daytime and nighttime pain medicine. RD, at 12; Tr. 109, 149–151.[4]

Respondent

In 2010, Respondent began a family medicine and pain management practice in Atlanta.[5] RD, at 5; Tr. 335–336, 347, 363, 372. Respondent testified that most of his patients are ''hard-working blue-collar workers'' and ''laborers'' and that his patients prefer short-acting opioids because they do not make them as drowsy as long-acting opioids, therefore allowing the patients to control their pain but still be able to work. RD, at 6; Tr. 343–345, 376–377. Respondent testified that his patients also worry about ''cost-effectiveness'' because ''they don't have great insurance . . . [and] they can't really afford to do physical therapy.'' RD, at 7; Tr. 348.

Respondent testified that he has seen many of his pain patients since 2010 or 2012 and that he started these patients on lower doses of opioids that increased over time with changes in drugs and dosages. RD, at 7; Tr. 345. Respondent testified that he ''do[es] the rational thoughts as to why [he] prescribe[s] these medications. [He] do[es not] willy-nilly prescribe 120 doses of anything without thinking it through.'' RD, at 7; Tr. 345–346. According to Respondent, he is ''kind of old school'' and ''spend[s] more time talking to [patients], examining them, and counseling them than writing notes.'' RD, at 7; Tr. 346.

Regarding opioids, Respondent acknowledged that an opioid prescription must be medically necessary. RD, at 7; Tr. 378. Respondent testified that he does ''everything [he is] supposed to do as far as the Georgia requirements for pain management,'' but that he does not ''always write them down because . . . most of [his] practice is to take care of the patients and not write paper.'' RD, at 8; Tr. 350, *see also* Tr. 375, 376. Respondent also testified that although he sometimes ''missed'' information in his notes, all of the patient information is documented in patient files in an ''abbreviated form.'' RD, at 8; Tr. 375–376.

Regarding the prescription of the ''Holy Trinity,'' Respondent acknowledged that it is a dangerous combination, but testified that ''if [patients] failed other muscle relaxants, I usually have to go to . . . the one that seems to work the best.'' RD, at 8; Tr. 351, 353. Respondent asserted that he discusses the risk of combination prescriptions with patients. RD, at 8; 355–356. Respondent testified that he uses an application on his phone called Medscape to check for interactions between medications. RD, at 9; Tr. 354–355.[6] Ultimately, Respondent testified that his job is ''to make people feel healthy and good.'' RD, at 9; Tr. 360.

Respondent testified that he is familiar with and adheres to the Georgia standard of care, as found in the laws published by the Georgia medical board website. RD, at 9; Tr. 338, 365–369. Regarding the patients listed in the OSC/ISO, Respondent testified that his patients were ''fully informed as to the nature of [his] proposals'' and that his prescriptions were within the standard of care, with his patients receiving ''more medical benefit than risk.'' RD, at 9; 365–366. Respondent also denied running a ''pill mill'' or having any arrangement with his patients regarding selling the controlled substance prescriptions and denied knowingly or directly profiting from any diversion, and according to Respondent, none of his patients have been arrested for diversion. RD, at 9; Tr. 342, 364–365.

The Patients

Patient J.W.

On at least three occasions, Respondent issued prescriptions to Patient J.W. that in combination formed the ''Holy Trinity.'' Specifically, on May 15, 2022, June 12, 2022, and July 17, 2022, Respondent prescribed 30 mg oxycodone, 2 mg alprazolam, and 350 mg carisoprodol. RD, at 13; Tr. 109, 274, 277, 280; GX 2, at 14–15, 17–18, 20–21. On each date, Respondent also prescribed a second opioid, Percocet, a brand name for oxycodone/acetaminophen, a schedule II opioid. RD, at 13; Tr. 274, 277, 280; GX 2, at 14, 17, 20. Because there was no documentation justifying prescribing the ''Holy Trinity,'' Dr. Lobel concluded, and the Agency agrees, that the prescriptions were not issued within the Georgia standard of care. RD, at 13; Tr. 275, 277, 280–282; GX 2, at 16, 19, 22. Accordingly, the ALJ found, and the Agency agrees, that the prescriptions were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. RD, at 13.

Patient S.D.

On at least three occasions, Respondent issued prescriptions to Patient S.D. that in combination formed the ''Holy Trinity.'' Specifically, on April 27, 2022, May 25, 2022, and June 22, 2022, Respondent prescribed 30 mg oxycodone, 2 mg alprazolam, and 350 mg carisoprodol. RD, at 13–14; Tr. 265, 268–269, 270; GX 3, at 213, 217, 219. Moreover, on each date, Respondent also prescribed Percocet and Valium, a brand name for diazepam, a schedule IV benzodiazepine, forming a ''double'' ''Holy Trinity'' because there were two opioids and two benzodiazepines in combination with the carisoprodol. RD, at 14; Tr. 265, 268–270, 272; GX 3, at 213, 217, 219. Because there was no documentation justifying the prescriptions, Dr. Lobel concluded, and the Agency agrees, that the prescriptions were not issued within the Georgia standard of care. RD, at 14; Tr. 266, 267, 269, 271. Accordingly, the ALJ found, and the Agency agrees, that the prescriptions were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. RD, at 14.

Patient T.J.

On at least three occasions, Respondent issued prescriptions to Patient T.J. that in combination formed the ''Holy Trinity.'' Specifically, on May 9, 2022, June 6, 2022, and June 30, 2022, Respondent prescribed 30 mg

[4] Dr. Lobel testified that although Georgia law does not specifically prohibit prescribing the ''Holy Trinity'' or duplicative therapies, the standard of care described comes from the state medical board. RD, at 12 n.10; Tr. 173, 290.

[5] Respondent testified that although he is not board-certified in pain management, he has completed many hours of training. RD, at 5; Tr. 372. Specifically, he ''took specialized courses offered by . . . the American Academy of Pain Management.'' RD, at 5; Tr. 347. Respondent is also a member of the American Academy of Pain Physicians, Integrative Pain Management, and performs immigration physicals. RD, at 6; Tr. 347, 363.

[6] Regarding the combination of oxycodone, Soma, and Xanax, the ''Holy Trinity'', Respondent testified that the Medscape application reports three interactions of those drugs and says to ''monitor closely'' but does not say ''severe adverse reaction.'' RD, at 9; Tr. 355.

oxycodone, 2 mg alprazolam, and 350 mg carisoprodol. RD, at 14–15; Tr. 259, 261, 263; GX 4, at 190, 192, 195. Because there was no documentation justifying prescribing the ''Holy Trinity,'' Dr. Lobel concluded, and the Agency agrees, that the prescriptions were not issued within the Georgia standard of care. RD, at 15; Tr. 260, 262, 264.[7] Accordingly, the ALJ found, and the Agency agrees, that the prescriptions were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. RD, at 15.

Patient A.A.

On at least three occasions, Respondent issued prescriptions to Patient A.A. that were therapeutically duplicative. Specifically, on April 11, 2022, June 6, 2022, and July 6, 2022, Respondent prescribed 30 mg oxycodone and Percocet. RD, at 15; Tr. 245, 250–251, 255; GX 5, at 63, 64, 66. As Dr. Lobel testified, oxycodone and Percocet are both immediate release opioids and so prescribing them in combination is therapeutic duplication. RD, at 15; Tr. 245–246, 250–251, 257. Because there was no documentation justifying the therapeutic duplication, Dr. Lobel concluded, and the Agency agrees, that the prescriptions were not issued within the Georgia standard of care. RD, at 15; Tr. 246, 249, 251, 253, 256–258; GX 5, at 37, 38, 40. Accordingly, the ALJ found, and the Agency agrees, that the prescriptions were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. RD, at 15–16.

Patient L.B.

On at least three occasions, Respondent issued prescriptions to Patient L.B. that were therapeutically duplicative. Specifically, on May 15, 2022, June 12, 2022, and July 10, 2022, Respondent prescribed 30 mg oxycodone and Percocet. RD, at 16; Tr. 221, 235, 238–239, 241–242; GX 6, at 35, 37, 39. Because there was no documentation justifying the therapeutic duplication, Dr. Lobel concluded, and the Agency agrees, that the prescriptions were not issued within the Georgia standard of care. RD, at 16; Tr. 236, 239 241; GX 5, at 36, 38, 40. Accordingly, the ALJ found, and the Agency agrees, that the prescriptions were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. RD, at 16.

Patient A.T.

On at least three occasions, Respondent issued prescriptions to Patient A.T. that were therapeutically duplicative. Specifically, on April 6, 2022, May 4, 2022, and June 2, 2022, Respondent prescribed 30 mg oxycodone and Percocet. RD, at 16; Tr. 220–221, 225, 226, 228–229; GX 7, at 86, 87, 88. Because there was no documentation justifying the therapeutic duplication, Dr. Lobel concluded, and the Agency agrees, that the prescriptions were not issued within the Georgia standard of care. RD, at 16–17; Tr. 221–222, 226–227, 231; GX 7, at 31–33. Accordingly, the ALJ found, and the Agency agrees, that the prescriptions were not issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. RD, at 17.

I. Discussion

A. The Five Public Interest Factors

Under the CSA, ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(g)(1).

DEA considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

The Government has the burden of proof in this proceeding. 21 CFR 1301.44. While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1), the Government's evidence in support of its *prima facie* case for revocation of Respondent's registration is confined to Factors B and D. RD, at 18; *see also* RD, at 18 n.20 (finding that Factors A, C, and E do not weigh for or against revocation).

Having reviewed the record and the RD, the Agency agrees with the ALJ, adopts the ALJ's analysis, and finds that the Government's evidence satisfies its *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). RD, at 17–23.

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.,* 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). DEA regulations require that for a prescription for a controlled substance to be effective, it must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice. 21 CFR 1306.04(a); *see also* 21 U.S.C. 829. Georgia state law too provides that a practitioner may only issue prescriptions while acting in the usual course of his professional practice and for a legitimate medical purpose. Ga. Code Ann. section 16–13–41(f)(2), (3).

In the current matter, the Agency agrees with the ALJ's analysis that Respondent's treatment of the six patients described above fell below the Georgia standard of care and thus violated Federal and State law because, as detailed above, Respondent continually prescribed the ''Holy Trinity'' and duplicative therapies while failing to establish a medical justification for the prescriptions; as such, Respondent's prescribing was not within the usual course of professional practice and not for a legitimate medical purpose.[8] RD, at 20–21. As

[7] Dr. Lobel testified that the documentation for the June 30, 2022, prescriptions did not support prescribing the ''Holy Trinity,'' but the Government did not elicit any testimony regarding the adequacy of the documentation for the other two dates for Patient T.J. RD, at 15 n.15; Tr. 263.

[8] The Agency also agrees with the ALJ's conclusion that none of Respondent's arguments—including, among others, that the case was initially based on unfounded criminal allegations; that the patients suffered no injuries as a result of Respondent's treatment; that the Government's case was only an attack on Respondent's recordkeeping; that both public and private insurance companies saw fit to cover Respondent's treatments; and that

Continued

Respondent's conduct displays clear violations of the Federal and State regulations described above, the Agency agrees with the ALJ and hereby finds that Respondent violated 21 U.S.C. 829; 21 CFR 1306.04(a); and Ga. Code Ann. section 16–13–41(f)(2), (3). *Id.* Accordingly, the Agency agrees with the ALJ and finds that Factors B and D weigh in favor of revocation of Respondent's registration and thus finds Respondent's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). *Id.* at 23.

III. Sanction

Where, as here, the Government has established sufficient grounds to revoke Respondent's registration, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). When a registrant has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior,[9] the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33738, 33746 (2021).

Here, the Agency agrees with the ALJ that ''Respondent's hearing testimony and post-hearing arguments constitute a blanket denial of any wrongdoing.'' RD, at 25. Notably, Respondent testified that he did ''everything [he is] supposed to do as far as the Georgia requirements for pain management'' and that ''[t]his hobgoblin of a drug problem exists primarily in the mind of an easily excitable DEA.'' *Id.* at 24–25; Tr. 350; Respondent's Post-Hearing Brief, at 6. As stated by the ALJ, ''Respondent's testimony and argument simply cannot be reconciled with the record evidence.'' RD, at 25. As such, and because Respondent made no admittance of any wrongdoing on his part, the Agency agrees with the ALJ and finds that Respondent failed to unequivocally accept responsibility. *Id.*

When a registrant fails to make the threshold showing of acceptance of responsibility, the Agency need not address the registrant's remedial measures. *Ajay S. Ahuja, M.D.,* 84 FR 5479, 5498 n.33 (2019) (citing *Jones Total Health Care Pharmacy, L.L.C. & SND Health Care, L.L.C.,* 81 FR 79188, 79202–03 (2016)); *Daniel A. Glick, D.D.S.,* 80 FR 74800, 74801, 74810 (2015). Even so, in the current matter, Respondent did not present any evidence of remedial measures, and the Agency thus agrees with the ALJ that ''[Respondent's] failure to put forth any evidence of steps he has taken to avoid similar misconduct in the future shows that he cannot be entrusted with a [registration].'' RD, at 26.

In addition to acceptance of responsibility, the Agency considers both specific and general deterrence when determining an appropriate sanction. *Daniel A. Glick, D.D.S.,* 80 FR at 74810. In this case, the Agency agrees with the ALJ that ''failing to impose a significant sanction against Respondent would send the wrong message to registrants that the Agency does not take seriously a registrant who repeatedly prescribes dangerous drug cocktails and combinations.'' RD, at 26. Regarding Respondent in particular, ''[g]iven Respondent's cavalier attitude regarding the standard of care, specific deterrence is necessary.'' *Id.* Moreover, the Agency agrees with the ALJ that Respondent's actions were egregious because Respondent not only ignored his obligations to issue prescriptions within the standard of care and instead prescribed combinations that he knew to be dangerous to his patients, but he also endangered the community at large given the risk of diversion when prescribing such combinations. *Id.*

In sum, Respondent has not offered any credible evidence on the record to rebut the Government's case for revocation of his registration and Respondent has not demonstrated that he can be entrusted with the responsibility of registration. RD, at 27. Accordingly, the Agency will order that Respondent's registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BS4103610 issued to Isaac Sved, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Isaac Sved, M.D., to renew or modify this registration, as well as any other pending application of Isaac Sved, M.D., for additional registration in Georgia. This Order is effective December 4, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–24153 Filed 11–1–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Blue Mint Pharmacy; Decision and Order

On July 26, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Blue Mint Pharmacy (Registrant) of Houston, Texas. Request for Final Agency Action (RFAA), Government Exhibit (RFAAX) 2, at 1. The OSC/ISO informed Registrant of the immediate suspension of its DEA Certificate of Registration (registration), Control No. FB4121327, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes '''an imminent danger to the public health or safety.''' *Id.* The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant's continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 824(a)(4), 823(g)(1)) [1].

none of Respondent's patients engaged in illicit activity—refute this analysis. RD, at 21–23.

[9] The record shows that in 2006, Respondent entered into a Memorandum of Understanding (MOU) with DEA in which Respondent admitted to prescribing controlled substances arguably in violation of generally accepted standard practices and Federal regulations; prescribing a large number of narcotics, with over half of his 1,500 patients prescribed narcotics; and keeping samples of controlled substances at an unregistered location. RD, at 3; Tr. 24; GX 12.

[1] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated April 17, 2023.[2]

I. Findings of Fact

Texas Standard of Care

DEA consulted Ms. Katherine Salinas, RPh, as an expert regarding the standard of care in the state of Texas for pharmacy practice.[3] RFAAX 4, at 1. According to Ms. Salinas, the Texas standard of care requires that when dispensing a controlled substance, Texas pharmacists must ensure that the prescription for the controlled substance is valid, pursuant to a valid patient-practitioner relationship, and issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Id.* at 1–2. Further, prior to dispensing a controlled substance, a pharmacist must resolve any questions regarding the prescription with the prescriber and maintain written documentation of any such discussions. *Id.* at 2. A pharmacist must also review the patient's medication record and ''at a minimum identify clinically significant: . . . (III) reasonable dose and route of administration; . . . (IV) drug-drug interactions; . . . and (X) proper utilization, including overutilization or underutilization.'' *Id.; see also* 22 Tex. Admin. Code section 291.33(c)(2)(A)(i). According to Ms. Salinas, ''[a]ll [s]tate of Texas pharmacists have access to these requirements[ ] and are required to pass a jurisprudence examination in order to become a licensed pharmacist.'' RFAAX 4, at 2. Further, ''[a]ll [s]tate of Texas pharmacists know [that they are] required to exercise reasonable caution in practice to prevent diversion by following common sense and proper dispensing practices.'' *Id.* at 3.

In particular, Ms. Salinas noted the Texas State Board of Pharmacy ''Red Flag Checklist,'' which is available to all Texas pharmacists on the Texas State Board of Pharmacy's website and also provided during pharmacy compliance inspections. *Id.* The red flags listed on the checklist include pattern prescribing;[4] prescriptions for controlled substances commonly known to be abused such as opioids or muscle relaxants; prescriptions for controlled substances at the highest strength and/or in large quantities;[5] patients obtaining similar controlled substance prescriptions from multiple practitioners; multiple patients sharing the same address and obtaining similar controlled substance prescriptions from the same practitioner; and patients consistently paying for controlled substance prescriptions with cash rather than through insurance. *Id.* at 3–4. Ms. Salinas stated that Texas pharmacists must document how they address and resolve any red flags and must have prevention techniques in place to deter the dispensing of fraudulent controlled substance prescriptions, such as contacting doctors to verify prescriptions, searching the Texas Medical Board website, talking with patients, and checking patient identification cards. *Id.* at 4.

Ms. Salinas concluded her explanation of the Texas standard of care by stating that ''a pharmacist must engage in a verification process of a prescription.'' *Id.* at 5. Further, Ms. Salinas stated: ''If a pharmacist does not believe a prescription is for a legitimate medical purpose, the pharmacist should not fill it.'' *Id.* Ms. Salinas also noted that ''[a]s a Compliance Officer, when [she identifies] a recurring pattern of certain combinations of controlled substances, with the same dosage and in large quantities to various patients, being paid for in cash instead of using insurance, [her] opinion is that the pharmacy is inappropriately dispensing controlled substance prescriptions and/or engaging in diversion activity.'' *Id.*

Expert Review of Registrant's Dispensing

Applying the Texas standard of care, Ms. Salinas reviewed Registrant's PMP data from approximately February 1, 2021, through March 31, 2022, Registrant's patient profiles for the fourteen patients at issue, and copies of certain controlled substance prescriptions issued to the fourteen patients. *Id.* Ultimately, Ms. Salinas concluded, and the Agency agrees, that between February 1, 2021, and March 31, 2022, Registrant repeatedly filled prescriptions for controlled substances for the fourteen patients at issue without addressing or resolving red flags of abuse or diversion in violation of the Texas standard of care and thus outside the usual course of professional practice. *Id.* at 5–6, 18.

Patients A.W., M.F., and D.H.

Registrant filled nearly identical prescriptions for patients A.W., M.F., and D.H., who all shared an address. Specifically, between January 31, 2022, and March 2, 2022, Registrant filled prescriptions for Patient A.W. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 85 tablets of 350 mg carisoprodol. RFAAX 4, at 6; *see also* RFAAX 3, Attachment B. Further, between December 31, 2021, and March 15, 2022, Registrant filled prescriptions for Patient M.F. for 120 tablets of 10/325 mg hydrocodone/acetaminophen and 85 tablets of 350 mg carisoprodol. RFAAX 4, at 11; *see also* RFAAX 3, Attachment H. Finally, between June 17, 2021, and August 26, 2021, Registrant filled prescriptions for Patient D.H. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 90 tablets of 350 mg carisoprodol. RFAAX 4, at 14; *see also* RFAAX 3, Attachment K.

In reviewing the prescriptions for these three individuals, Ms. Salinas found that all of the prescriptions were issued by the same practitioner, Dr. G.K., who prescribed the same controlled substances in identical or substantially similar quantities to multiple patients; both the hydrocodone/acetaminophen and the carisoprodol, controlled substances known to be abused, were prescribed in large quantities and at the highest dosage; the three patients shared the same address; and all three patients paid cash for all of the prescriptions. RFAAX 4, at 6, 11–12, 14–15; *see also* RFAAX 3, Attachments B, H, K. Ms. Salinas did not find any evidence that Registrant addressed these red flags of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. RFAAX 4, at 6–7, 12, 15; *see also* RFAAX 3, Attachments B, H, K.

redesignated 21 U.S.C. 823(f), cited in the OSC/ISO, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[2] Based on the Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC/ISO on Registrant was adequate. RFAAX 3, at 5. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC/ISO and Registrant has neither requested a hearing nor submitted a corrective action plan and, therefore, has waived any such rights. RFAA, at 2; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[3] For Ms. Salinas' qualifications, *see* RFAAX 4, Attachment P. Ms. Salinas is currently employed by the Texas State Board of Pharmacy as a Compliance Officer, and one of her duties is to inspect all classes of pharmacies for compliance with Texas pharmacy rules and regulations. RFAAX 4, at 1.

[4] Pattern prescribing is when '' 'a pharmacy dispenses a reasonably discernible pattern of substantially identical prescriptions for the same controlled substances, potentially paired with other controlled substances, for numerous persons, indicating a lack of individual drug therapy in prescriptions issued by the practitioner.' '' *Id.*

[5] Such prescriptions can indicate a lack of individual drug therapy in prescriptions issued by the practitioner. *Id.*

Patient J.A., D.W., C.E, and S.F.

Registrant filled nearly identical prescriptions for patients J.A., D.W., C.E., and S.F, who all shared an address. Specifically, between January 26, 2022, and March 25, 2022, Registrant filled prescriptions for Patient J.A. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 85 tablets of 350 mg carisoprodol. RFAAX 4, at 7; *see also* RFAAX 3, Attachment C. Further, between January 18, 2022, and March 17, 2022, Registrant filled prescriptions for Patient D.W. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 85 tablets of 350 mg carisoprodol. RFAAX 4, at 8; *see also* RFAAX 3, Attachment D. Between January 4, 2022, and March 3, 2022, Registrant filled prescriptions for Patient C.E. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 85 tablets of 350 mg carisoprodol. RFAAX 4, at 10; *see also* RFAAX 3, Attachment G. Finally, between December 30, 2021, and March 24, 2022, Registrant filled prescriptions for Patient S.F. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 90 tablets of 350 mg carisoprodol. RFAAX 4, at 12; *see also* RFAAX 3, Attachment I.

In reviewing the above prescriptions issued to the four patients, Ms. Salinas found that all of the prescriptions were issued by the same practitioner, Dr. G.K., who prescribed the same controlled substances in identical or substantially similar quantities to multiple patients; both the hydrocodone/acetaminophen and the carisoprodol, controlled substances known to be abused, were prescribed in large quantities and at the highest dosage; the four patients shared the same address and three of the patients (J.A., D.W., and S.F.) shared the same phone number; and all four patients paid cash for all of the prescriptions. RFAAX 4, at 7–8, 10–11, 13; RFAAX 3, Attachments C, D, G, I. Ms. Salinas did not find any evidence that Registrant addressed these red flags of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. RFAAX 4, at 7–13; *see also* RFAAX 3, Attachments C, D, G, I.

Patients A.B. and C.B.

Between January 17, 2022, and March 18, 2022, Registrant filled prescriptions for both Patient A.B. and Patient C.B. for 120 tablets of 10/325 mg hydrocodone/acetaminophen and 90 tablets of 350 mg carisoprodol. RFAAX 4, at 9–10; *see also* RFAAX 3, Attachment E, F. In reviewing the prescriptions, Ms. Salinas found that all of the prescriptions were issued by the same practitioner, Dr. G.K., who prescribed the same controlled substances in identical or substantially similar quantities to multiple patients; both the hydrocodone/acetaminophen and the carisoprodol, controlled substances known to be abused, were prescribed in large quantities and at the highest dosage; and Patients A.B. and C.B. paid cash for all of the prescriptions. *Id.* Ms. Salinas did not find any evidence that Registrant addressed these red flags of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. *Id.*

Patient T.P.

Between July 8, 2021, and September 10, 2021, Registrant filled prescriptions for Patient T.P. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 85 tablets of 350 mg carisoprodol. RFAAX 4, at 13–14; *see also* RFAAX 3, Attachment J. In reviewing the prescriptions, Ms. Salinas found that all of the prescriptions were issued by the same practitioner, Dr. G.K., who prescribed the same controlled substances in identical or substantially similar quantities to multiple patients; both the hydrocodone/acetaminophen and the carisoprodol, controlled substances known to be abused, were prescribed in large quantities and at the highest dosage; Patient T.P. shared the same phone number as Patient M.F.; and Patient T.P. paid cash for all of the prescriptions. RFAAX 4, at 14; *see also* RFAAX 3, Attachment J. Ms. Salinas did not find any evidence that Registrant addressed these red flags of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. RFAAX 4, at 14; *see also* RFAAX 3, Attachment J.

Patient G.A.

Between February 24, 2021, and February 9, 2022, Registrant filled prescriptions for Patient G.A. for 120 tablets of 10/325 mg hydrocodone/acetaminophen and 90 tablets of 350 mg carisoprodol. RFAAX 4, at 15; *see also* RFAAX 3, Attachment L. In reviewing the prescriptions, Ms. Salinas found that the prescriptions were issued by multiple, different practitioners. RFAAX 4, at 14–15; *see also* RFAAX 3, Attachment L. Ms. Salinas did not find any evidence that Registrant addressed this red flag of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. RFAAX 4, at 16; *see also* RFAAX 3, Attachment L.

Patient K.G.

Between February 1, 2021, and March 15, 2022, Registrant filled prescriptions for Patient K.G. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 80 tablets of 350 mg carisoprodol. RFAAX 4, at 16; *see also* RFAAX 3, Attachment M. In reviewing the prescriptions, Ms. Salinas found that the prescriptions were issued by multiple, different practitioners. *Id.* Ms. Salinas did not find any evidence that Registrant addressed this red flag of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. *Id.*

Patient L.J.

Between March 12, 2021, and March 23, 2022, Registrant filled prescriptions for Patient L.J. for 112 tablets of 10/325 mg hydrocodone/acetaminophen and 80 tablets of 350 mg carisoprodol. RFAAX 4, at 17; *see also* RFAAX 3, Attachment N. In reviewing the prescriptions, Ms. Salinas found that the prescriptions were issued by multiple, different practitioners. *Id.* Ms. Salinas did not find any evidence that Registrant addressed this red flag of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. *Id.*

Patient T.T.

Between February 4, 2021, and March 8, 2022, Registrant filled prescriptions for Patient T.T. for 110 tablets of 10/325 mg hydrocodone/acetaminophen and 80 tablets of 350 mg carisoprodol. RFAAX 4, at 17; *see also* RFAAX 3, Attachment O. In reviewing the prescriptions, Ms. Salinas found that the prescriptions were issued by multiple, different practitioners. *Id.* Ms. Salinas did not find any evidence that Registrant addressed this red flag of abuse or diversion and, as a result, opined that Registrant violated the minimum standard of care for a Texas pharmacy and operated outside of the usual course of professional practice. RFAAX 4, at 17–18; *see also* RFAAX 3, Attachment O.

II. Discussion

A. The Five Public Interest Factors

Under the CSA, ''[a] registration . . . to . . . dispense a controlled substance

. . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1)

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),[6] the Government's evidence in support of its *prima facie* case for revocation of Registrant's registration is confined to Factors B and D. *See* RFAA, at 23–29. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.,* 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). In the current matter, the Government has alleged that Registrant violated numerous federal and state laws regulating controlled substances. RFAAX 2, at 2.[7] Specifically, federal law requires that ''[a] prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice,'' and that ''[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a), 1306.06; *see also* 21 U.S.C. 829. Federal law also emphasizes that although ''[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner . . . a corresponding responsibility rests with the pharmacist who fills the prescription.'' 21 CFR 1306.04(a).

As for state law, Texas regulations require that ''[a] pharmacist may not . . . dispense or deliver a controlled substance . . . except under a valid prescription and in the course of professional practice.'' Tex. Health & Safety Code section 481.074(a)(1).[8] The Texas Board of Pharmacy sets forth numerous ''operational standards'' for pharmacists filling prescriptions, requiring, firstly, that pharmacists ''review the patient's medication record. Such review shall at a minimum identify clinically significant . . . (III) reasonable dose and route of administration; . . . (VI) drug-drug interactions; . . . and (X) proper utilization, including overutilization or underutilization.'' 22 Tex. Admin. Code section 291.33(c)(2)(A)(i). Further, ''[u]pon identifying any clinically significant conditions [or] situations[,] . . . the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.'' *Id.* section 291.33(c)(2)(A)(ii). A pharmacist must also ensure that ''[p]rior to dispensing, any questions regarding a prescription drug order [ ] be resolved with the prescriber and written documentation of these discussions [be] made and maintained.'' *Id.* section 291.33(c)(2)(A)(iv). Finally, a pharmacist must consider the various ''red flag factors'' in preventing the non-therapeutic dispensing of controlled substances, including, among others: pattern prescribing; prescriptions for controlled substances commonly known to be abused; prescriptions for controlled substances at the highest strength and/or in large quantities; patients obtaining similar controlled substance prescriptions from multiple practitioners; multiple patients sharing the same address and obtaining similar controlled substance prescriptions from the same practitioner; and patients consistently paying for controlled substance prescriptions with cash rather than through insurance. *Id.* section 291.29(f).

Here, the record demonstrates that Registrant repeatedly filled prescriptions for controlled substances for multiple patients without adhering to Texas' ''operational standards'' for pharmacists filling prescriptions and without addressing or resolving numerous and blatant red flags of abuse and/or diversion. Because Registrant's conduct clearly violates the Texas standard of care—thus rendering its dispensing outside the usual course of professional practice—and clearly violates the various federal and state regulations described above, the Agency hereby sustains the Government's allegations that Registrant repeatedly violated federal and state law relating to controlled substances.

Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Registrant's registration and thus finds Registrant's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Registrant failed to provide sufficient evidence to rebut the Government's *prima facie* case.

III. Sanction

Where, as here, the Government has established grounds to revoke

[6] As to Factor A, the record contains no evidence of a recommendation from any state licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence ''does not weigh for or against a determination as to whether continuation of the [Registrant's] DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, there are a number of reasons why one who has engaged in criminal misconduct may never have been convicted of an offense under this factor. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010). Agency cases have therefore found that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.* Finally, as to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

[7] The Agency need not adjudicate the criminal violations alleged in the instant OSC/ISO. *Ruan* v. *United States,* 142 S. Ct. 2,370 (2022) (decided in the context of criminal proceedings).

[8] Texas law notes that ''[a] pharmacist may not . . . dispense a controlled substance if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship.'' *Id.* section 481.074(a)(2). Further, it is unlawful in Texas for any ''registrant or dispenser'' to knowingly deliver a controlled substance in violation of sections 481.070–481.075 of the Texas Health and Safety Code. *Id.* section 481.128.

Registrant's registration, the burden shifts to the registrant to show why it can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). When a registrant has committed acts inconsistent with the public interest, it must both accept responsibility and demonstrate that it has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33738, 33746 (2021).

Here, Registrant did not request a hearing, submit a corrective action plan, respond to the OSC/ISO, or otherwise avail itself of the opportunity to refute the Government's case. As such, Registrant has made no representations as to its future compliance with the CSA nor made any demonstration that it can be entrusted with registration. Moreover, the evidence presented by the Government clearly shows that Registrant violated the CSA, further indicating that Registrant cannot be entrusted. Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FB4121327 issued to Blue Mint Pharmacy. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Blue Mint Pharmacy, to renew or modify this registration, as well as any other pending application of Blue Mint Pharmacy, for additional registration in Texas. This Order is effective December 4, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 25, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–24150 Filed 11–1–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed First Modification To Consent Decree Under the Clean Water Act

On October 25, 2023, the Department of Justice lodged a proposed first modification to the consent decree (''First Modification'') with the United States District Court for the District of Massachusetts in the lawsuit entitled *United States and Commonwealth of Massachusetts* v. *City of Revere, Massachusetts,* Civil Action No. 1:10–cv–11460 (D. Mass.).

The United States filed this lawsuit in 2010 under the Clean Water Act (''Act''). The complaint sought injunctive relief and civil penalties for violations of the Act in connection with the City of Revere's operation of its sewage collection system and municipal separate storm sewer system (''MS4''). The allegations in the Complaint were resolved in a consent decree entered on November 17, 2010 (''Consent Decree'') in which the City of Revere agreed, among other things, to develop and implement a Comprehensive Wastewater Management Plan and Comprehensive Stormwater Management Plan (''CWMP/CSMP'') to ensure identification and implementation of capital projects necessary to eliminate sanitary sewer overflows (''SSOs'') and bring its MS4 into compliance with National Pollutant Elimination System (''NPDES'') permit requirements.

The proposed First Modification replaces the Consent Decree CWMP/CSMP provisions with new provisions that require the City of Revere to update portions of its CWMP/CSMP by December 31, 2026. This update must include a summary of work completed pursuant to the Consent Decree, assessment of the City of Revere sewer system current service level and associated review of capacity-related SSOs, development and assessment of alternatives to achieve the goal of the Consent Decree to prevent collection system surcharges or capacity-related SSOs events, and a recommended plan and implementation schedule identifying projects to attain the target level of sewer system service of a ten-year design storm. The new provisions also extend the deadline for completion of all work proposed under Revere's CWMP/CSMP to December 31, 2038.

The publication of this notice opens a period for public comment on the First Modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Commonwealth of Massachusetts* v. *City of Revere, Massachusetts,* Civil Action No. 1:10–cv–11460, D.J. Ref. No. 90–5–1–1–09299. 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, DC 20044–7611.

During the public comment period, the First Modification 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 First Modification 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 $4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–24168 Filed 11–1–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Availability; Service Contract Inventory

AGENCY: Justice Management Division, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Justice Management Division (JMD), Department of Justice (DOJ) is publishing this notice to advise

the public of the availability of its FY 2021 Service Contracts Inventory and Inventory Supplement.

ADDRESSES: *https://www.justice.gov/jmd/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Tara M. Jamison, Office of Acquisition Management, Justice Management Division, U.S. Department of Justice, Washington, DC 20530; Phone: 202–616–3754; Email: *Tara.Jamison@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The inventory includes service contract actions over $25,000 that were awarded in fiscal year (FY) 2020. Additionally, the inventory supplement includes information collected from contractors on the amount invoiced and direct labor hours expended for covered service contracts. The Department of Justice analyzes this data for the purpose of determining whether its contract labor is being used in an effective and appropriate manner and if the mix of federal employees and contractors in the agency is effectively balanced. The inventory and supplement do not include contractor proprietary or sensitive information.

Authority: Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Pub. L. 111–117.

Dated: October 27, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–24164 Filed 11–1–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension without change of a currently approved collection for the ''Producer Price Index'' survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before January 2, 2024.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room G225, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov*.

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll-free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Producer Price Index (PPI) is a Principal Federal Economic Indicator consisting of a family of indexes that measures the average change over time in the selling prices received by domestic producers of goods and services. PPIs measure price change from the perspective of the seller. This contrasts with other measures, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective. About 10,000 PPIs for individual products and groups of products are released each month. The PPI data are widely used by the business community as well as by government and academia. In particular, the data are used as an economic indicator playing a crucial role in market analysis, as a deflator of other economic series, the basis for the calculation of price adjustments for contracts and purchase agreements, and as an input to economic research. These uses highlight the necessity of the PPI in order to understand the economy.

PPI data meets a wide range of government needs by providing a description of the magnitude and composition of price changes within the economy. Government agencies view these indexes as sensitive indicators of the economic environment and closely follow each monthly release of statistics. PPI data are vital in helping the President and Congress set fiscal spending targets. The Federal Reserve Board Open Market Committee monitors producer prices to help determine monetary policy. Federal policy makers at the Department of the Treasury and the Council of Economic Advisors utilize these statistics to help interpret the economic environment and make decisions based upon these interpretations. Many dollar-denominated measurements of economic performance, such as the Gross Domestic Product (GDP), require accurate price data for the conversion of nominal dollars into real dollars. National income accounting figures must also be inflation free in order to remain relevant to fiscal and monetary policy makers setting objectives. Price adjustment clauses in government purchasing contracts commonly use one or more PPIs. According to a conservative estimate, hundreds-of-billions of dollars' worth of contracts and purchase agreements employ PPIs as part of price adjustment clauses. Failure to calculate these price data would prolong the time frame needed for accurate recognition of and appropriate adaptation to economic events.

The private sector also makes extensive use of PPI data. Researchers commonly use producer prices to probe and measure the interaction of market forces. Private firms use PPIs for contract escalation and price adjustment. The Internal Revenue Service (IRS) recommends using PPI data for certain kinds of tax related inventory accounting, such as Last-In-First-Out (LIFO). Private businesses extensively use PPIs for planning and operations. Firms often compare the prices they pay and receive with changes in appropriate PPIs.

Economic researchers and forecasters also put PPIs to regular use. They use PPI data to better understand market forces. Research topics requiring producer price data include studying elasticities, potential lead and lag structures within price changes, and the identification of prices that cause major influence throughout the economy. Policy-makers, businesses, and researchers all require complete descriptions of price change trends if they are to perform effectively.

The expansive coverage of PPIs makes them very valuable to the users described above as well as many others.

II. Current Action

Office of Management and Budget clearance is being sought for the extension of the PPI survey.

The PPI collection is not a one-time project with an end date. The purpose of the PPI collection is to accumulate

data for the ongoing, monthly publication of the PPI family of indexes. The Bureau of Labor Statistics must continue collecting data for the PPI since both policy and business planning benefit from accurate, timely, and relevant description of price trends. Legislators and government agencies use the PPI to assist them with developing policy and evaluating the markets. Dollar-denominated measures of economic performance, such as Gross Domestic Product, require accurate price data in order to convert nominal to constant-dollar values. Inflation-free national income accounting figures are vital to fiscal and monetary policy-makers when setting objectives and targets. The price adjustment clauses of purchase agreements use monthly PPIs. It is conservatively estimated that hundreds-of-billions of dollars' worth of contracts and purchase agreements employ PPIs as part of price-adjustment clauses. Failure to provide current accurate monthly statistics would necessitate more complex clauses in contracts and prolong the time required to determine price changes for purposes of contract adjustments.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Title of Collection: Producer Price Index Survey.

OMB Number: 1220–0008.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private Sector.

Data collection	Number of respondents	Frequency	Number of responses (per year)	Average time per response (minutes)	Estimated total burden (hours)
Initiation BLS Forms 1810A, C, C1, and E.	4,305	Once	4,305	120	8,610
Data Quality Verification Calls	Subset of 4,305 initiation respondents (Approximately 8%).	Once	340	15	85
BLS IDCF	11,107	Monthly	660,537	5	55,045
Totals	15,412		665,182		63,740

* For monthly repricing, PPI requests repricing of 55,045 items each month.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 30th day of October 2023.

Eric Molina,

Chief, Division of Management Systems, Branch of Policy Analysis.

[FR Doc. 2023–24223 Filed 11–1–23; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustment for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is announcing a revised hourly rate for the fees charged to applicants and approval holders for testing, evaluating, and approving products for use in mines. MSHA charges a fee to cover the costs (direct and indirect) of its services associated with the approval program. The new hourly rate will be $166.

DATES: MSHA will charge the new hourly rate for new approval services starting January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Juliette E. Hill, Chief, Approval and Certification Center (A&CC), 304–547–2029 or 304–547–0400 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, authorizes MSHA to approve equipment, materials, and explosives for use in mines to ensure that the products are designed, constructed, and maintained so as not to cause a fire, explosion, or other accident. Under 30 CFR part 5—Fees for Testing, Evaluation, and Approval of Mining Products, MSHA establishes the method the Agency uses to calculate the fees needed to recover costs for approval services. Under 30 U.S.C. 966, MSHA may collect and retain up to $2,499,000 of fees collected for the approval and certification of equipment, materials, and explosives for use in mines.

On December 21, 2018, MSHA published a notice of fee adjustment in the **Federal Register** (83 FR 65747) that adjusted the Agency's fees for testing, evaluation, and approval of products manufactured for use in mines. Since January 1, 2019, MSHA has charged an hourly rate of $137.

II. Applicable Fee

Under 30 CFR 5.50, a new hourly rate must remain in effect for at least 1 year and the rate will be subject to revision at least once every 3 years. MSHA determines a new hourly rate by dividing the total of approval program costs (direct and indirect costs) for a previous fiscal year by the number of total direct hours spent on approval program activities for that fiscal year.

For this update, MSHA calculated the FY 2024 hourly rate using FY 2021 costs. MSHA has determined that as of January 1, 2024, the hourly rate will be $166 per hour for services on new applications and post-approval activities (changes to approvals and post-approval product audits). This rate increase is consistent with cumulative inflation between January 2019, when

the last hourly rate was instituted, and mid-2023.

- MSHA will process applications and post-approval activities postmarked before January 1, 2024, under the existing FY 2019 hourly rate of $137.
- MSHA will process applications and post-approval activities postmarked on or after January 1, 2024, under the revised FY 2024 hourly rate of $166.

This fee information is available on the MSHA website at *http://www.msha.gov.*

Christopher J. Williamson,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2023–24142 Filed 11–1–23; 8:45 am]

BILLING CODE 4520–43–P

MARINE MAMMAL COMMISSION

Sunshine Act Meetings

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will hold a public meeting on Tuesday, 14 November 2023 from 8:30 a.m. to 4 p.m. and Wednesday, 15 November 2023 from 8:30 a.m. to 5 p.m. The Commission and the Committee also will meet in executive session on Tuesday, 14 November 2023, from 4:15 to 5 p.m.

PLACE: The Navy Memorial Visitor's Center, 701 Pennsylvania Ave. NW, Washington, DC 20004.

STATUS: The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will be limited to discussions of the internal personnel rules and practices of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chair. Virtual participation will be possible through a Zoom Webinar. The meeting agenda and webinar registration details will be posted on the Commission's website (*https://www.mmc.gov/events-meetings-and-workshops/marine-mammal-commission-annual-meetings/2023-annual-meeting/*) prior to the meeting.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal science and conservation policy issues and celebrate the 50th anniversaries of the Endangered Species Act and Marine Mammal Protection Act. While these laws have achieved the recovery of some marine mammal species, others continue to struggle and face a variety of risk factors, including the impacts of climate change. Through the meeting, we will use case studies of threatened and endangered marine mammals to explore national-level issues related to stock assessment, health surveillance, and other management needs in a changing climate.

CONTACT PERSON FOR MORE INFORMATION: Brady O'Donnell, Communications Officer, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504–0087; email: *bodonnell@mmc.gov.*

Dated: October 27, 2023.

Peter O. Thomas,

Executive Director.

[FR Doc. 2023–24280 Filed 10–31–23; 11:15 am]

BILLING CODE 6820–31–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498, 50–499, and 72–1041; NRC–2023–0128]

In the Matter of STP Nuclear Operating Company and NRG South Texas LP; South Texas Project, Units 1 and 2 and the Associated Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of licenses; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the application filed by STP Nuclear Operating Company, acting on behalf of Constellation Energy Generation, LLC (CEG) and NRG South Texas LP (NRG South Texas) and its parent companies, on June 12, 2023, as supplemented by letters dated August 31, 2023, and October 5, 2023. Specifically, the order approves the indirect transfer of possession-only non-operating interests in Renewed Facility Operating License Nos. NPF–76 and NPF–80 for South Texas Project (STP), Units 1 and 2, respectively, and its generally licensed independent spent fuel storage installation from NRG South Texas to CEG and the issuance of conforming amendments to the operating licenses.

DATES: The order was issued on October 30, 2023, and is effective for 1 year.

ADDRESSES: Please refer to Docket ID NRC–2023–0128 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0128. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The order, the NRC staff safety evaluation supporting the order, and the draft conforming license amendments are available at ADAMS Package Accession No. ML23279A022.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Galvin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6256; email: *Dennis.Galvin@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: October 30, 2023.

For the Nuclear Regulatory Commission.

Dennis J. Galvin,

Project Manager, Plant Licensing Branch IV, Division of Operator Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Indirect Transfer of Licenses and Conforming License Amendments

United States of America

Nuclear Regulatory Commission

In the Matter of: STP NUCLEAR OPERATING COMPANY AND NRG SOUTH TEXAS LP; (South Texas Project, Units 1 and 2 and 72–1041; the Associated Independent Spent Fuel Storage Installation)

Docket Nos. 50–498, 50–499, and

Renewed License Nos. NPF–76 and NPF–80

Order Approving Indirect Transfer of Licenses and Conforming License Amendments

I.

STP Nuclear Operating Company (STPNOC) is the licensed operator for the U.S. Nuclear Regulatory Commission (NRC, the Commission) Renewed Facility Operating License Nos. NPF–76 and NPF–80 and the general license for the independent spent fuel storage installation (ISFSI), which authorize the possession, use, and operation of South Texas Project (STP), Units 1 and 2 and the STP ISFSI, respectively (collectively, the Facility). The Facility is located in Matagorda County, Texas.

II.

Pursuant to title 10 of the *Code of Federal Regulations* (10 CFR) section 50.80, ''Transfer of licenses,'' 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit,'' and 10 CFR 72.50, ''Transfer of license,'' and by application dated June 12, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23163A176), as supplement by letters dated August 31, 2023, and October 5, 2023 (ML23243B056 and ML23279A138, respectively), STPNOC, acting on behalf of Constellation Energy Generation, LLC (CEG) and NRG South Texas LP (NRG South Texas) and its parent companies, requested that the NRC consent to the indirect transfer of the possession-only non-operating interests in the NRC licenses for the Facility from NRG South Texas to CEG and conforming administrative amendments to the licenses to reflect the proposed license transfer. NRG South Texas is one of three licensed owners of the Facility, owning a 44 percent share of the Facility and holding possession-only rights in the NRC licenses.

On July 19, 2023, the NRC published a notice of consideration of approval of the application in the **Federal Register** (88 FR 46192). This notice provided an opportunity to comment, request a hearing, and petition for leave to intervene on the application. The NRC did not receive any written comments in response to the notice. On July 31, 2023 (ML23212B247), the City of San Antonio, Texas acting by and through the City Public Service Board of San Antonio (CPS Energy), a Texas municipally-owned utility, and the City of Austin, Texas (Austin), the other two licensed owners of the Facility, submitted a motion to dismiss the license transfer application, a motion to stay the proceedings and suspend NRC review of the application, and a petition to intervene and request for hearing. CPS Energy owns a 40 percent share and Austin owns a 16 percent share of the Facility. CEG, NRG South Texas, and STPNOC filed answers in opposition to the motions and CEG and NRG South Texas filed answers in opposition to the hearing request; CPS Energy and Austin supplemented their hearing request and filed replies. These filings remain pending before the Commission. The NRC staff reviewed and considered these filings as part of its evaluation of the application.

Pursuant to 10 CFR 50.80, no license for a utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Pursuant to 10 CFR 72.50, no license or any part included in a license issued under 10 CFR part 72 for an ISFSI shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, as supplemented, and other information before the Commission, and relying upon the representations contained in the application, the NRC staff has determined that CEG is qualified to indirectly hold the licenses, to the extent described in the application, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below. The NRC also consents to NRG South Texas voiding and canceling the existing April 11, 2006, and November 2, 2006, Support Agreements upon closing of the proposed transaction and the transfer of control to CEG.

Upon review of the information in the application, as supplemented, for conforming administrative amendments to the operating licenses to reflect the transfer, the NRC staff has determined that: (1) the application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (AEA), and the Commission's rules and regulations set forth in 10 CFR Chapter I; (2) the Facility will operate in conformity with the application, the provisions of the AEA, and the rules and regulations of the Commission; (3) there is reasonable assurance that the activities authorized by the amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; (4) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public; and (5) the issuance of the amendments will be in accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC staff safety evaluation dated the same date as this order, which is available at ADAMS Accession No. ML23279A048 (non-proprietary).

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the AEA, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, 10 CFR 72.50, and 10 CFR 50.90, *it is hereby ordered* that the license transfer application, as described herein, is approved, subject to the following condition: The NRC staff's approval of the license transfer is subject to the Commission's authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing or motions on the license transfer application.

It is further ordered that after receipt of all required regulatory approvals of the proposed transaction, the applicants shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 2 business days prior to the date of the closing of the proposed transaction. Should the proposed transaction not be completed within 1 year of the date of this order, this order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order. The condition of this order may be amended upon application by the applicants and approval by the NRC.

It is further ordered that consistent with 10 CFR 2.1315(b), the license amendments that make changes, as indicated in Enclosure 2 to the letter forwarding this order, to reflect the subject indirect license transfer are approved. The amendments shall be issued and made effective when the proposed indirect license transfer actions are completed.

This order is effective upon issuance.

For further details with respect to this order, see the application dated June 12, 2023, as supplemented by letters dated

August 31, 2023, and October 5, 2023, and the associated NRC staff safety evaluation dated the same date as this order. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of October, 2023.

For the Nuclear Regulatory Commission.

/RA/

Bo M. Pham,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–24247 Filed 11–1–23; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of an information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget extend approval under the Paperwork Reduction Act of a collection of information under its regulation on Payment of Premiums. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted by December 4, 2023.

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.

All comments received will be posted without change to PBGC's website, *https://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of this information collection may be obtained by writing to Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–326–4400, extension 3559. (If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.)

SUPPLEMENTARY INFORMATION: Section 4007 of title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under title IV pension insurance programs to pay premiums to PBGC. All plans covered by title IV pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Under § 4007.3 of the premium payment regulation, the plan administrator of each pension plan covered by title IV of ERISA is required to file a premium payment and information prescribed by PBGC for each premium payment year. Premium information is filed electronically using ''My Plan Administration Account'' (''My PAA'') through PBGC's website. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

The information reported in premium filings includes (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). PBGC needs this information to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

PBGC is updating the premium rates, as required by statute, and making conforming, clarifying, and editorial changes to the premium filing instructions. These changes are non-material.

The collection of information under the regulation has been approved through February 29, 2024, under OMB control number 1212–0009. On August 3, 2023, PBGC published in the **Federal Register** (at 88 FR 51359) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend its approval of this collection of information for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that it will receive 31,303 premium filings per year from plan administrators under this collection of information. PBGC further estimates that the annual burden of this collection of information is 13,565 hours and $21,661,676.

Issued in Washington, DC, by:

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–24217 Filed 11–1–23; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–28 and CP2024–28]

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:* November 6, 2023.

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:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–28 and CP2024–28; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 3 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 27, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* November 6, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–24219 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–FW–P

[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).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–27 and CP2024–27]

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:* November 3, 2023.

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:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–27 and CP2024–27; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 11 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 26, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 3, 2023.

[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).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–24161 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 83 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–23, CP2024–23.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–24145 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 85 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–26, CP2024–26.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–24147 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 82 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–22, CP2024–22.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–24144 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service ™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service ® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 84 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–24, CP2024–24.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–24146 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 20, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 81 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–21, CP2024–21.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–24143 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 26, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 11 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–27, CP2024–27.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–24149 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, USPS Ground Advantage® & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 2, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail, USPS Ground Advantage® & Parcel Select Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–25, CP2024–25.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2023–24148 Filed 11–1–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98825; File No. SR–PEARL–2023–58]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 2614(a)(1)(ix) and 2618(b)(1) To Amend Certain Risk Controls When Trading Equity Securities on MIAX Pearl Equities

Pursuant to the provisions of section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its existing risk controls for Equity Members[3] when trading equity securities on the Exchange's equity trading platform (referred to herein as ''MIAX Pearl Equities'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain existing risk controls when trading equity securities on MIAX Pearl Equities. To help Equity Members manage their risk, the Exchange currently offers Limit Order Price Protection and other risk controls that authorize the Exchange to take automated action if a designated limit for an Equity Member is breached. Such risk controls provide Equity Members with enhanced abilities to manage their risk when trading on the Exchange. The Exchange now proposes to amend Limit Order Price Protection under Exchange Rule 2614(a)(1)(ix) and Trading Collar under Exchange Rule 2618(b)(1) to enhance certain existing risk controls available to Equity Members. Each of these changes are described below.

Limit Order Price Protection Reference Price

Limit Order Price Protection is set forth under Exchange Rule 2614(a)(1)(ix) and provides for the cancellation of Limit Orders priced too far away from a specified reference price at the time the order first becomes eligible to trade. A Limit Order entered before Regular Trading Hours[4] that becomes eligible to trade during Regular Trading Hours will be subject to Limit Order Price Protection at the time Regular Trading Hours begins.[5]

Exchange Rule 2614(a)(1)(ix)(A) provides that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar value and percentage away from the following: (1) the PBO for Limit Orders to buy, the PBB for Limit Orders to sell; (2) if the PBO or PBB is unavailable, the consolidated last sale price disseminated during the Regular Trading Hours on trade date; (3) if the PBO, PBB, and a consolidated last sale price are unavailable, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events. Exchange Rule 2614(a)(1)(ix)(C) provides that Limit Order Price Protection will not be applied if the prices listed above are unavailable or if

[4] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Exchange Rule 1901.

[5] Further, a Limit Order in a security that is subject to a trading halt becomes first eligible to trade when the halt is lifted and continuous trading has resumed. *See* Exchange Rule 2614(a)(1)(ix)(C).

the Official Closing Price listed under paragraph (a)(1)(ix)(A)3. is to be applied and a regulatory halt has been declared by the primary listing market during that trading day. The Exchange proposes to reorganize Exchange Rule 2614(a)(1)(ix)(C) to place these provisions under subparagraphs 1. and 2., respectively. Equity Members have requested that Limit Order Price Protection also not be applied when no consolidated last sale price has been disseminated following the conclusion of a regulatory halt declared by the primary listing market during that trading day. The consolidated last sale price disseminated prior to a regulatory halt likely does not appropriately relate to the current trading behavior of the security in such a scenario and Equity Members have informed the Exchange that they would prefer Limit Order Price Protections not be applied since it may result in their order being unnecessarily cancelled. The cancellation may be unnecessary because the specified reference price used to calculate whether the Limit Order should be cancelled was established prior to the security being halted and likely stale. A consolidated last sale disseminated following the conclusion of a regulatory halt would be much more indicative of the security's trading behavior.

This proposed change is similar to a recent proposal by the Exchange to amend Exchange Rule 2614(a)(1)(ix)(C) to provide that Limit Order Price Protection would not be applied when a regulatory halt has been declared by the primary listing market during that trading day and the Exchange would have applied the prior day's Official Closing Price because the PBO, PBB, and a consolidated last sale price are unavailable.[6] Like in this proposal, the prior proposal was also in response to requests from Equity Members that Limit Order Price Protection not be applied when a stale reference price may be used. In the prior proposal, the concern was that the prior day's Official Closing Price would be used when the PBO, PBB, and a consolidated last sale price are unavailable and a trading halt has been declared by the primary listing market during that trading day because the Official Closing Price would not appropriately relate to the current trading behavior of the security in such a scenario. In such case, Equity Members preferred Limit Order Price Protection not be applied since it may result in their Limit Order being unnecessarily cancelled. The same is true here.

The Exchange, therefore, proposes to amend Exchange Rule 2614(a)(1)(ix)(C) to provide that Limit Order Price Protection would not be applied when no consolidated last sale price has been disseminated following the conclusion of a regulatory halt declared by the primary listing market during that trading day. This provision would be codified under subparagraph .3 to reorganized Exchange Rule 2614(a)(1)(ix)(C).

Trading Collar

In addition to the Limit Order Price Protection described above, the Exchange also prevents all incoming orders, including those marked ISO, from executing at a price outside the Trading Collar price range as described in Exchange Rule 2618(b). The Trading Collar prevents buy orders from trading or routing at prices above the collar and prevents sell orders from trading or routing at prices below the collar. The Trading Collar price range is calculated using the greater of numerical guidelines for clearly erroneous executions under Exchange Rule 2621 or a specified dollar value established by the Exchange.

The Exchange proposes two changes to the application of the Trading Collar. First, the Exchange proposes to expand the times during which the Trading Collar is applied to include the Exchange's Opening and Re-Opening Process. Second, the Exchange proposes to not apply the Trading Collar in an additional case where the reference price that is to be used may be stale and not relate to current market conditions to avoid the unnecessary cancellation of orders.

Trading Collar and Opening and Re-Opening Process

The Exchange proposes to expand the times when the Trading Collar would be applied to include the Exchange's Opening and Re-Opening Process. Today, Trading Collars are applied to all orders, except those orders that are eligible to participate in the Exchange's Opening Process under Exchange Rule 2615. The Trading Collar is also not applied to all orders during the Exchange's Re-Opening Process.

The Exchange proposes to amend Exchange Rule 2618(b)(1) to no longer exclude orders that are eligible to participate in the Exchange's Opening Process from the Trading Collar protection. As proposed, Trading Collars would be applied to orders that are eligible to participate in the Exchange's Opening and Re-Opening Process. Limit Up-Limit Down price bands are disseminated by the applicable Securities Information Processor (''SIP'') during Regular Trading Hours.[7] However, the SIP may not have begun to disseminate price bands at the beginning of a trading day or after a halt when the Exchange is to conduct its Opening or Re-Opening Process, as applicable. In such a scenario, Equity Members have expressed the need for additional protections around the opening and re-opening of trading where the Limit Up-Limit Down price bands are not yet being disseminated by the applicable SIP. Therefore, the Exchange proposes to remove language from Exchange Rule 2618(b)(1) that states the Exchange will not apply the Trading Collar to orders that are eligible to participate in the Exchange's Opening Process.[8] Going forward as a result of this proposal, the Trading Collar would be applied to orders eligible to be executed in the Exchange's Opening and Re-Opening Process and such orders would be prevented from executing at a price outside the Trading Collar price range as described in Exchange Rule 2618(b).

Trading Collar Reference Price

Exchange Rule 2618(b)(1) provides that the Trading Collar price range is calculated based on a Trading Collar Reference Price and sets forth a sequence of prices to determine the Trading Collar Reference Price to be used if a certain reference price is unavailable. The Exchange first utilizes the consolidated last sale price disseminated during the Regular Trading Hours on the trade date as the Trading Collar Reference Price. If not available, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events is used. If neither are available to use as the Trading Collar Reference Price, the Exchange suspends the Trading Collar function in the interest of maintaining a fair and orderly market in the impacted security. The Exchange calculates the Trading Collar price range for a security by applying the Numerical Guideline and reference price to the Trading Collar Reference Price. The result is added to the Trading Collar Reference Price to determine the Trading Collar Price for buy orders, while the result is

[6] *See* Securities Exchange Act Release No. 96205 (November 1, 2022), 87 FR 67080 (November 7, 2022) (SR–PEARL–2022–43).

[7] *See* Sections I(S) and V(A)(1) of the Limit Up-Limit Down Plan.

[8] Exchange Rule 2618(b)(1) does not address the Exchange's current practice of not applying the Trading Collar during the Re-Opening Process and, therefore, the Rule will reflect the proposed functionality once this proposal is implemented.

subtracted from the Trading Collar Reference Price to determine the Trading Collar Price for sell orders. Exchange Rule 2618(b)(1)(A) provides that the Trading Collar Reference Price is equal to the following: (i) consolidated last sale price disseminated during the Regular Trading Hours on trade date; or (ii) if (i) is not available, the prior day's Official Closing Price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events. Exchange Rule 2618(b)(1) further provides that upon entry, any portion of an order to buy (sell) that would execute at a price above (below) the Trading Collar Price is cancelled unless the price listed under paragraph (A)(ii) described above is to be applied and a regulatory halt has been declared by the primary listing market during that trading day. The Exchange proposes to reorganize Exchange Rule 2618(b)(1) to separately place these provisions under subparagraph (A) and (A)(i) respectively. As a result of this reorganization of Exchange Rule 2618(b)(1), the Exchange also proposes to update rule cross references within the rule and renumber the remainder of Exchange Rule 2618(b)(1) accordingly.

Like proposed above for Limit Order Price Protection, Equity Members have requested that the Trading Collar not be applied if no consolidated last sale price has been disseminated following the conclusion of a regulatory halt declared by the primary listing market on that trading day. The consolidated last sale price disseminated prior to a regulatory halt likely does not appropriately relate to the current trading behavior of the security in such a scenario and Equity Members have informed the Exchange that they would prefer the Trading Collar not be applied since it may result in their order being unnecessarily cancelled. The cancellation may be unnecessary because the specified reference price used to calculate whether the order should be cancelled was established prior to the security being halted and is likely stale. A consolidated last sale disseminated following the conclusion of a regulatory halt would be much more indicative of the security's trading behavior.

Like with the proposed change to Limit Order Price Protection discussed above, this proposed change is similar to a recent proposal by the Exchange to amend Exchange Rule 2618(b)(1) to provide that upon entry, an order priced outside the Trading Collar would not be canceled when a trading halt has been declared by the primary listing market during that trading day and the Exchange would have applied the prior day's Official Closing Price because the consolidated last sale price is unavailable.[9] Like in this proposal, the prior proposal was also in response to requests from Equity Members that the Trading Collar not be applied when a stale reference price may be used. In the prior proposal, the concern was that the prior day's Official Closing Price would be used when the consolidated last sale price is unavailable and a trading halt has been declared by the primary listing market during that trading day because the Official Closing Price would not appropriately relate to the current trading behavior of the security in such a scenario. In such case, Equity Members preferred the Trading Collar not be applied since it may result in their order being unnecessarily cancelled. Again, the same is true here.

The Exchange, therefore, proposes to amend Exchange Rule 2618(b)(1) to provide that upon entry, an order priced outside the Trading Collar would not be canceled if no consolidated last sale price has been disseminated following the conclusion of a regulatory halt declared by the primary listing market on that trading day. In such case, the Exchange would accept such an order and post it on the MIAX Pearl Equities Book at its limit price.[10] This provision would be codified under subparagraph (ii) of reorganized Exchange Rule 2618(b)(1)(A).

* * * * *

The Exchange does not guarantee that the risk settings in this proposal are sufficiently comprehensive to meet all of an Equity Member's risk management needs. Pursuant to Rule 15c3–5 under the Act,[11] a broker-dealer with market access must perform appropriate due diligence to assure that controls are reasonably designed to be effective, and otherwise consistent with the rule.[12] Use of the Exchange's risk settings included in Exchange Rule 2618 will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the Equity Member.

Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of the proposed enhancements to its risk controls set forth herein. The Exchange anticipates that the implementation date will be in the fourth quarter of 2023 or first quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5),[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed amendments will remove impediments to and perfect the mechanism of a free and open market and a national market system because the augmented functionality is being proposed in response to Equity Member feedback as part of their efforts to appropriately manage their risk.

Trading Collar and Opening and Re-Opening Process

The Exchange's proposal to amend Exchange Rule 2618(b)(1) to no longer exclude orders that are eligible to participate in the Exchange's Opening and Re-Opening Process from the Trading Collar protection promotes just and equitable principles of trade and protects investors and the public interest because it would provide Equity Members with additional protections around the opening of trading where the Limit Up-Limit Down price bands are not yet being disseminated by the applicable SIP. Equity Members have expressed the desire for Trading Collar to be applied to orders eligible to be executed in the Exchange's Opening and Re-Opening Process and to prevent such orders from executing at a price outside the Trading Collar price range as described in Exchange Rule 2618(b). By no longer excluding the Opening and Re-Opening Process, the proposal expands the time by which the Trading

[9] *See supra* note 6.

[10] In such case, a Limit Order would continue to be subject to the Exchange's applicable re-pricing processes. *See* Exchange Rule 2614(a)(1)(v)–(viii).

[11] 17 CFR 240.15c3–5.

[12] *See* Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, *available at https://www.sec.gov/divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

Collar would be applied to include all orders entered during Regular Trading Hours. Doing so should prevent orders from being executed in the Exchange's Opening and Re-Opening Process at undesirable prices that would have otherwise been outside of the Trading Collar. The proposal, therefore, protects investors and the public interest by preventing orders from executing outside of the Trading Collar price range and resulting in unwanted executions. The Exchange notes that at least one other national securities exchange also applies trading collars in such a scenario.[15]

Limit Order Price Protection and Trading Collar Reference Price

The proposal to not apply Limit Order Price Protection and the Trading Collar if no consolidated last sale price has been disseminated following the conclusion of a regulatory halt declared by the primary listing market on that trading day promotes just and equitable principles of trade because in such a scenario the consolidated last sale price disseminated prior to a regulatory halt does not likely appropriately relate to the current trading behavior of the security and may result in an order being unnecessarily cancelled.[16] Equity Members are free to not enter orders during such times and enter such orders later when Limit Order Price Protection and Trading Collars are in effect. The Exchange notes that this proposal is an extension of similar change it recently made in response to feedback from Equity Members to not apply Limit Order Price Protection or Trading Collars when the prior day's Official Closing Price is to be used when the PBO, PBB (for Limit Order Price Protection), and a consolidated last sale price are unavailable and a trading halt has been declared by the primary listing market during that trading day.[17]

As described above, the Exchange is expanding the scope of the Trading Collars to include the entire trading day by no longer excluding orders eligible to participate in the Exchange's Opening and Re-Opening Process from the protection. This will result in more orders being subject to the protection and being prevented from possibly executing at prices outside of the Trading Collar range. Not applying Limit Order Price Protection and Trading Collar if no consolidated last sale price has been disseminated following the conclusion of a regulatory halt as proposed herein, does not offset the expansion of time the Trading Collar is applied, nor does it create an inappropriate gap in the trading day where orders would not be protected. Rather, it seeks to address a small period of time following a regulatory halt where no consolidated last sale has been disseminated. This may result in orders being unnecessarily cancelled due to the Trading Collar or Limit Order Price Protection ranges being based on a stale reference price. The Exchange also anticipates that this will be an infrequent occurrence since it requires a either a first trade and/or two-sided quotation to perform its Re-Opening Process.[18] Any potential time period during which the Trading Collar or Limit Order Price Protection would not be applied is likely to be rare and very short because the Re-Opening Process only occurs without a reported trade where the primary listing exchange did not publish a trade within one second of publication of its first two-sided quotation.

These proposed changes to Limit Order Price Protection and the Trading Collar are similar to a recent proposal by the Exchange to not apply Limit Order Price Protection or the Trading Collar when a trading halt has been declared by the primary listing market during that trading day and the Exchange would have applied the prior day's Official Closing Price as the reference price.[19] Like in this proposal, the prior proposal was also in response to requests from Equity Members that Limit Order Price Protection and the Trading Collar not be applied when a stale reference price may be used. In the prior proposal, the concern was that the prior day's Official Closing Price would be used when the consolidated last sale price is unavailable and a trading halt has been declared by the primary listing market during that trading day because the Official Closing Price would not appropriately relate to the current trading behavior of the security in such a scenario. In such case, Equity Members preferred Limit Order Price Protection and the Trading Collar not be applied since it may result in their order being unnecessarily cancelled. Again, the same is true for this proposal.

Rule Reorganization

The reorganization of Exchange Rules 2614(a)(1)(ix)(C) and 2618(b)(1) removes impediments to and perfects the mechanism of a free and open market and a national market system because these changes make each rule easier to comprehend, reducing the potential for inadvertent investor confusion.

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.

Trading Collar and Opening and Re-Opening Process

The Exchange believes its proposal to expand the application of the Trading Collar to include the Opening and Re-Opening Process will not impose any burden on inter-market competition because it could serve to improve the Exchange's market quality by expanding the application of this risk protection to include all times during Regular Trading Hours and preventing executions during the Exchange's Opening and Re-Opening Process at undesirable prices that would have been outside of the Trading Collar. The Exchange believes that the proposal may have a positive effect on competition because it would allow the Exchange to apply Trading Collar during timeframes similar to at least one other national securities exchange.[20] The proposal would impose no burden on intra-market competition because each risk setting would be applied to all Equity Members' orders equally.

Limit Order Price Protection and Trading Collar Reference Price

The Exchange believes its proposal to not apply Limit Order Price Protection and the Trading Collar if no consolidated last sale price has been

[15] *See* New York Stock Exchange, Inc. (''NYSE'') Rule 7.31(a)(1)(B). NYSE applies trading collars during Core Trading Hours. Core trading hours are defined under NYSE 7.34(a)(2) (providing, in sum, that for UTP Securities, the Core Trading Session will begin for each security at 9:30 a.m. and end at the conclusion of Core Trading Hours and for Exchange-listed securities, the Core Trading Session will begin for each security with the Core Open Auction, which can take place during Core Trading Hours only).

[16] The Exchange notes that it will still apply Limit Order Price Protection where there is a PBB or PBO. *See* Exchange Rule 2614(a)(1)(ix)(A) (providing that a Limit Order to buy (sell) will be rejected if it is priced at or above (below) the greater of a specified dollar value and percentage away from the following: (1) the PBO for Limit Orders to buy, the PBB for Limit Orders to sell . . .).

[17] *See supra* note 6.

[18] *See* Exchange Rule 2615(e)(1)(ii) (stating that the Re-Opening Process will occur at the midpoint of the: (i) first NBBO subsequent to the first reported trade and first two-sided quotation on the primary listing exchange following the resumption of trading after a halt, suspension, or pause; or (ii) NBBO when the first two-sided quotation is published by the primary listing exchange following the resumption of trading after a halt, suspension, or pause if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange (emphasis added).

[19] *See supra* note 6.

[20] *See* NYSE Rules 7.31(a)(1)(B) and 7.34(a)(2)(B).

disseminated following the conclusion of a regulatory halt does not burden inter-market competition because it could improve confidence in the Exchange's overall execution quality by preventing orders from being unnecessarily canceled due to stale reference prices.[21] Further, this proposed rule change may increase confidence in the proper functioning of the Exchange and contribute to additional competition among trading venues. Rather than impede competition, the proposal is designed to avoid the unwanted cancelation of orders following a regulatory halt, which, in turn, could enhance the integrity of trading on the Exchange. These proposals also would not burden intra-market competition because it would apply to all Equity Members equally and all Equity Members' orders would not be subject to the applicable protection where it would be based on a stale reference price and result in an unnecessary cancelation of the order, as described here.

Rule Reorganization

The reorganization of Exchange Rules 2614(a)(1)(ix)(C) and 2618(b)(1) would not impact competition because such changes would not enhance or alter the Exchange's ability to compete, but rather, make each rule easier to comprehend, reducing the potential for inadvertent investor confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] thereunder.

[21] *See supra* note 16.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2023–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2023–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–58 and should be submitted on or before November 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Dated: October 30, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–24270 Filed 11–1–23; 8:45 am]

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98806; File No. SR–CboeBYX–2023–013]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

October 27, 2023.

On September 1, 2023, Cboe BYX Exchange, Inc. (''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 certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.[4] On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission: (1) temporarily suspended the proposed rule change; and (2) 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 October 25, 2023, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[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. 98393 (September 14, 2023), 88 FR 64933.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98647, 88 FR 68798 (October 4, 2023).

withdrew the proposed rule change (SR–CboeBYX–2023–013).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24171 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98819; File No. 4–795]

Order Granting Broker-Dealers Exemptive Relief, Pursuant to Section 36(a) and Rule 15c2–11(g) Under the Securities Exchange Act of 1934, From Rule 15c2–11 for Fixed-Income Securities Sold in Compliance With the Safe Harbor of Rule 144A Under the Securities Act of 1933

October 30, 2023.

I. Introduction

The Securities and Exchange Commission (''Commission'') adopted 17 CFR 240.15c2–11 (''Rule 15c2–11'') under the Securities Exchange Act of 1934 (''Exchange Act'') in 1971.[1] In September 2020, the Commission adopted amendments to Rule 15c2–11 to, among other things, provide greater transparency to investors and other market participants by requiring brokers or dealers to have in their records specified information about the issuer and its security that is current and publicly available before a broker-dealer can begin quoting that security.[2] Rule 15c2–11 governs the publication of quotations for securities [3] in a quotation medium other than a national securities exchange, *i.e.,* over-the-counter (''OTC'') securities, other than exempted securities [4] and municipal securities.[5] Rule 15c2–11 sets forth certain information review and recordkeeping requirements for brokers and dealers to initiate or resume quotations for securities in the OTC market. Under 17 CFR 240.15c2–11(a)(1)(i), a broker or dealer, before it may publish any quotation for a security or, directly or indirectly, submit any such quotation for publication, in a quotation medium other than a national securities exchange, must obtain, have in its records, and review key, basic information regarding the subject security and its issuer, as specified in 17 CFR 240.15c2–11(b) (''paragraph (b) information''), that is ''current'' and ''publicly available.'' [6] In addition, based upon a review of the applicable paragraph (b) information, together with any other supplemental documents and information specified in 17 CFR 240.15c2–11(c), the broker or dealer must have a reasonable basis under the circumstances for believing that the paragraph (b) information is accurate in all material respects and is from a reliable source.[7] Further, the reviewing broker or dealer must also preserve documents and information that are required to be obtained under the applicable paragraphs (a), (b), and (c) of Rule 15c2–11.[8]

Following the Commission's 2020 adoption of amendments to Rule 15c2–11, certain market participants stated that Rule 15c2–11's information review and recordkeeping requirements should not apply with regard to quotations for fixed-income securities that are sold in compliance with the safe harbor in 17 CFR 230.144A (''Rule 144A'') [9] under the Securities Act of 1933 [10] (''Rule 144A fixed-income securities''). In particular, on November 22, 2022, the National Association of Manufacturers and the Kentucky Association of Manufacturers submitted a petition to the Commission pursuant to 17 CFR 201.192(a) of the Commission's Rules of Practice [11] for a rulemaking to amend Rule 15c2–11, to expressly exempt from Rule 15c2–11 Rule 144A fixed-income securities (''Petition''). The Petition also requested, in the alternative, that the Commission expressly exempt Rule 144A fixed-income securities from Rule 15c2–11 pursuant to the exemptive authority set forth in 17 CFR 240.15c2–11(g).[12]

For the reasons discussed below, this Order exempts Rule 144A fixed-income securities from Rule 15c2–11, thus effectively granting the alternative relief sought in the Petition.

II. Discussion of Exemptive Relief

Section 36 of the Exchange Act authorizes the Commission to, conditionally or unconditionally, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act, or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[13] Paragraph (g) of Rule 15c2–11 under the Exchange Act similarly provides that the Commission may, conditionally or unconditionally, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of Rule 15c2–11 to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[14]

This exemptive relief is limited to Rule 144A fixed-income securities.[15]

[8] 17 CFR 200.30–3(a)(12).

[1] *Initiation or Resumption of Quotations by a Broker or Dealer Who Lacks Certain Information,* Release No. 34–9310 (Sept. 13, 1971), 36 FR 18641 (Sept. 18, 1971).

[2] *See Publication or Submission of Quotations Without Specified Information,* Release No. 34–89891 (Sept. 16, 2020), 85 FR 68124, 68125 (Oct. 27, 2020) (''2020 Rule 15c2–11 Release'').

[3] The term ''security'' is defined under section 3(a)(10) of the Exchange Act and specifically includes, among others, notes, bonds, debentures, and certificates of deposit, which are commonly known as fixed-income securities. 15 U.S.C. 78c(a)(10), (79). For purposes of this order, the term ''fixed-income security'' shall mean any note, bond, debenture, certificate of deposit for a security, certificate of deposit, or asset-backed security. *See id.*

[4] *See* 15 U.S.C. 78*o*(c)(2)(A). The term ''exempted security'' includes, among others, certain government securities, such as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. *See* 15 U.S.C. 78c(a)(12), (42).

[5] 17 CFR 240.15c2–11(f)(4). The term ''municipal security'' includes, among others, securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States. *See* 15 U.S.C. 78c(a)(29).

[6] *See* 17 CFR 240.15c2–11(a)(1)(i)(A), (B). The terms ''current'' and ''publicly available'' are defined in paragraphs (e)(2) and (e)(5) of Rule 15c2–11, respectively, and have the same meaning in this order.

[7] *See* 17 CFR 240.15c2–11(a)(1)(i)(C). *See also* 2020 Rule 15c2–11 Release, 85 FR at 68125. These rule amendments, among other things, expanded the scope of Rule 15c2–11's requirements for obtaining and reviewing specified information. Broker-dealers may publish initial quotations in reliance on the publicly available determination of a ''qualified interdealer quotation system'' that it complied with the information review requirement set forth in Rule 15c2–11(a)(2)(i) through (iii). *See* 17 CFR 15c2–11(a)(1)(ii).

[8] *See* 17 CFR 240.15c2–11(d)(1)(i)(A). *See also* 2020 Rule 15c2–11 Release, 85 FR at 68131, 68162.

[9] 17 CFR 230.144A. *See also* No. 33–6862 (Apr. 23, 1990), 55 FR 17933, 17939 n.55 (Apr. 30, 1990) (''Rule 144A Adopting Release'') (noting the applicability of Rule 15c2–11 to Rule 144A offerings).

[10] 15 U.S.C. 77a.

[11] 17 CFR 201.192(a).

[12] *See, e.g.,* Letter from Andrew Pincus to Vanessa Countryman, Petition for Rulewriting and Application for Exemption from Rule 15c2–11 (Nov. 22, 2022), *https://www.sec.gov/files/rules/petitions/2022/petamend-rule-15c211-4795.pdf.*

[13] 15 U.S.C. 78mm.

[14] 17 CFR 240.15c2–11(g).

[15] The Petition was limited to Rule 144A fixed-income securities and expressly excluded equity

Continued

Because the exemption applies only to fixed-income securities issued in accordance with the requirements of Rule 144A, it is limited to resales of securities to an investor base that ''can be conclusively assumed to be sophisticated,'' [16] is able to obtain certain basic financial information concerning the issuers' business, and has extensive experience in the private resale market for restricted securities.[17] Under the requirements of Rule 144A, securities can be sold only to ''qualified institutional investors'' (or purchasers that the seller or a person acting on its behalf reasonably believes are qualified institutional investors), which, with the exception of registered dealers, must in the aggregate own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with such a qualified institutional buyer.[18] Furthermore, in the case of issuers that do not file periodic reports under the Exchange Act or furnish home country information to the Commission pursuant to 17 CFR 240 12g3–2(b), Rule 144A requires that any prospective purchaser of Rule 144A fixed-income securities has the right to obtain from the issuer reasonably current financial information (''Rule 144A information''): [19]

[A] very brief statement of the nature of the business of the issuer and the products and services it offers; and the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for such part of the two preceding fiscal years as the issuer has been in operation (the financial information should be audited to the extent possible).[20]

The availability of the Rule 144A information can be used by prospective qualified institutional buyers to make better informed investment decisions and assess potential risks in investing in the security. While the Rule 144A information that is required to be provided to qualified institutional buyers upon request is not the current publicly available information defined in paragraph (b) of Rule 15c2–11, the Rule 144A information serves the same purpose of investor protection.

The Commission finds it is appropriate in the public interest, and consistent with the protection of investors, to exempt brokers and dealers from the requirements of Rule 15c2–11, with respect to Rule 144A fixed-income securities.

III. Conclusion

Accordingly, *it is hereby ordered,* pursuant to section 36(a) of the Exchange Act [21] and Rule 15c2–11(g) under the Exchange Act,[22] that a broker or dealer is exempt from the requirements of Rule 15c2–11 with respect to a fixed-income security to be sold in compliance with the safe harbor in Rule 144A [23] under the Securities Act of 1933.[24]

This exemptive relief is subject to modification or revocation at any time by the Commission but will be in effect unless and until the Commission determines that modification or revocation is necessary or appropriate in furtherance of the purposes of the Exchange Act, or the relief is otherwise superseded by future Commission action such as a rulemaking addressing the Rule 144A safe harbor or issues pertaining to the fixed income markets more generally.

Persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly sections 9(a) and 10(b), and 17 CFR 240.10b–5 thereunder.[25] Responsibility for compliance with these and any other applicable provisions of the Federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions or quotations may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other Federal or State laws to, the proposed transactions or quotations.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

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securities sold in compliance with the safe harbor in Rule 144A. *See* Petition at n.1. Moreover, the amendments to Rule 15c2–11 have applied to Rule 144A equity securities since the compliance date of those amendments which was September 2021. Accordingly, this exemption does not address equity securities sold in compliance with the safe harbor in Rule 144A.

[16] *Accredited Investor Definition,* Release No. 33–10824 (Aug. 26, 2020), 85 FR 64234, 64236 (Oct. 9, 2020) (''Accredited Investor Release'') (citing *Resale of Restricted Securities; Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145,* Release No. 33–6806 (Oct. 25, 1988), 53 FR 44016 (Nov. 1, 1988)) (''1988 Rule 144A Proposing Release'').

[17] 1988 Rule 144A Proposing Release, 53 FR at 44028.

[18] 17 CFR 230.144A(a)(1) (definition of ''qualified institutional buyer'').

[19] 17 CFR 230.144A(d)(4).

[20] *Id.* With respect to asset-backed securities, the Commission has interpreted the information requirement to mandate provision of ''basic, material information concerning the structure of the securities and distributions thereon, the nature, performance and servicing of the assets supporting the securities, and any credit enhancement mechanism associated with the securities.'' *See* Rule 144A Adopting Release, 55 FR at 17939.

[21] 15 U.S.C.78mm(a).

[22] 17 CFR 240.15c2–11(g).

[23] 17 CFR 230.144A.

[24] 15 U.S.C. 77a *et seq.*

[25] 15 U.S.C. 78i(a), 78j(b); 17 CFR 240.10b–5.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98814; File No. SR–NSCC–2023–010]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Clearing Agency Operational Risk Management Framework

October 27, 2023.

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 October 20, 2023, 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. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Clearing Agency Operational Risk Management Framework (''ORM Framework'' or ''Framework'') of the National Securities Clearing Corporation (''NSCC'') and its affiliates The Depository Trust Company (''DTC'') and Fixed Income Clearing Corporation (''FICC,'' and together with NSCC and DTC, the ''Clearing Agencies'') in order to (i) revise nomenclature and process changes to Risk Profiles, (ii) update the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) update recovery times for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

Tier 5 non-essential functions, (iv) update business continuity testing across industry organizations, and (v) update the ORM Framework to reflect recent changes to group names and make other nonmaterial edits, 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

The Clearing Agencies adopted the ORM Framework [5] to provide an outline for how each of the Clearing Agencies manages its operational risks. In this way, the Framework supports the Clearing Agencies' compliance with Rules 17Ad–22(e)(17) of the Standards for Covered Clearing Agencies (''Standards'') under the Securities Exchange Act of 1934 (''Act''),[6] as described in the Initial Filing. In addition to setting forth the way each of the Clearing Agencies addresses these requirements, the ORM Framework also contains a section titled ''Framework Ownership and Change Management'' that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework.

In connection with the annual review and approval of the Framework by the Boards of Directors of each of the Clearing Agencies (each a ''Board'' and collectively, the ''Boards''), the Clearing Agencies are proposing to make certain revisions to the Framework.

Such proposed changes would include (i) revise nomenclature and process changes to Risk Profiles, (ii) updating the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) updating the recovery times for Tier 5 equating to non-essential functions, (iv) updating business continuity testing across industry organizations, and (v) updating the ORM Framework to reflect recent changes to group names and making other nonmaterial edits. The proposed changes are described in greater detail below.

i. Proposed Amendments To Revise Nomenclature and Process Changes to Risk Profiles

Section 4.2 of the ORM Framework describes the risk profiles, which are tools used by the Clearing Agencies to monitor and document inherent risks and residual risks to support an overall assessment of the applicable Clearing Agency business' or Clearing Agency support area. The proposed changes would update the Framework to reflect recent developments to the name of the tools used by the Clearing Agency. The proposed changes would also reflect updates to Clearing Agency processes and other matters described in the Framework. These proposed changes do not substantively impact how the Clearing Agencies manage operational risk in compliance with the requirements of Rule 17Ad–22(e)(17) under the Act.[7]

The proposed changes would update the Framework by removing references to risk profiles and replacing them with Risk Assessments and Quarterly Business Monitoring. These proposed changes reflect the Clearing Agencies bifurcation of the prior Risk Profile process into an assessment and a metrics review component, each with differing cadences for publication. Specifically Risk Assessments are prepared at least annually, and Quarterly Business Monitoring is generally prepared quarterly and not less than semi-annually.

ii. Proposed Amendments To Align to the Cyber Risk Institute Profile

Section 5 of the Framework describes the role of TRM in establishing appropriate programs, policies, procedures, and controls with respect to the Clearing Agencies' information technology risks to help management ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity, as required by Rule 17Ad–22(e)(17)(ii) under the Act.[8] The Clearing Agencies previously aligned their technology risks management practices to the NIST standards, which are recognized information technology standards that have been used by TRM in support of executing such responsibilities. TRM shifted from reliance only on NIST standards to instead align their risk management practices with the standards of CRI, which is a global standard for cyber risk assessment and are based on the NIST Cyber Security Framework (''NIST SCF''). NIST CSF has five core functions, while the CRI standards have those same five core functions plus two additional core functions. This shift would allow the Clearing Agencies to continue maintaining compliance with Rule 17Ad–22(e)(17) under the Act.[9]

Therefore, the Clearing Agencies are proposing to amend Section 5 of the Framework to remove reference to NIST standards and replace them with the CRI Profile to reflect its existing practice.

iii. Proposed Amendments To Update Recovery Time of Tier 5 Operations

Section 6 of the Framework describes how the Clearing Agencies have established and maintain business continuity plans to address events that may pose a significant risk of disrupting their operations. The Framework describes how the business continuity process for each Clearing Agency Business and Clearing Agency Support Area [10] is ranked within a range of tiers, from 0 to 5. The range of tiers is based on criticality to each applicable Clearing Agency's operations (each a ''Tier''), where Tier 0 equates to critical operations or support of such operations for which virtually no downtime is permitted, and Tier 5 equates to non-essential operations or support of such operations for which recovery times of greater than five days is permitted. The Clearing Agencies are proposing a change to the Tier 5 recovery time from greater than five days to greater than fifteen days. The greater than fifteen days better represents the actual recovery time for the underlying product and service functions.

To reflect this change in the Framework, the Clearing Agencies are proposing to amend Section 6 of the Framework to replace the number five, with fifteen, as it relates to recovery times for Tier 5 and align with Clearing Agency current practice.

[5] *See* Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014; SR–NSCC–2017–013; SR–FICC–2017–017) (''Initial Filing'').

[6] 17 CFR 240.17Ad–22(e)(17).

[7] *Id.*

[8] 17 CFR 240.17Ad–22(e)(17)(ii).

[9] 17 CFR 240.17Ad–22(e)(17).

[10] The Clearing Agencies monitor key risks, including Operational Risks stemming from the day-to day operation of the Clearing Agencies' businesses and support areas (each a ''Clearing Agency Business'' or ''Clearing Agency Support Area'').

iv. Proposed Amendments To Update the Description of Business Continuity Testing

As mentioned above, Section 6 of the Framework describes how the Clearing Agencies manage business continuity risks. The Clearing Agencies are proposing changes to the Framework to describe their management of these risks more accurately. Specifically, the Clearing Agencies are proposing changes to better reflect their administration of industry testing, which is one of the preventive measures the Clearing Agencies may take with respect to business continuity risk management. The proposed changes would reflect the breadth of industry participants used for such industry exercises conducted by the Clearing Agencies instead of only the Securities Industry and Financial Markets Association (SIFMA) and the Financial Services Authority. The proposed rule change is not intended to reflect a material change to the industry testing done by the Clearing Agencies, but rather, would more accurately reflect the possible scope of any such testing.

Therefore, the Clearing Agencies are proposing to amend the last bullet of Section 6 of the Framework to remove reference to SIFMA and the Financial Services Authority and include a more comprehensive description of industry testing currently conducted to manage its business continuity risks.

v. Proposed Amendments To Update Organizational Name Changes and Make Other Nonmaterial Edits

Finally, the Framework is owned and managed by an officer within the Operational Risk Management Group within the Group Chief Risk Office of DTCC. While the role and responsibilities of the Operational Risk Management Group have not changed, the proposed changes would update the Framework to reflect a change in the name of the group. The Operational Risk Management Group is now referred to as Operational Risk. This proposed change would reflect a recent organizational name change.

The proposed rule change would make additional immaterial edits to the Framework that do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e)(17) under the Act.[11]

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act[12] and Rule 17Ad–22(e)(17)(ii) and (iii) promulgated under the Act,[13] for the reasons described below.

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act, which requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and 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, for the reasons described below.[14] The proposed changes to (i) revise nomenclature and process changes to Risk Profiles, (ii) update the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) update the recovery times for Tier 5 equating to non-essential functions, (iv) update business continuity testing across industry organizations, and (v) update the ORM Framework to reflect recent changes to group names and making other nonmaterial edits would update and clarify the Framework and would make it more comprehensive in how it describes the methods and tools currently used by the Clearing Agencies to manage operational risks and therefore comply with Section 17A(b)(3)(F) of the Act.[15] By creating clearer, updated and more comprehensive descriptions, the Clearing Agencies believe the proposed changes would make the ORM Framework more effective in providing an overview of the important risk management activities described therein.

The risk management functions described in the ORM Framework allow the Clearing Agencies to continue the prompt and accurate clearance and settlement of securities and can continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible notwithstanding the default of a member of an affiliated family. The proposed changes to (1) to revise nomenclature and process changes to risk profiles, (2) shift to the CRI standards, and (3) broaden the description of industry testing to capture the breadth of industry participants available to engage in such testing within the ORM Framework reflect the tools used by Clearing Agencies to assess inherent and residual risks; reliance by the Clearing Agencies on reliable global sources related to its information technology standards and diverse sources for industry testing. Identifying and mitigating plausible sources of operational risks both internal and external, information technology and business continuity, outlined in the above-referenced proposed changes, facilitates the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. Therefore, the Clearing Agencies believe the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(17) under the Act requires, in part, that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and (iii) establishing and maintaining business continuity plans in order to address events that may pose a significant risk of disrupting their operations.

The Framework would be amended to update the description of the Clearing Agencies' information technology and business continuity procedures. The proposed changes to revise nomenclature and process changes to Risk Profiles including the bifurcation of Risk Profiles process and identification of applicable governance processes assist the Clearing Agencies in effectively managing their operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating the impact of those risks. The proposed change to shift to CRI standards, which encompasses the NIST standards plus additional metrics, is part of the programs, policies, procedures, and controls used by the Clearing Agencies to continue the building, implementation, and maintenance of systems that have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. Lastly, accurately describing the Clearing Agencies industry testing procedure in the ORM framework conforms with the Clearing Agencies compliance obligations since business continuity testing is one of the

[11] 17 CFR 240.17Ad–22(e)(17).

[12] 15 U.S.C. 78s(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(17)(ii) and (iii).

[14] 15 U.S.C. 78s(b)(3)(F).

[15] *Id.*

[16] *Id.*

preventive measures the Clearing Agencies may take with respect to business continuity risk management. As described above, these procedures address how the Clearing Agencies detect, identify, investigate, and resolve incidents that affect the Clearing Agencies' systems. These procedures are designed to help address the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(17)(ii) and (iii) under the Act.[17] Therefore, the Clearing Agencies believe that the proposed rule changes to update the description of these procedures in the Risk Management Framework is consistent with Rule 17Ad–22(e)(17)(ii) and (iii).[18]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the ORM Framework described above would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' operational risk management processes. The proposed rule changes to the Framework, would not advantage, or disadvantage any participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. As such, the Clearing Agencies do not believe that the proposed rule changes would 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 Securities and Exchange Commission (''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 not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[19] of the Act and paragraph (f)[20] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NSCC–2023–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–NSCC–2023–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NSCC–2023–010 and should be submitted on or before November 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24179 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98813; File No. SR–FICC–2023–015]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Clearing Agency Operational Risk Management Framework

October 27, 2023.

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 October 20, 2023, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule

[17] 17 CFR 240.17Ad–22(e)(17)(ii) and (iii).

[18] *Id.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Clearing Agency Operational Risk Management Framework (''ORM Framework'' or ''Framework'') of Fixed Income Clearing Corporation (''FICC''), and its affiliates the National Securities Clearing Corporation (''NSCC''), The Depository Trust Company (''DTC,'' and together with FICC and NSCC, the ''Clearing Agencies'') in order to (i) revise nomenclature and process changes to Risk Profiles, (ii) update the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) update recovery times for Tier 5 non-essential functions, (iv) update business continuity testing across industry organizations, and (v) update the ORM Framework to reflect recent changes to group names and make other nonmaterial edits, 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

The Clearing Agencies adopted the ORM Framework [5] to provide an outline for how each of the Clearing Agencies manages its operational risks. In this way, the Framework supports the Clearing Agencies' compliance with Rules 17Ad–22(e)(17) of the Standards for Covered Clearing Agencies (''Standards'') under the Securities Exchange Act of 1934 (''Act''),[6] as described in the Initial Filing. In addition to setting forth the way each of the Clearing Agencies addresses these requirements, the ORM Framework also contains a section titled ''Framework Ownership and Change Management'' that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework.

In connection with the annual review and approval of the Framework by the Boards of Directors of each of the Clearing Agencies (each a ''Board'' and collectively, the ''Boards''), the Clearing Agencies are proposing to make certain revisions to the Framework.

Such proposed changes would include (i) revise nomenclature and process changes to Risk Profiles, (ii) updating the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) updating the recovery times for Tier 5 equating to non-essential functions, (iv) updating business continuity testing across industry organizations, and (v) updating the ORM Framework to reflect recent changes to group names and making other nonmaterial edits. The proposed changes are described in greater detail below.

i. Proposed Amendments To Revise Nomenclature and Process Changes to Risk Profiles

Section 4.2 of the ORM Framework describes the risk profiles, which are tools used by the Clearing Agencies to monitor and document inherent risks and residual risks to support an overall assessment of the applicable Clearing Agency business' or Clearing Agency support area. The proposed changes would update the Framework to reflect recent developments to the name of the tools used by the Clearing Agency. The proposed changes would also reflect updates to Clearing Agency processes and other matters described in the Framework. These proposed changes do not substantively impact how the Clearing Agencies manage operational risk in compliance with the requirements of Rule 17Ad–22(e)(17) under the Act.[7]

The proposed changes would update the Framework by removing references to risk profiles and replacing them with Risk Assessments and Quarterly Business Monitoring. These proposed changes reflect the Clearing Agencies bifurcation of the prior Risk Profile process into an assessment and a metrics review component, each with differing cadences for publication. Specifically Risk Assessments are prepared at least annually, and Quarterly Business Monitoring is generally prepared quarterly and not less than semi-annually.

ii. Proposed Amendments To Align to the Cyber Risk Institute Profile

Section 5 of the Framework describes the role of TRM in establishing appropriate programs, policies, procedures, and controls with respect to the Clearing Agencies' information technology risks to help management ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity, as required by Rule 17Ad–22(e)(17)(ii) under the Act.[8] The Clearing Agencies previously aligned their technology risks management practices to the NIST standards, which are recognized information technology standards that have been used by TRM in support of executing such responsibilities. TRM shifted from reliance only on NIST standards to instead align their risk management practices with the standards of CRI, which is a global standard for cyber risk assessment and are based on the NIST Cyber Security Framework (''NIST SCF''). NIST CSF has five core functions, while the CRI standards have those same five core functions plus two additional core functions. This shift would allow the Clearing Agencies to continue maintaining compliance with Rule 17Ad–22(e)(17) under the Act.[9]

Therefore, the Clearing Agencies are proposing to amend Section 5 of the Framework to remove reference to NIST standards and replace them with the CRI Profile to reflect its existing practice.

iii. Proposed Amendments To Update Recovery Time of Tier 5 Operations

Section 6 of the Framework describes how the Clearing Agencies have established and maintain business continuity plans to address events that may pose a significant risk of disrupting their operations. The Framework describes how the business continuity process for each Clearing Agency Business and Clearing Agency Support

[4] 17 CFR 240.19b–4(f)(4).

[5] *See* Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014; SR–NSCC–2017–013; SR–FICC–2017–017) (''Initial Filing'').

[6] 17 CFR 240.17Ad–22(e)(17).

[7] *Id.*

[8] 17 CFR 240.17Ad–22(e)(17)(ii).

[9] 17 CFR 240.17Ad–22(e)(17).

Area [10] is ranked within a range of tiers, from 0 to 5. The range of tiers is based on criticality to each applicable Clearing Agency's operations (each a ''Tier''), where Tier 0 equates to critical operations or support of such operations for which virtually no downtime is permitted, and Tier 5 equates to non-essential operations or support of such operations for which recovery times of greater than five days is permitted. The Clearing Agencies are proposing a change to the Tier 5 recovery time from greater than five days to greater than fifteen days. The greater than fifteen days better represents the actual recovery time for the underlying product and service functions.

To reflect this change in the Framework, the Clearing Agencies are proposing to amend Section 6 of the Framework to replace the number five, with fifteen, as it relates to recovery times for Tier 5 and align with Clearing Agency current practice.

iv. Proposed Amendments To Update the Description of Business Continuity Testing

As mentioned above, Section 6 of the Framework describes how the Clearing Agencies manage business continuity risks. The Clearing Agencies are proposing changes to the Framework to describe their management of these risks more accurately. Specifically, the Clearing Agencies are proposing changes to better reflect their administration of industry testing, which is one of the preventive measures the Clearing Agencies may take with respect to business continuity risk management. The proposed changes would reflect the breadth of industry participants used for such industry exercises conducted by the Clearing Agencies instead of only the Securities Industry and Financial Markets Association (SIFMA) and the Financial Services Authority. The proposed rule change is not intended to reflect a material change to the industry testing done by the Clearing Agencies, but rather, would more accurately reflect the possible scope of any such testing.

Therefore, the Clearing Agencies are proposing to amend the last bullet of Section 6 of the Framework to remove reference to SIFMA and the Financial Services Authority and include a more comprehensive description of industry testing currently conducted to manage its business continuity risks.

v. Proposed Amendments To Update Organizational Name Changes and Make Other Nonmaterial Edits

Finally, the Framework is owned and managed by an officer within the Operational Risk Management Group within the Group Chief Risk Office of DTCC. While the role and responsibilities of the Operational Risk Management Group have not changed, the proposed changes would update the Framework to reflect a change in the name of the group. The Operational Risk Management Group is now referred to as Operational Risk. This proposed change would reflect a recent organizational name change.

The proposed rule change would make additional immaterial edits to the Framework that do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e)(17) under the Act.[11]

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act [12] and Rule 17Ad–22(e)(17)(ii) and (iii) promulgated under the Act,[13] for the reasons described below.

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act, which requires, in part, that the rules of a registered clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and 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, for the reasons described below.[14] The proposed changes to (i) revise nomenclature and process changes to Risk Profiles, (ii) update the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) update the recovery times for Tier 5 equating to non-essential functions, (iv) update business continuity testing across industry organizations, and (v) update the ORM Framework to reflect recent changes to group names and making other nonmaterial edits would update and clarify the Framework and would make it more comprehensive in how it describes the methods and tools currently used by the Clearing Agencies to manage operational risks and therefore comply with Section 17A(b3)(F) of the Act.[15] By creating clearer, updated and more comprehensive descriptions, the Clearing Agencies believe the proposed changes would make the ORM Framework more effective in providing an overview of the important risk management activities described therein.

The risk management functions described in the ORM Framework allow the Clearing Agencies to continue the prompt and accurate clearance and settlement of securities and can continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible notwithstanding the default of a member of an affiliated family. The proposed changes to (1) to revise nomenclature and process changes to risk profiles, (2) shift to the CRI standards, and (3) broaden the description of industry testing to capture the breadth of industry participants available to engage in such testing within the ORM Framework reflect the tools used by Clearing Agencies to assess inherent and residual risks; reliance by the Clearing Agencies on reliable global sources related to its information technology standards and diverse sources for industry testing. Identifying and mitigating plausible sources of operational risks both internal and external, information technology and business continuity, outlined in the above-referenced proposed changes, facilitates the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. Therefore, the Clearing Agencies believe the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(17) under the Act requires, in part, that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and (iii) establishing and maintaining business continuity plans in order to address events that may pose a significant risk of disrupting their operations.

[10] The Clearing Agencies monitor key risks, including Operational Risks stemming from the day-to day operation of the Clearing Agencies' businesses and support areas (each a ''Clearing Agency Business'' or ''Clearing Agency Support Area'').

[11] 17 CFR 240.17Ad–22(e)(17).

[12] 15 U.S.C. 78s(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(17)(ii) and (iii).

[14] 15 U.S.C. 78s(b)(3)(F).

[15] *Id.*

[16] *Id.*

The Framework would be amended to update the description of the Clearing Agencies' information technology and business continuity procedures. The proposed changes to revise nomenclature and process changes to Risk Profiles including the bifurcation of Risk Profiles process and identification of applicable governance processes assist the Clearing Agencies in effectively managing their operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating the impact of those risks. The proposed change to shift to CRI standards, which encompasses the NIST standards plus additional metrics, is part of the programs, policies, procedures, and controls used by the Clearing Agencies to continue the building, implementation, and maintenance of systems that have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. Lastly, accurately describing the Clearing Agencies industry testing procedure in the ORM framework conforms with the Clearing Agencies compliance obligations since business continuity testing is one of the preventive measures the Clearing Agencies may take with respect to business continuity risk management. As described above, these procedures address how the Clearing Agencies detect, identify, investigate, and resolve incidents that affect the Clearing Agencies' systems. These procedures are designed to help address the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(17)(ii) and (iii) under the Act.[17] Therefore, the Clearing Agencies believe that the proposed rule changes to update the description of these procedures in the Risk Management Framework is consistent with Rule 17Ad–22(e)(17)(ii) and (iii).[18]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the ORM Framework described above would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' operational risk management processes. The proposed rule changes to the Framework, would not advantage, or disadvantage any participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. As such, the Clearing Agencies do not believe that the proposed rule changes would have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Securities and Exchange Commission (''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.

FICC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[19] of the Act and paragraph (f)[20] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–FICC–2023–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–FICC–2023–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–FICC–2023–015 and should be submitted on or before November 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24178 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 240.17Ad–22(e)(17)(ii) and (iii).

[18] *Id.*

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98809; File No. SR–CboeBZX–2023–068]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

October 27, 2023.

On September 1, 2023, Cboe BZX Exchange, Inc. (''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 certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.[4] On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission: (1) temporarily suspended the proposed rule change; and (2) 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 October 25, 2023, the Exchange withdrew the proposed rule change (SR–CboeBZX–2023–068).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24174 Filed 11–1–23; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[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. 98389 (September 14, 2023), 88 FR 64957.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98650, 88 FR 68787 (October 4, 2023).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98811; File No. SR–CboeEDGX–2023–057]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

October 27, 2023.

On September 1, 2023, Cboe EDGX Exchange, Inc. (''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 certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.[4] On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission: (1) temporarily suspended the proposed rule change; and (2) 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 October 25, 2023, the Exchange withdrew the proposed rule change (SR–CboeEDGX–2023–057).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24176 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[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. 98396 (September 14, 2023), 88 FR 64960.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98653, 88 FR 68774 (October 4, 2023).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98808; File No. SR–C2–2023–020]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

October 27, 2023.

On September 1, 2023, Cboe C2 Exchange, Inc. (''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 certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.[4] On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission: (1) temporarily suspended the proposed rule change; and (2) 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 October 25, 2023, the Exchange withdrew the proposed rule change (SR–C2–2023–020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24173 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[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. 98397 (September 14, 2023), 88 FR 64939.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98649, 88 FR 68859 (October 4, 2023).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98810; File No. SR–CboeEDGA–2023–015]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

October 27, 2023

On September 1, 2023, Cboe EDGA Exchange, Inc. (''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 certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.[4] On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission: (1) temporarily suspended the proposed rule change; and (2) 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 October 25, 2023, the Exchange withdrew the proposed rule change (SR–CboeEDGA–2023–015).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24175 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[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. 98394 (September 14, 2023), 88 FR 64947.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98652, 88 FR 68677 (October 4, 2023).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98807; File No. SR–CboeEDGX–2023–058]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

October 27, 2023.

On September 1, 2023, Cboe EDGX Exchange, Inc. (''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 certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.[4] On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission: (1) temporarily suspended the proposed rule change; and (2) 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 October 25, 2023, the Exchange withdrew the proposed rule change (SR–CboeEDGX–2023–058).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24172 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[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. 98390 (September 14, 2023), 88 FR 64930.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98651, 88 FR 68852 (October 4, 2023).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98805; File No. SR–CboeBZX–2023–067]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend Its Fee Schedule Related to Physical Port Fees

October 27, 2023.

On September 1, 2023, Cboe BZX Exchange, Inc. (''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 certain connectivity and port fees.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on September 20, 2023.[4] On September 29, 2023, pursuant to Section 19(b)(3)(C) of the Act,[5] the Commission: (1) temporarily suspended the proposed rule change; and (2) 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 October 25, 2023, the Exchange withdrew the proposed rule change (SR–CboeBZX–2023–067).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24170 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[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. 98395 (September 14, 2023), 88 FR 64950.

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98646, 88 FR 68830 (October 4, 2023).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35044]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of applications for deregistration.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2023. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Goldman Sachs MLP & Energy Renaissance Fund [File No. 811–22979]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 10, 2023, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $49,714 incurred in connection with the liquidation were paid by the applicant and the applicant's investment advisor. Applicant also has retained approximately $6,850,674 for the purpose of paying an outstanding tax liability.

Filing Date: The application was filed on September 22, 2023.

Applicant's Address: 200 West Street, New York, New York 10282.

Mirae Asset Discovery Funds [File No. 811–22406]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred the assets of the Emerging Markets Fund to the Global X Emerging Markets ETF and the assets of the Emerging Markets Great Consumer Fund to the Global X Emerging Markets Great Consumer ETF, and on May 12, 2023, made a final distribution to its shareholders based on net asset value. Expenses of $530,294.71 incurred in connection with the reorganization were paid by the acquiring fund's investment adviser.

Filing Dates: The application was filed on August 24, 2023 and amended on October 6, 2023.

Applicant's Address: 1212 Avenue of the Americas, 10th Floor, New York, New York 10036.

Trust For Credit Unions [File No. 811–05407]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 10, 2023, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $288,261 incurred in connection with the liquidation were paid by the applicant and Callahan Credit Union Financial Services, LLLP, an affiliate of the applicant's underwriter.

Filing Dates: The application was filed on June 1, 2023 and amended on August 11, 2023 and October 13, 2023.

Applicant's Address: 615 East Michigan Street, Milwaukee, Wisconsin 53202.

Walthausen Funds [File No. 811–22143]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to North Star Small Cap Value Fund, and on May 12, 2023, made a final distribution to its shareholders based on net asset value. Expenses of $187,496 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on September 26, 2023.

Applicant's Address: 20 North Wacker Drive, Suite 1416, Chicago, Illinois 60606.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: October 27, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24131 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98815; File No. SR–ICEEU–2023–011]

Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Wind Down Framework and Plan

October 27, 2023.

I. Introduction

On August 11, 2023, ICE Clear Europe Limited (''ICEEU'') 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 its Wind Down Framework and Plan (to be renamed the ''Wind Down Plan'') (the ''Plan''). On August 22, 2023, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to make certain changes to the Exhibit 5.[3] Notice of the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 30, 2023.[4] On September 26, 2023, the Commission designated a longer period for Commission action on the proposed rule change until November 28, 2023.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 updates the Exhibit 5 to correct the presentation of three of the proposed changes to the Wind Down Framework and Plan that were filed with the Commission on August 11, 2023. The proposed rule change incudes an Exhibit 4. Exhibit 4 shows the change that Amendment No. 1 makes to the Exhibit 5.

[4] Securities Exchange Act Release No. 98217 (August 24, 2023), 88 FR 60001 (August 30, 2023) (File No. SR–ICEEU–2023–011) (''Notice'').

[5] Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of Longer Period for

Continued

The Commission has not received any comments on the proposed rule change, as modified by Amendment No. 1 (hereinafter, ''Proposed Rule Change''). For the reasons discussed below, the Commission is approving the Proposed Rule Change.[6]

II. Description of the Proposed Rule Change

ICEEU is a covered clearing agency. Under Rule 17Ad–22(e)(3)(ii), ICEEU must ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or other losses.'' [7] The Plan addresses scenarios in which ICEEU determines to wind down in an orderly fashion. For example, one circumstance that could lead ICEEU to wind down in an orderly fashion is insolvency because of either member default or some other reason (*e.g.,* fraud). ICEEU may also choose to wind down in an orderly fashion when it is not insolvent (*e.g.,* for business reasons).[8]

Through the Proposed Rule Change, ICEEU proposes to make changes to the Plan. These proposed changes update the Plan's introduction, preparations for winding down, planning options, discussion of meeting liquidity requirements during wind-down, and document governance.[9]

1. The Plan's Introduction

The Plan currently has an overview and context section. The overview section contains background information on ICEEU. For example, it identifies ICEEU's regulators, parent entities, functions, clearing strategy, and tools for risk management. Among other things, the context section discusses certain regulatory requirements imposed on ICEEU and ICEEU's Recovery Plan. The Proposed Rule Change would delete the overview section and portions of the context section. Specifically, the Proposed Rule Change would delete portions of the context section that discuss regulatory requirements and ICEEU's Recovery Plan, and a statement that the Plan also reflects feedback received from certain regulators, because ICEEU no longer considers this level of detail of background information to be necessary.[10] It would also delete a reference to EMIR requirements, because these no longer apply to ICEEU.[11]

The Proposed Rule Change would divide the rest of the remaining context section into a new four-part executive summary section. The first part of the executive summary would be titled ''Purpose of the Plan.'' This section would include portions of the existing context section describing when the Plan would be required and the time span for a wind-down. The Proposed Rule Change would add a sentence noting that the Plan sets out the relevant information, the steps to take, and the options available with respect to winding down some or all of ICEEU's business. The Proposed Rule Change would also note that the Plan seeks to support ICEEU's compliance with all relevant regulatory obligations with respect to wind-down. Finally, the Proposed Rule Change would add a footnote to explain that references to EMIR requirements and other EU legislation refer to legislation on-shored into United Kingdom legislation following the withdrawal of the United Kingdom from the European Union.

The second portion of the executive summary would be titled ''Summary of the Plan.'' This section would include portions of the existing context section describing the things the Plan considers (*e.g.,* scenarios). The current Plan already notes that it includes consideration of all existing contractual obligations with, for example, exchanges, payment banks, custodians, CSDs, repo counterparties, data providers, IT providers, contractors, buildings, and staff. The Proposed Rule Change would add that the Plan also considers other services that ICEEU may be providing, such as intra-group services.

The third part of the executive summary would be titled ''Structure of the Plan.'' This section would include portions of the existing context section describing the Plan's contents, central aspects of the Plan, and assumptions underlying the Plan. The Proposed Rule Change would amend the content to state that extensive consultation with relevant stakeholders will be likely, rather than always occurring, prior to any final decisions regarding the execution of the Plan. ICEEU proposes this change to reflect that different forms and extents of consultation with particular stakeholders may be appropriate for different circumstances and proposed actions.[12]

The fourth section of the executive summary would be titled ''Execution of the Plan.'' It would not include any portions of the existing context section. This new section would add to the Plan a discussion of the establishment, responsibilities, and composition of the Wind Down Planning Committee. For example, this new section would note that ICEEU establishes the Wind Down Planning Committee, this committee reports to the Board, and the committee liaises with all stakeholders. Further, this committee includes a non-executive director chair, senior officers, and other advisors as appropriate.[13]

2. Preparations for Winding Down

ICEEU also proposes changes to the Plan related to its preparations for winding down. The Proposed Rule Change would add text clarifying that the Wind Down Planning Committee will try to ensure that the impact of any plans on relevant stakeholders (in addition to members) would be as minimal as possible. In considering a potential transfer to an alternative CCP, the Proposed Rule Change would clarify that the Wind Down Planning Committee should answer if there are any jurisdictional complications, materially differing membership requirements, or regulatory processes that should be factored into the timeline for wind-down. Additionally, the Proposed Rule Change would edit the Plan so that it no longer requires the Wind Down Planning Committee to consider whether the members would accept a particular contract not being

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Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to the Wind Down Framework and Plan; Exchange Act Release No. 98536 (Sept. 26, 2023), 88 FR 67834 (Oct. 2, 2023) (File No. SR–ICEEU–2023–011).

[6] Capitalized terms not otherwise defined herein have the meanings assigned to them in the Plan or, if not defined therein, ICE Clear Europe's Clearing Rules.

[7] 17 CFR 240.17Ad–22(e)(3)(ii).

[8] Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Changes Related to the ICE Clear Europe Recovery and Wind-Down Plans; Exchange Act Release No. 83651 (July 17, 2018), 83 FR 34891, 34893 (July 23, 2018) (File No. SR–ICEEU–2017–016 and SR–ICEEU–2017–017).

[9] In addition to the proposed changes described below, the Proposed Rule Change makes grammatical and non-substantive edits throughout the Plan.

[10] Notice, 88 FR at 60001–02.

[11] *Id.* at 60002.

[12] *Id.*

[13] The Proposed Rule Change would make similar changes to the ''Analysis, Consultation, and Planning'' section of the Plan. Specifically, it would note that the composition of the Planning Committee shall include relevant members of the senior management of ICEEU and any other senior ICE representatives as considered appropriate by ICEU senior management rather than simply noting that the composition of the Planning Committee would include the senior management of ICEEU.

available for clearing at the time of transfer. The Proposed Rule Change would eliminate this consideration because ICEEU believes transfer would likely not be feasible in a scenario where a particular contract is not available for clearing at the time of transfer.[14] In considering a potential termination, the Proposed Rule Change would add that the Wind Down Planning Committee should answer whether the relevant regulators are likely to be accepting of the termination and whether the relevant regulatory processes have been adequately factored into the proposed timeline.

The Proposed Rule Change would note that as part of planning for wind-down, ICEEU shall assess the impact of services it receives and provides. Relevant factors in this assessment include timing and costs. The Proposed Rule Change would also state that ICEEU's plans assume that ICEEU continues to call and receive all margin requirements and operate during the wind-down period. The Proposed Rule Change would provide a caveat that under certain circumstances, such as an unplanned disruption from a Clearing Member default or a material non-default event or loss, revised timelines and other actions may be required.

3. Planning Options

According to the Plan, ICEEU may either transfer certain aspects of its business (*e.g.,* F&O clearing or CDS clearing) to another clearinghouse or terminate those aspects of its business. Additionally, the Plan includes a section dedicated to terminating service agreements. ICEEU proposes changes to the Plan impacting a potential transfer of its business, the potential termination of its business, and how it would go about terminating service agreements in the event of any type of wind-down.

A. Transfer Option

The current Plan states that if a particular market wishes and is able to continue trading and settling via a CCP then the wind down plan is based on the transfer option. The Proposed Rule Change would clarify that if a particular market wishes and is able to continue trading and settling via an alternative CCP, then the wind-down plan is based on the transfer option. The Proposed Rule Change would adjust multiple aspects of the Plan's discussion of the transfer option. Specifically, the current Plan describes how ICEEU would implement a transfer, for both its F&O and CDS businesses. The Plan describes the transfer of each business in terms of an overall approach to transfer, assumptions ICEEU makes as part of the transfer, activities that ICEEU will undertake, the timeline for transfer, and the resources needed for transfer.

Overall Approach To Transfer

The proposed rule change would update the description of ICEEU's overall approach to the transfer of its F&O and CDS businesses. With respect to transfer of the F&O business, the current Plan states that where an F&O contract is not cleared by the clearing house receiving the transfer, then ICEEU would terminate the contract and exclude it from transfer until the recipient clearing house begins clearing the contract. The Proposed Rule Change would modify this statement to state instead that ICEEU will just exclude the contract from transfer. ICEEU proposes this modification because it believes that the delay accompanying a later transfer would not be feasible.[15]

With respect to ICEEU's approach to transfer of the CDS business, the current Plan states that for ICEEU CDS contracts that are not currently cleared on the recipient clearing house's platform, the necessary capability to clear the contract will be built and tested by the recipient clearing house in time for transfer and will be included in the transfer. The Proposed Rule Change would add language to this provision subjecting this requirement to the clearing house's relevant new product approval and regulatory processes. The Proposed Rule Change would further note that if the recipient clearing house cannot build and test clearing methods in an acceptable timeframe, then ICEEU's clearing of those CDS contracts may, rather than will, be terminated through rebilateralisation.[16]

Assumptions

Another aspect of the Plan's discussion of the transfer option that the Proposed Rule Change addresses are the assumptions underlying a plan for the transfer of ICEEU's F&O or CDS business. In both the F&O and CDS contexts, the current Plan assumes that the questions around viable and willing clearing houses have been answered. The Proposed Rule Change would clarify in both the F&O and CDS contexts that the questions around viable and willing clearing houses include jurisdictional considerations.[17]

In the F&O context, the current Plan assumes that ICEEU's clearing of the F&O market may legally be transferred to one or more clearing houses. The Proposed Rule Change would add an explanation to this assumption acknowledging that ICEEU clears a diverse profile of markets so that it may not be possible to transfer all to a single clearing house.[18] Where the current Plan assumes that the questions around viable and willing clearing houses have been answered, it also includes a clause stating that there would be a maximum of two viable and willing clearing houses. The Proposed Rule Change would remove this clause.

In the assumptions for CDS transfers, as well as in other locations throughout the Plan's discussion of the CDS transfer option, the Proposed Rule Change would add language recognizing that alternative CCPs may have different membership requirements from ICEEU. For example, the current Plan assumes that the receiving clearing house's rules contain no impediments to the transfer. The Proposed Rule Change would add to this assumption by noting that the receiving clearing house's rules (including membership criteria) contain no impediments to the transfer.

Activities

A third aspect of the Plan's discussion of the transfer option that the Proposed Rule Change addresses are plan activities with respect to the transfer of ICEEU's F&O or CDS business. In the discussion of plan activities for both the transfer of ICEEU's F&O business and its CDS business, the current Plan calls for the transfer of margin funds to recipient clearing houses at the end of the weekend. The Proposed Rule Change would highlight that relevant collateral must be transferred to a recipient clearing house at the end of the weekend rather than margin funds.[19]

In the discussion of plan activities for the transfer of ICEEU's F&O business, the Proposed Rule Change would update references to ICEEU's position management and other systems (*e.g.,* FEC and ECS). The current Plan indicates that novation of member F&O contract positions from ICEEU to recipient clearing houses would be agreed. The Proposed Rule Change would add that Novation of related collateral from ICEEU to recipient

[14] Notice, 88 FR at 60002.

[15] *Id.*

[16] Transactions that ICEEU clears and settles centrally may also be cleared and settled bilaterally, using only two parties as opposed to clearing and settling a transaction through a CCP. Rebilateralisation describes the process of clearing and settling positions bilaterally that were once cleared and settled centrally.

[17] Notice, 88 FR at 60002.

[18] A similar explanation is added to the portion of the Plan addressing the timeline for transfer of ICEEU's F&O business.

[19] The Proposed Rule Change makes changes throughout the Plan that align with this change.

clearing houses would also be agreed as appropriate. Finally, the current Plan calls for open position data migration to recipient clearing houses, excluding any non-transferring contracts, to be built and tested. The Proposed Rule Change would call for relevant collateral migration to recipient clearing houses to be built and tested as well.

In the discussion of plan activities for the transfer of ICEEU's CDS business, the current Plan states that following a gap analysis, the members and contracts that were missing from the alternative clearing house's platform would be identified and the timeframe for adding them agreed. If the timescale for adding any missing contracts was not acceptable to the market, then they would be terminated, positions would not be migrated, and once the recipient clearing house is able to clear them they would be back-loaded. The Proposed Rule Change would note that if the timescale for adding any missing contracts was not acceptable to the market, then they would be terminated, positions would not be migrated, and once the recipient clearing house is able to clear them they could (rather than would) be back-loaded.

Timeline

The Proposed Rule Change also would adjust sections on the timeline for transfer of ICEEU's F&O and CDS businesses. The Proposed Rule Change would adjust the timeline for transfer of ICEEU's F&O and CDS businesses from no more than six months to approximately six months.[20] Moreover, the Proposed Rule Change would add text to the sections on the timeline for transfer of ICEEU's F&O and CDS businesses acknowledging that a transfer may need to involve more than one recipient clearing house which may affect the timeline for transfer.

Resources

The Proposed Rule Change would make one edit in the context of both its F&O and CDS business related to the resources needed for transfer. The current plan notes that risk management will continue with initial margin (IM) and variation margin (VM) operating unchanged. The Proposed Rule Change would note that risk management will therefore continue with initial margin (IM) and variation margin (VM) operating unchanged.

b. Termination Option

The Proposed Rule Change would clarify that a wind-down is based on the termination option if market conditions are so distressed that trading cannot continue, or an alternative CCP cannot be found. The Proposed Rule Change would adjust multiple aspects of the Plan's discussion of the termination option, including the timeline for termination, overall approach to termination, activities that ICEEU will undertake, resources needed for termination, and the rules applicable to termination.

Timeline

The Proposed Rule Change would contemplate a more fluid timeline for termination of both the F&O and CDS business. Throughout the Plan, the Proposed Rule Change would make changes so that the timeline for termination in the case of the F&O business, or termination, wind-down, or rebilateralisation in the case of the CDS business, will take approximately five months, as opposed to exactly five months. Moreover, the Proposed Rule Change would contemplate that F&O and CDS termination occur on a designated Withdrawal Date. This added flexibility would allow ICEEU to account for the particular circumstances of the termination, such as differing maturity profiles in the context of F&O termination.[21]

Approach

The Proposed Rule Change also addresses the approach to terminating the F&O business. The Proposed Rule Change would clarify that F&O members will be notified by circular of ICEEU's intent to terminate the clearing of contracts. It also would revise the maturity profile for different product groups based on expiration date, because the maturity profile may be materially different between product groups.[22] While acknowledging that the maturity profile may materially differ between product groups within the F&O clearing service, ICEEU would note that a common approach to termination may not be appropriate across all groups; therefore, the wind-down plan should consider the profile by relevant group, specifically with respect to the time required for termination. At the same time, ICEEU would note that the process of terminating open positions at Withdrawal Date is common across all maturities and product groups. Moreover, the Proposed Rule Change would note that the percentage of total open contracts expected to wind down naturally via expiration within three months is approximately 30 percent as opposed to approximately 35 percent. The Proposed Rule Change would also add that new trades would be accepted until the Withdrawal Date, with the expectation that they serve to reduce risk and therefore reduce open interest. ICEEU would also note that open F&O positions will be terminated through closing them down via offsetting transactions at the end-of-day settlement price, which is calculated in accordance with Clearing House Rules 701 and 802. It also would adjust the options available to F&O members to close out open positions themselves leading up to the Withdrawal Date. For example, the Proposed Rule Change would add that F&O members may use comparable trading strategies to Exchanges for Swaps to take positions off-market (in addition to being allowed to use Exchanges for Swaps).[23] Conforming changes would also be made to the assumptions underlying an F&O termination and the activities associated with an F&O termination in the Proposed Rule Change.

Activities

The Proposed Rule Change would also amend the activities associated with termination of ICEEU's F&O business. In the context of activities associated with ICEEU's F&O business, the Proposed Rule Change would note that all related margin, rather than only initial margin, is returned at contract termination.

Resources

The Proposed Rule Change would also amend a section addressing resources needed for termination in the context of ICEEU's CDS business. The Proposed Rule Change would note that ICEEU will continue to provide CDS clearing while reducing open interest, as opposed to reducing volume, until the time that clearing is terminated.

Rules

In the current Plan, Continuing CDS Rule Provisions specify the basis for calculating close-out amounts. These provisions also form the legal basis for any wind down. The Proposed Rule Change would remove text related to references to Continuing CDS Rule Provisions because the Continuing CDS

[20] The Proposed Rule Change adjusts a graphic in a different section of the Plan in a manner that aligns with this change. Likewise, the Proposed Rule Change adjusts the Plan's conclusion to both align with this timeline and note that the timeline could be affected by factors such as the need for multiple alternative clearing venues.

[21] Notice, 88 FR at 60002.

[22] *Id.*

[23] Exchanges for Swaps are off-exchange bilaterally-negotiated transactions involving the simultaneous exchange of an exchange futures position for a corresponding related OTC swap or other OTC derivative in the same or related product. ICE Futures U.S. EFRP FAQs.

Rule Provisions have been deleted from the Rules.[24]

c. Terminating Service Agreements

The Proposed Rule Change would change portions of the Plan governing the termination of service contracts. It would change the length of the notice provided for terminating service contracts from exactly six months to approximately six months, and note that appropriate notice should be given with respect to termination of relevant employee contracts instead of six months' notice.

The Proposed Rule Change would add introductory text to a table listing relevant services and contracts. The introductory text would explain that the list is an illustrative summary only, and that a more complete, separately maintained list of service arrangements is available for reference as part of any wind-down planning. Additionally, the introductory text would state that IT services and licenses are largely provided by ICEEU's parent or affiliates and that IT services provided by external third parties are not expected to have a material impact on timelines or costs relating to wind-down plans.

The Proposed Rule Change would also adjust the table listing relevant services and contracts. It would combine the treatment of a number of clearing services agreements with different affiliated ICE markets into a single category to ensure that the treatment is presented consistently in the Plan. Additionally, the Proposed Rule Change would also clarify that exit provisions are not included as part of intra-group agreements regarding property; add a Clearing and Settlement Services Agreement with Intercontinental Exchange Holdings; replace Dutch National Bank with European Central Bank in order to reflect that ICEEU uses European Central Bank as a concentration bank; change a reference from referring to specific exchanges to referring to relevant ICE Exchanges; and change the notice time period for Clearing and Settlement Services Agreements from twelve months to twenty-four months.

4. Meeting Liquidity Requirements During Wind-Down

The Proposed Rule Change would edit a section of the Plan discussing how ICEEU will meet its liquidity requirements during wind-down. The Plan currently states that ''members cash held as cash is immediate or available in short term.'' The Proposed Rule Change would make edits clarifying that collateral held as cash from Clearing Members should be immediately accessible or available at short notice. Further, the Proposed Rule Change would make edits that note that the vast majority, instead of approximately 99 percent, of funds should be invested in high-quality, short-term instruments. Moreover, the Proposed Rule Change would note that all investments are made in accordance with ICEEU's Liquidity and Investment Management Policy. The Proposed Rule Change would remove a specific reference to maximum maturity and liquidity requirements mentioning the weighted-average life of investments and reverse repos. It would edit a liquidity requirement to note that outright purchases are limited to high-quality and liquid government debt that can be liquidated on short notice in the secondary market. With respect to non-cash assets, the Proposed Rule Change would note that these assets are immediately available for meeting any liquidity requirements arising in a wind-down scenario, and that the non-cash collateral pool consists of highly liquid assets. The Proposed Rule Change would also highlight that ICEEU runs liquidity stress tests every day inclusive of extreme-but-plausible scenarios to ensure that it can maintain a healthy liquidity position. ICEEU proposes these changes to make this portion of the Plan consistent with the Liquidity and Investment Management Policy.[25]

5. Document Governance

The Proposed Rule Change would delete the Plan's Governance section and replace it with a Document Governance and Exception Handling section that is consistent with recently-adopted ICEEU policies.[26] Under this section, the owner of the Plan would be responsible for ensuring that the Plan remains up to date and is reviewed in accordance with ICE Clear Europe's governance processes. Such reviews would encompass, at a minimum, regulatory compliance; documentation and purpose; implementation; use; and open items from previous validations or reviews (where appropriate). The results of the review, including any findings, would be reported to ICE Clear Europe's Executive Risk Committee along with the priority of findings, proposed remediations and target due date to remediate the findings.

The document owner also would be responsible for reporting material breaches or unapproved deviations from the Plan to their Head of Department, the Chief Risk Officer, and the Head of Regulation and Compliance (or, as applicable, their respective delegates). Those individuals together would determine if further escalation should be made to relevant senior executives, the Board, and/or competent authorities.

Finally, exceptions to the Plan would be approved in accordance with ICE Clear Europe's governance process for the approval of changes, and changes to the Plan would have to be approved in accordance with ICE Clear Europe's governance process. Such changes only would take effect after completion of all necessary internal and regulatory approvals.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[27] For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act[28] and Rules 17Ad–22(e)(2)(i), (e)(2)(v),[29] and (e)(3)(ii) thereunder.[30]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, ICEEU's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, 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 . . . .''[31] Based on its review of the record, and for the reasons discussed below, ICEEU's Proposed Rule Change is consistent with Section 17A(b)(3)(F).

The Proposed Rule Change would focus the Plan on the wind-down process. For example, the Proposed Rule Change would delete unnecessary portions of the overview and context

[24] Notice, 88 FR at 60002.

[25] *Id.* at 60003.

[26] *Id.* For example, ICEEU recently amended its Recovery Plan and Outsourcing Policy to make changes similar to those now proposed. *See* Securities Exchange Act Release No. 98337 (Sept. 8, 2023), 88 FR 63149, 63154–55 (Sept. 14, 2023) (File No. SR–ICEEU–2023–020) (Recovery Plan); Securities Exchange Act Release No. 98387 (Sept. 14, 2023), 88 FR 64953, 64955 (Sept. 20, 2023) (File No. SR–ICEEU–2023–018) (Outsourcing Policy).

[27] 15 U.S.C. 78s(b)(2)(C).

[28] 15 U.S.C. 78q–1(b)(3)(F).

[29] 17 CFR 240.17Ad–22(e)(2).

[30] 17 CFR 240.17Ad–22(e)(18).

[31] 15 U.S.C. 78q–1(b)(3)(F).

section of the current Plan. It would also create a new Executive Summary section centered around aspects of the Plan (*e.g.,* the purpose of the Plan, summary of the Plan, structure of the Plan, and execution of the Plan) and populate that Executive Summary with remaining portions of the current Plan's context section with a few modifications.

The Proposed Rule Change would also add or update details integral to operating the Plan. For example, the Proposed Rule Change would add text to clarify that the Wind Down Planning Committee will try to ensure that the impact of any plans on relevant stakeholders (in addition to members) would be as minimal as possible; add additional text identifying the Wind Down Planning Committee's composition and duties; revise the maturity profile for different product groups based on expiration date; update numerous timelines within the plan; delete inapplicable references to statutes or rules; update the meaning of other references to statutes; edit questions that ICEEU's Wind Down Planning Committee should consider as it tries to determine whether ICEEU should terminate or transfer its business; and acknowledge that a transfer may need to involve more than one recipient clearing house. Further, ICEEU proposes additions that would consider differences among stakeholders and products, as well as whether a specific course of action would be feasible. For example, the Proposed Rule Change would amend the Plan to state that extensive consultation with relevant stakeholders will be likely, rather than will always occur, prior to any final decisions regarding the execution of the Plan, because different forms and extents of consultation with particular stakeholders may be appropriate for different circumstances and proposed actions. The Proposed Rule Change would also edit the Plan so that it no longer requires the Wind Down Planning Committee to consider whether the members would accept a particular contract not being available for clearing at the time of transfer, because ICEEU believes transfer would likely not be feasible in a scenario where a particular contract is not available for clearing at the time of transfer.

Finally, the Proposed Rule Change would make a number of changes to ensure that the Plan is consistent with itself and other ICEEU policies. For example, the Proposed Rule Change would combine the treatment of a number of clearing services agreements with different affiliated ICE markets into a single category on a table and would make edits to a section of the Plan discussing how ICEEU will meet its liquidity requirements during a wind-down.

In focusing the Plan and ensuring that it is internally consistent and consistent with other ICEEU policies, the Proposed Rule Change would make Plan clearer and easier to apply and thereby improve ICEEU's ability to facilitate the orderly close out of positions and potential transfer of positions to other clearing houses. The Proposed Rule Change would also facilitate the orderly close out of positions and potential transfer of positions to other clearing houses through adding and updating details integral to operating the Plan. Facilitation of the orderly close out of positions and potential transfer of positions to other clearing houses enhances ICEEU's ability to maintain and continue the prompt and accurate clearance and settlement of transactions by assuring that such transactions are closed-out and transferred to other clearing houses in an orderly and transparent manner. Further, by adding and updating details integral to operating the Plan, the Proposed Rule Change would also help assure an efficient and orderly wind-down. This, in turn, would help assure the safeguarding of securities or funds in the custody or control of ICE Clear Europe by reducing the likelihood of an inefficient or disorderly wind-down, which could disrupt access to such securities or funds.

Therefore, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[32]

B. Consistency With Rule 17Ad–22(e)(2)(i) and (v)

Rule 17Ad–22(e)(2)(i) and (v) require ICEEU to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . provide for governance arrangements that are clear and transparent . . . and specify clear and direct lines of responsibility.'' [33] Based on its review of the record, and for the reasons discussed below, ICEEU's Proposed Rule Change is consistent with Rule 17Ad–22(e)(2)(i) and (v).

As discussed above, the Proposed Rule Change would add a Document Governance and Exception Handling Section. This section would make the document owner responsible for ensuring that the Plan remains up-to-date and is reviewed in accordance with ICE Clear Europe's governance processes. The document owner also would be responsible for reporting material breaches or unapproved deviations from the Plan to their Head of Department, the Chief Risk Officer, and the Head of Regulation and Compliance (or, as applicable, their respective delegates). These changes would establish clear and direct responsibilities for the document owner of the plan consistent with Rule 17Ad–22(e)(2)(i) and (v).[34]

The Proposed Rule Change would also add a section to the Plan's Introduction titled ''Execution of the Plan.'' As noted above, this section adds to the Plan a discussion of the establishment, responsibilities, and composition of the Wind Down Planning Committee. In doing so, it notes that the Wind Down Planning Committee reports to the Board and liaises with all stakeholders. This change would also establish clear and direct responsibilities for the document owner of the plan consistent with Rule 17Ad–22(e)(2)(i) and (v).[35]

Therefore, the Proposed Rule Change is consistent with the requirements of Rules 17Ad–22(e)(2)(i) and (v).[36]

C. Consistency With Rule 17Ad–22(e)(3)(ii)

Rule 17Ad–22(e)(3)(ii) requires ICEEU to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.'' [37] Based on its review of the record, and for the reasons discussed below, ICEEU's Proposed Rule Change is consistent with Rule 17Ad–22(e)(3)(ii).

The Proposed Rule Change would edit the planning options in the Plan. In doing so, it would alter the approach to assumptions underlying, activities related to, and the timeline for the Plan. For example, the timeline for transfer of one of ICEEU's business lines would be now approximately six months as opposed to no more than six months. By making information like this available in the Plan, the Proposed Rule Change enables ICEEU to prepare in advance for

[32] 15 U.S.C. 78q–1(b)(3)(F).

[33] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[34] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[35] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[36] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[37] 17 CFR 240.17Ad–22(e)(18).

and practice the steps needed to effectuate a wind-down. The added timeline flexibility would enhance ICEEU's ability to use the Plan effectively to carry-out an orderly wind-down.

Additionally, the Proposed Rule Change would edit a section of the Plan discussing how ICEEU will meet its liquidity requirements during wind-down. For example, the Proposed Rule Change would make clear that collateral held as cash from Clearing Members should be immediately accessible or available at short notice and that the vast majority, instead of approximately 99 percent, of funds should be invested in high-quality, short-term instruments. The Proposed Rule Change would make these edits to make this portion of the Plan consistent with the Liquidity and Investment Management Policy.[38] By making the Plan consistent with the Liquidity and Investment Management Policy the Proposed Rule Change decreases the potential for confusion which allows ICEEU personnel to correctly interpret the liquidity provisions in the Plan and effectuate a wind-down in a consistent and coordinated fashion. This increases the likelihood of an orderly wind-down. Therefore, the Proposed Rule Change is consistent with the requirements of Rule 17Ad–22(e)(3)(ii).[39]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[40] and Rules 17Ad–22(e)(2)(i), (e)(2)(v),[41] and (e)(3)(ii) thereunder.[42]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change, as modified by Amendment No. 1 (SR–ICEEU–2023–011) be, and hereby is, approved.[43]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Deputy Secretary.

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[38] Notice, 88 FR at 60002.

[39] 17 CFR 240.17Ad–22(e)(3)(ii).

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[42] 17 CFR 240.17Ad–22(e)(3)(ii).

[43] In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98812; File No. SR–DTC–2023–011]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Clearing Agency Operational Risk Management Framework

October 27, 2023.

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 October 20, 2023, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Clearing Agency Operational Risk Management Framework (''ORM Framework'' or ''Framework'') of The Depository Trust Company (''DTC'') and its affiliates the National Securities Clearing Corporation (''NSCC'') and Fixed Income Clearing Corporation (''FICC,'' and together with DTC and NSCC, the ''Clearing Agencies'') in order to (i) revise nomenclature and process changes to Risk Profiles, (ii) update the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) update recovery times for Tier 5 non-essential functions, (iv) update business continuity testing across industry organizations, and (v) update the ORM Framework to reflect recent changes to group names and make other nonmaterial edits, as described in greater detail below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies adopted the ORM Framework[5] to provide an outline for how each of the Clearing Agencies manages its operational risks. In this way, the Framework supports the Clearing Agencies' compliance with Rules 17Ad–22(e)(17) of the Standards for Covered Clearing Agencies (''Standards'') under the Securities Exchange Act of 1934 (''Act''),[6] as described in the Initial Filing. In addition to setting forth the way each of the Clearing Agencies addresses these requirements, the ORM Framework also contains a section titled ''Framework Ownership and Change Management'' that, among other matters, describes the Framework ownership and the required governance process for review and approval of changes to the Framework.

In connection with the annual review and approval of the Framework by the Boards of Directors of each of the Clearing Agencies (each a ''Board'' and collectively, the ''Boards''), the Clearing Agencies are proposing to make certain revisions to the Framework.

Such proposed changes would include (i) revise nomenclature and process changes to Risk Profiles, (ii) updating the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) updating the recovery times for Tier 5 equating to non-essential functions, (iv) updating business continuity testing across industry organizations, and (v) updating the ORM Framework to reflect recent changes to group names and

[5] *See* Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014; SR–NSCC–2017–013; SR–FICC–2017–017) (''Initial Filing'').

[6] 17 CFR 240.17Ad–22(e)(17).

making other nonmaterial edits. The proposed changes are described in greater detail below.

i. Proposed Amendments To Revise Nomenclature and Process Changes to Risk Profiles

Section 4.2 of the ORM Framework describes the risk profiles, which are tools used by the Clearing Agencies to monitor and document inherent risks and residual risks to support an overall assessment of the applicable Clearing Agency business' or Clearing Agency support area. The proposed changes would update the Framework to reflect recent developments to the name of the tools used by the Clearing Agency. The proposed changes would also reflect updates to Clearing Agency processes and other matters described in the Framework. These proposed changes do not substantively impact how the Clearing Agencies manage operational risk in compliance with the requirements of Rule 17Ad–22(e)(17) under the Act.[7]

The proposed changes would update the Framework by removing references to risk profiles and replacing them with Risk Assessments and Quarterly Business Monitoring. These proposed changes reflect the Clearing Agencies bifurcation of the prior Risk Profile process into an assessment and a metrics review component, each with differing cadences for publication. Specifically Risk Assessments are prepared at least annually, and Quarterly Business Monitoring is generally prepared quarterly and not less than semi-annually.

ii. Proposed Amendments To Align to the Cyber Risk Institute Profile

Section 5 of the Framework describes the role of TRM in establishing appropriate programs, policies, procedures, and controls with respect to the Clearing Agencies' information technology risks to help management ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity, as required by Rule 17Ad–22(e)(17)(ii) under the Act.[8] The Clearing Agencies previously aligned their technology risks management practices to the NIST standards, which are recognized information technology standards that have been used by TRM in support of executing such responsibilities. TRM shifted from reliance only on NIST standards to instead align their risk management practices with the standards of CRI, which is a global standard for cyber risk assessment and are based on the NIST Cyber Security Framework (''NIST SCF''). NIST CSF has five core functions, while the CRI standards have those same five core functions plus two additional core functions. This shift would allow the Clearing Agencies to continue maintaining compliance with Rule 17Ad–22(e)(17) under the Act.[9]

Therefore, the Clearing Agencies are proposing to amend Section 5 of the Framework to remove reference to NIST standards and replace them with the CRI Profile to reflect its existing practice.

iii. Proposed Amendments To Update Recovery Time of Tier 5 Operations

Section 6 of the Framework describes how the Clearing Agencies have established and maintain business continuity plans to address events that may pose a significant risk of disrupting their operations. The Framework describes how the business continuity process for each Clearing Agency Business and Clearing Agency Support Area [10] is ranked within a range of tiers, from 0 to 5. The range of tiers is based on criticality to each applicable Clearing Agency's operations (each a ''Tier''), where Tier 0 equates to critical operations or support of such operations for which virtually no downtime is permitted, and Tier 5 equates to non-essential operations or support of such operations for which recovery times of greater than five days is permitted. The Clearing Agencies are proposing a change to the Tier 5 recovery time from greater than five days to greater than fifteen days. The greater than fifteen days better represents the actual recovery time for the underlying product and service functions.

To reflect this change in the Framework, the Clearing Agencies are proposing to amend Section 6 of the Framework to replace the number five, with fifteen, as it relates to recovery times for Tier 5 and align with Clearing Agency current practice.

iv. Proposed Amendments To Update the Description of Business Continuity Testing

As mentioned above, Section 6 of the Framework describes how the Clearing Agencies manage business continuity risks. The Clearing Agencies are proposing changes to the Framework to describe their management of these risks more accurately. Specifically, the Clearing Agencies are proposing changes to better reflect their administration of industry testing, which is one of the preventive measures the Clearing Agencies may take with respect to business continuity risk management. The proposed changes would reflect the breadth of industry participants used for such industry exercises conducted by the Clearing Agencies instead of only the Securities Industry and Financial Markets Association (SIFMA) and the Financial Services Authority. The proposed rule change is not intended to reflect a material change to the industry testing done by the Clearing Agencies, but rather, would more accurately reflect the possible scope of any such testing.

Therefore, the Clearing Agencies are proposing to amend the last bullet of Section 6 of the Framework to remove reference to SIFMA and the Financial Services Authority and include a more comprehensive description of industry testing currently conducted to manage its business continuity risks.

v. Proposed Amendments To Update Organizational Name Changes and Make Other Nonmaterial Edits

Finally, the Framework is owned and managed by an officer within the Operational Risk Management Group within the Group Chief Risk Office of DTCC. While the role and responsibilities of the Operational Risk Management Group have not changed, the proposed changes would update the Framework to reflect a change in the name of the group. The Operational Risk Management Group is now referred to as Operational Risk. This proposed change would reflect a recent organizational name change.

The proposed rule change would make additional immaterial edits to the Framework that do not alter how the Clearing Agencies comply with the applicable requirements of Rule 17Ad–22(e)(17) under the Act.[11]

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act [12] and Rule 17Ad–22(e)(17)(ii) and (iii) promulgated under the Act,[13] for the reasons described below.

The Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act, which requires, in part, that the rules of a

[7] *Id.*

[8] 17 CFR 240.17Ad–22(e)(17)(ii).

[9] 17 CFR 240.17Ad–22(e)(17).

[10] The Clearing Agencies monitor key risks, including Operational Risks stemming from the day-to day operation of the Clearing Agencies' businesses and support areas (each a ''Clearing Agency Business'' or ''Clearing Agency Support Area'').

[11] 17 CFR 240.17Ad–22(e)(17).

[12] 15 U.S.C. 78s(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(17)(ii) and (iii).

registered clearing agency be designed to 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, for the reasons described below.[14] The proposed changes to (i) revise nomenclature and process changes to Risk Profiles, (ii) update the ORM Framework to align programs, policies, procedures, and controls within Technology Risk Management (''TRM'') to the Cyber Risk Institute (''CRI'') Profile instead of the National Institute of Standards and Technology (''NIST'') standards, (iii) update the recovery times for Tier 5 equating to non-essential functions, (iv) update business continuity testing across industry organizations, and (v) update the ORM Framework to reflect recent changes to group names and making other nonmaterial edits would update and clarify the Framework and would make it more comprehensive in how it describes the methods and tools currently used by the Clearing Agencies to manage operational risks and therefore comply with Section 17A(b3)(F) of the Act.[15] By creating clearer, updated and more comprehensive descriptions, the Clearing Agencies believe the proposed changes would make the ORM Framework more effective in providing an overview of the important risk management activities described therein.

The risk management functions described in the ORM Framework allow the Clearing Agencies to continue the prompt and accurate clearance and settlement of securities and can continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible notwithstanding the default of a member of an affiliated family. The proposed changes to (1) to revise nomenclature and process changes to risk profiles, (2) shift to the CRI standards, and (3) broaden the description of industry testing to capture the breadth of industry participants available to engage in such testing within the ORM Framework reflect the tools used by Clearing Agencies to assess inherent and residual risks; reliance by the Clearing Agencies on reliable global sources related to its information technology standards and diverse sources for industry testing. Identifying and mitigating plausible sources of operational risks both internal and external, information technology and business continuity, outlined in the above-referenced proposed changes, facilitates the Clearing Agencies' ability to continue the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible. Therefore, the Clearing Agencies believe the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[16]

Rule 17Ad–22(e)(17) under the Act requires, in part, that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by (ii) ensuring that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and (iii) establishing and maintaining business continuity plans in order to address events that may pose a significant risk of disrupting their operations.

The Framework would be amended to update the description of the Clearing Agencies' information technology and business continuity procedures. The proposed changes to revise nomenclature and process changes to Risk Profiles including the bifurcation of Risk Profiles process and identification of applicable governance processes assist the Clearing Agencies in effectively managing their operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating the impact of those risks. The proposed change to shift to CRI standards, which encompasses the NIST standards plus additional metrics, is part of the programs, policies, procedures, and controls used by the Clearing Agencies to continue the building, implementation, and maintenance of systems that have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. Lastly, accurately describing the Clearing Agencies industry testing procedure in the ORM framework conforms with the Clearing Agencies compliance obligations since business continuity testing is one of the preventive measures the Clearing Agencies may take with respect to business continuity risk management. As described above, these procedures address how the Clearing Agencies detect, identify, investigate, and resolve incidents that affect the Clearing Agencies' systems. These procedures are designed to help address the Clearing Agencies' compliance with the requirements of Rule 17Ad–22(e)(17)(ii) and (iii) under the Act.[17] Therefore, the Clearing Agencies believe that the proposed rule changes to update the description of these procedures in the Risk Management Framework is consistent with Rule 17Ad–22(e)(17)(ii) and (iii).[18]

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies do not believe that the proposed changes to the ORM Framework described above would have any impact, or impose any burden, on competition. The proposed changes would enhance the Framework by providing additional clarity and accuracy concerning the Clearing Agencies' operational risk management processes. The proposed rule changes to the Framework, would not advantage, or disadvantage any participant or user of the Clearing Agencies' services or unfairly inhibit access to the Clearing Agencies' services. As such, the Clearing Agencies do not believe that the proposed rule changes would have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC 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 Securities and Exchange Commission (''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

[14] 15 U.S.C. 78s(b)(3)(F).

[15] *Id.*

[16] *Id.*

[17] 17 CFR 240.17Ad–22(e)(17)(ii) and (iii).

[18] *Id.*

tradingandmarkets@sec.gov or 202–551–5777.

DTC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[19] of the Act and paragraph (f)[20] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–DTC–2023–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–DTC–2023–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–DTC–2023–011 and should be submitted on or before November 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–24177 Filed 11–1–23; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20032 and #20033; MISSOURI Disaster Number MO–20000]

Administrative Disaster Declaration of a Rural Area for the State of Missouri

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative disaster declaration of a rural area for the State of Missouri dated 10/27/2023.

Incident: Severe Storms, Straight-line Winds, Tornadoes and Flooding.

Incident Period: 07/29/2023 through 08/14/2023.

DATES: Issued on 10/27/2023.

Physical Loan Application Deadline Date: 12/26/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 07/29/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bollinger, Knox.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 200326 and for economic injury is 200330.

The State which received an EIDL Declaration is Missouri.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–24201 Filed 11–1–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Procurement Scorecard Program; Exclusion for Certain Department of Veterans Affairs Contracts

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: The U.S. Small Business Administration (SBA) publishes an annual procurement scorecard (Scorecard) that scores agencies on their performance in contracting with small businesses. This notice modifies the method that SBA uses to calculate contracting dollars for the Department

of Veterans Affairs (VA). Specifically, starting with fiscal year 2023 (FY23), SBA will exclude VA expenditures for Community Care Network (CCN) contracts and any successor contracts.

FOR FURTHER INFORMATION CONTACT: Kevin Doss, Deputy Director, Office of Government Contracting and Business Development, *Kevin.Doss@sba.gov,* (202) 272–7700. This notice modifies the method that SBA uses to calculate contracting dollars for the Department of Veterans Affairs (VA). Specifically, starting with fiscal year 2023 (FY23), SBA will exclude VA expenditures for Community Care Network (CCN) contracts and any successor contracts. The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background

SBA issues an annual Scorecard to score Federal agencies on creating the maximum practicable opportunities for the award of prime contracts and subcontracts to small business concerns, small disadvantaged businesses (SDBs), women-owned small businesses (WOSBs), HUBZone small business concerns, and service-disabled veteran-owned small business concerns (SDVO SBCs). Sec. 868, Public Law 114–92, 129 Stat. 933 (November 25, 2015). SBA bases an agency's score on several weighted factors, the most significant of which is the percentage of prime contracting dollars awarded to small businesses.

SBA strives to account for all Federal contracting dollars on the annual Scorecard, but, in rare circumstances, SBA will exclude isolated categories of contracts from the Scorecard. As one example, SBA does not consider contracts that are not reported into the governmentwide contract reporting systems, namely the Federal Procurement Data System (FPDS) and the Electronic Subcontracting Reporting System (eSRS), because SBA cannot verify their existence. Some other categories are excluded from the Scorecard by operation of law. *See* 15 U.S.C. 644(g)(2)(B).

Additionally, SBA has excluded from the Scorecard certain contracts in which the agency has very little—if any—involvement in incurring the obligation. SBA believes that the Scorecard measures the agency's efforts to reach small-business and socioeconomic contractor goals, and, in the rare cases where the agency is not the primary decisionmaker in incurring the contract obligation, it is not unreasonable to consider whether those cases are skewing the agency's Scorecard achievement through no fault of the agency itself.

On that basis, SBA excludes from the Scorecard certain contracts awarded under the Department of Defense's TRICARE program, which provides health care to Servicemembers, retirees and their families. Under the TRICARE exclusion, SBA disregards all contract obligations reported by the Defense Health Agency's TRICARE contracting offices codes H94002 and HT9402. in determining the Department of Defense's score for the Scorecard. As noted in SBA's Goaling Guidelines, the TRICARE exclusion recognizes patients' role as the primary decisionmaker when and where to seek health care under the program. DHA's contracting arrangements primarily give effect to that patient decision. Other exclusions operate in the same manner.

All of the exclusions from the Scorecard, as well as other details on the Scorecard methodology, are listed in SBA's Goaling Guidelines, available at *https://www.sba.gov/document/report-sba-goaling-guidelines*.

On May 22, 2023, the VA, through its director of the Office of Small Disadvantaged Business Utilization, requested that SBA grant an exclusion from the Scorecard for the VA's Community Care Network (CCN) contracts used to provide veterans with access to health care from non-VA providers. SBA has considered the VA's request and the applicable statutory requirements for an exclusion, and SBA grants the exclusion beginning with the Scorecard for FY23.

II. The VA's CCN Contracts

Under the CCN contracts, veterans have access to a nationwide system of healthcare providers that operate outside of the VA system. The VA states in its exclusion request that the veteran is the primary decisionmaker on whether to incur an obligation under a CCN contract. According to the VA, the veteran's choice as to whether to use a non-VA facilities largely determines whether healthcare will be provided under a CCN contract or through a VA provider.

The VA's request explains that the CCN contracts are for the benefit of the veteran, not a procurement for Government use. The VA analogized the CCN contracts to the Department of Defense's TRICARE contracts, which SBA already excludes from the Scorecard.

The VA's expenditures through CCN are substantial. In FY22, CCN obligations accounted for 38.9% of the VA's total procurement base. The growth in CCN obligations in FY22 caused a steep decline in the percentage of contracting dollars that the VA spent with small businesses, even as VA's actual dollars awarded to small business attained a record high.

III. Statutory Requirements

Section 1631(c)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year 2013, Public Law 112–239, constrains SBA's authority to consider and grant exclusions from the Scorecard. Under section 1631, SBA is not permitted to exclude categories of contracts on the basis of three criteria listed in the NDAA: (1) the type of goods or services for which the agency contracts; (2) whether or not funding for the contracts is made directly available to the agency by an Appropriations Act or is made available by reimbursement from another agency or account; and (3) whether or not the contract is subject to the Federal Acquisition Regulation.

In its request, the VA explained that an exclusion for the CCN contracts would not be on the basis of any of those statutorily identified criteria. First, the CCN exclusion is based on specific contracts that provide access to non-VA care for veterans, not based on the type of good or service. The VA states that the exclusion would not affect other healthcare contracts, such as establishing Community Based Outpatient clinics, procuring medical supplies, or obtaining temporary services from health care providers.

Second, the VA found that the CCN exclusion would not be based on whether the funding is appropriated. Congress appropriates funding for CCN contracts through a Medical Community Care appropriations account, but that is not the basis for the VA's request. Instead, the VA bases its request on the veteran being the primary decisionmaker on whether to incur an obligation under the CCN contracts.

Third, the VA states that it does not base its request on the applicability of the Federal Acquisition Regulation. The VA reiterated that the contracts are for the benefit of the veteran, not the agency.

Based on the foregoing, SBA believes that it is not constrained by section 1631 in considering and granting the VA's request for an exclusion.

IV. Exclusion for CCN Contracts

Starting in the Scorecard for F23, SBA will exclude the CCN contracts and any successor contracts from the VA's prime

contracting Scorecard and the governmentwide prime contracting scorecard by disregarding actions using Funding Office code 36135Y. This code refers to the Office of Integrated Veteran Care within the Veterans Health Administration, which reports the claims for payments under the CCN contracts for submission to FPDS.

Larry Stubblefield,

Acting Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2023–24206 Filed 11–1–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Consultation Documents for Public Comment Under Section 106 of the National Historic Preservation Act

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability of consultation documents for public comment under section 106 of the National Historic Preservation Act.

SUMMARY: The FAA, in cooperation with the National Park Service (NPS) (together the agencies), has initiated development of an Air Tour Management Plan (ATMP) for Canyon de Chelly National Monument (the Park) pursuant to the National Parks Air Tour Management Act (NPATMA) of 2000 and its implementing regulations. The agencies determined that the development of an ATMP constitutes a Federal undertaking subject to compliance the National Historic Preservation Act of 1966, as amended (NHPA). The agencies have initiated the section 106 process with the Navajo Nation Tribal Historic Preservation Officer, Tribes, and other consulting parties. This notice announces the opportunity for the public to comment on the results of the FAA's efforts to identify historic properties, evaluate the properties' significance, and assess the undertaking's effects on them. The agencies are seeking public input on the FAA's efforts to date in identifying consulting parties, determining the area of potential effects, identifying historic properties, and assessing the effects of the undertaking on historic properties within the area of potential effects. The agencies are providing the description of the undertaking, the consulting party list, the delineation of the proposed Area of Potential Effects (APE), the results of the agencies' efforts to identify historic properties within the APE, the evaluation of their significance, and the agencies' approach to assessing the undertaking's effects upon the identified historic properties. Supporting documentation can be found at the following link: *https://parkplanning.nps.gov/CACHATMP.*

DATES: Any member of the public is encouraged to provide views on this project to the agencies. The agencies will accept and consider comments related to section 106. Comments must be received on or before December 1, 2023, by 11:59 MDT. Comments will be received on the PEPC website. The Park's website link is *https://parkplanning.nps.gov/CACHATMP.*

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

ADDRESSES: The public is encouraged to provide written comments regarding the section 106 documents provided in the PEPC website throughout the comment period.

Contact: Any request for reasonable accommodation related to providing comments on the Section 106 documents should be sent to the person listed on the Park's PEPC website. The U.S. Department of Transportation and U.S. Department of the Interior are committed to providing equal access to the meetings 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.

FOR FURTHER INFORMATION CONTACT: Sandra Fox, (202) 267–0928, *Sandra.Y.Fox@faa.gov.*

SUPPLEMENTARY INFORMATION:

Description of the Undertaking. The undertaking for purposes of section 106 is implementing an ATMP for the Park. Consistent with the NPATMA, the proposed ATMP would regulate commercial air tours over the Park or within ½ mile outside the boundary of the Park, including over tribal lands within or abutting the Park. A commercial air tour subject to the ATMP is any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over the Park, or within ½ mile of its boundary, during which the aircraft flies:

(1) Below 5,000 feet above ground level (except solely for the purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the FAA requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

(2) Less than one mile laterally from any geographic feature within the Park (unless more than ½ mile outside the Park boundary).

Overflights that do not meet the definition above of a commercial air tour are not subject to the NPATMA and are thus outside the scope of the ATMP.

The agencies have documented the existing conditions for commercial air tour operations over the Park. Although there are four air tour operators with IOA (Interim Operating Authority), only one commercial air tour operator currently conducts tours over the Park. The operator currently flies one route west to east over the southern portion of the park, two routes running east to west and back through the center of the Park, and two routes entering and exiting through the north portion of the Park and passing along the center of the Park east to west and back. Until the ATMP is in place the operators could change routes to fly over other areas of the Park without notice to the agencies. Existing routes are depicted in Attachment A in the supporting documentation. The agencies consider the existing operations for commercial air tours to be an average of 2017–2019 annual air tours flown, which is 43 air tours. Based on 2017–2019 data, there was only one instance in which flights exceeded 1 per day (2 flights on 3/19/19). A three-year average is used because it reflects the most accurate and reliable air tour conditions, and accounts for variations across multiple years. Under existing conditions, commercial air tours over the Park are conducted using fixed wing aircraft: Cessna 182 and Cessna T207A. Reported minimum altitudes range from 800 to 1,000 feet (ft.) above ground level (AGL) [1] depending on the route. The proposed undertaking would prohibit commercial air tour operations within the ATMP planning area. A summary of

[1] Altitude expressed in units above ground level is a measurement of the distance between the ground surface and the aircraft, whereas altitude expressed in median sea level (MSL) refers to the altitude of aircraft above sea level, regardless of the terrain below it. Aircraft flying at a constant MSL altitude would simultaneously fly at varying AGL altitudes, and vice versa, assuming uneven terrain is present below the aircraft.

the undertaking elements is shown in the table below:

SUMMARY OF ATMP ELEMENTS

General Description and Objectives	Prohibits air tours within the ATMP planning area to maximize achievement of Park management objectives. Air tours could continue to fly outside the ATMP planning area (*i.e.,* at or above 5,000 feet AGL or more than ½-mile outside of the Park's boundary).
Annual/Daily Number of Flights	None in ATMP planning area.
Routes	None in ATMP planning area.
Minimum Altitudes	Flights over the Park at or above 5,000 feet AGL could occur as they are outside the ATMP planning area. Flights more than ½-mile outside the Park boundary could similarly still occur as they are also outside the ATMP planning area.
Time of Day	N/A.
Day of Week	N/A.
Seasonal	N/A.
Quiet Technology (QT) Incentives	N/A.
Annual Meeting, Operator Training and Education	N/A.
Restrictions for Particular Events	N/A.
Adaptive Management	N/A.
Initial Allocation, Aircraft Type, Competitive Bidding, and New Entrants	N/A.
Monitoring and Enforcement	Monitoring would occur to ensure operators are complying with the terms and conditions of the ATMP.
Interim Operating Authority [2]	Terminates 180 days from the establishment date of the ATMP.

Delineation of the Proposed APE and Historic Property Identification. In establishing the proposed APE, the FAA sought to include areas where any historic property present could be affected by noise from or sight of commercial air tours that may take place under the undertaking, including those over the Park or adjacent tribal lands or those that are reasonably foreseeable. The FAA proposed an APE comprising the Park plus ½ mile outside the boundary of the Park. A map of the APE can be found on the Planning, Environment and Public Comment System (PEPC) website linked below.

To identify historic properties within the APE, the FAA coordinated with Park staff to identify known historic properties located within the APE. The FAA also coordinated with the Navajo Nation Heritage and Historic Preservation Department to collect data for previously identified properties that may be listed in or are eligible for listing in the National Register of Historic Places (National Register). The agencies performed an in-person records search at the Navajo Nation Heritage and Historic Preservation Department on September 13, 2023, which focused on identifying known Traditional Cultural Properties (TCPs) within the APE. The agencies have also consulted with other consulting parties, including Tribes that have an interest in the area, to identify any historic properties not previously identified in the APE or additional information on historic properties previously documented in the APE. A summary of the identified historic properties and whether they are listed or eligible to be listed on the National Register can be found on the PEPC website linked below.

Assessment of Effects. In assessing the effect of the undertaking on historic properties within the APE, the FAA will take into consideration that the undertaking does not include land acquisition, construction, or ground disturbance and will not result in physical effects to historic properties. The agencies will assess the effects of the undertaking on a historic property to determine if it alters the characteristics that qualify the property for eligibility for listing or inclusion in the National Register. Effects are considered adverse if they diminish the integrity of a property's elements that contribute to its significance. The agencies will focus the assessment of effects on the potential for adverse effects from the introduction of audible or visual elements that could diminish the integrity of the property's significant historic features. The FAA is also considering whether air tours could affect the use of TCPs associated with cultural practices, customs, or beliefs that continue to be held or practiced today.

The agencies request that you provide any comments you may have regarding the undertaking, the historic property identification efforts, your views regarding the significant characteristics of listed or eligible properties, and any information you might have that would help identify additional properties for which setting or feeling is a characteristic of significance. Your feedback on the potential of the undertaking to cause adverse effects to the historic properties is also welcomed.

This notice affords the public an opportunity to participate in section 106 activities for the development of an ATMP at Canyon de Chelly National Monument, including reviewing and providing comments on the section 106 process to date. The FAA and NPS encourage public participation and provide information on how to submit comments or feedback below. Supporting documentation can be found at the following link: *https://parkplanning.nps.gov/CACHATMP.*

The FAA and NPS are issuing this notice pursuant to section 800.2(d) of 36 CFR part 800, Protection of Historic Properties, and section 106 of 54 U.S.C. Subtitle III, National Historic Preservation Act. The section 106 implementing regulations at 36 CFR part 800 require FAA, as the lead Federal agency, to identify any properties within the project area that are listed in or eligible for listing in the National Register; to assess the effects the undertaking may have on historic properties; and to seek ways to avoid, minimize, or mitigate any adverse effects.

The FAA and the NPS are inviting comments from the public, Federal and State agencies, Tribes, and other interested parties on the section 106

[2] Commercial air tours over the Park are currently conducted under interim operating authority (IOA) that NPATMA required the FAA to grant air tour operators. Interim operating authority does not provide any operating parameters (routes, altitudes, etc.) for commercial air tours other than an annual limit. Under NPATMA, IOA for a park terminates by operation of law 180 days after an ATMP is established for that park.

process for Canyon de Chelly National Monument.

The FAA and the NPS have determined that the ATMP constitutes a Federal undertaking subject to compliance with section 106 of the NHPA and its implementing regulations at 36 CFR part 800. The FAA and the NPS have consulted with the Tribal Historic Preservation Officer, federally recognized Tribes, and other interested parties to identify historic properties and assess the potential effects of the ATMP on them.

The proposed APE for this undertaking (36 CFR 800.4(a)(1)) as defined at 36 CFR 800.16(d) is the geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of any historic properties, if any such properties exist. FAA and NPS approval of the ATMP does not require land acquisition, construction, or ground disturbance, and the FAA anticipates no physical effects to historic properties. The FAA is therefore focusing its assessment on the potential introduction of visual or audible elements that could diminish the integrity of any identified significant historic properties.

The historic property identification effort has focused on identifying properties for which setting and feeling are characteristics contributing to a property's National Register eligibility, as they are the type of historic property most sensitive to the effects of aircraft overflight. These may include isolated properties where a cultural landscape is part of the property's significance, rural historic districts, outdoor spaces designed for meditation or contemplation, and certain TCPs. The agencies have taken into consideration the views and input of consulting parties, past planning, research and studies, magnitude and nature of the undertaking, degree of Federal involvement, nature and extent of potential effects on historic properties, and the likely nature of historic properties within the APE in accordance with 36 CFR 800.4(b)(1). The historic property identification effort has focused on properties for which setting and feeling are characteristics contributing to the property's National Register eligibility.

In assessing the effects of the undertaking on historic properties in the APE, the FAA will consider the number and altitude of commercial air tours over historic properties to further assess the potential for visual effects and any incremental change in noise levels that may result in alteration of the characteristics of historic properties qualifying them for the National Register.

The comment period is open to the public. The FAA and the NPS request that comments be as specific as possible. All written comments become part of the official record. Written comments regarding the section 106 consultation documents can be submitted via PEPC or sent to the mailing addresses provided on the Park's PEPC site. Comments will not be accepted by fax, email, or any other way than those specified above.

Issued in Washington, DC, on October 30, 2023.

Sandra Fox,

Environmental Protection Specialist, FAA Office of Environment & Energy.

[FR Doc. 2023–24191 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–22]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On August 25, 2023, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before December 4, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On August 25, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. *See* 88 FR 58435. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30-days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Critical Incident Stress Plans.

OMB Control Number: 2130–0602.

Abstract: Under 49 CFR part 272, Class I, intercity passenger, and commuter railroads are required to develop, and submit to FRA for approval, a critical incident stress plan

(CISP) that provides for appropriate support services to be offered to their employees who are affected by a critical incident as defined in 49 CFR 272.9. FRA uses the information collected to ensure the minimum standards of part 272 are met.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses (Railroads)/Rail Labor Unions.

Form(s): N/A.

Respondent Universe: 40 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 2,546.

Total Estimated Annual Burden: 246 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $21,109.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–24199 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–26]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before January 2, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0566) in any correspondence submitted. FRA will summarize comments received in a subsequent 30-day notice and include them in its information collection submission to OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Reflectorization of Rail Freight Rolling Stock.

OMB Control Number: 2130–0566.

Abstract: FRA issued this regulation to mandate the reflectorization of freight rolling stock (using retroreflective material on freight cars and locomotives) to enhance the visibility of trains to reduce the number and severity of accidents at highway-rail grade crossings where visibility was a contributing factor.[1] FRA uses the information collected to verify that the person responsible for the car reporting mark is notified after the required visual inspection when the freight equipment has less than 80 percent of the required retroreflective sheeting present, undamaged, or unobscured.

Moreover, FRA uses the information collected to verify that the required locomotive records of retroreflective sheeting defects found, after inspection, are kept in the locomotive cab or in a railroad accessible electronic database that FRA can access upon request. Finally, FRA uses the information collected to confirm that railroads/car owners meet the prescribed standards for the inspection and maintenance of the required retroreflective material.

In this 60-day notice, FRA makes no adjustments to the previously approved burden hours and responses in the Office of Information and Regulatory Affairs (OIRA) inventory.[2]

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 783 railroads and freight car owners.

Frequency of Submission: On occasion/monthly.

Reporting Burden:

[1] *See* 70 FR 144, Jan. 3, 2005.

[2] Changes to the total cost equivalent in U.S. dollars, a category not included in the OIRA inventory, are due to updated statistics from the 2022 Surface Transportation Board (STB) Full Year Wage A&B data series.

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S dollar (D = C * wage rates) [3]
224.7—Waivers	783 railroads & freight car owners.	10 petitions	8 hours	80.00	$6,874.40
224.15(b)—Special approval procedures—Petitions for special approval of alternative standard.	2 manufacturers	2 petitions	40 hours	80.00	6,874.40
—(d)(3) Hearing on the petition in accordance with the procedures provided in § 211.25.	*FRA anticipates that there will be zero hearings during this 3-year ICR period.*				
—(e) Disposition of petitions	*This requirement is exempted from PRA under 5 CFR 1320.4(2).*				
224.101—General requirements	*The estimated paperwork burden for this requirement is covered under § 224.15.*				
224.103(d)—Characteristics retroreflective sheeting—Certification.	*The requirements for this part are included as part of the standard manufacturing process.*				
224.103(e)—Characteristics retroreflective sheeting—Alternative standards.	*The estimated paperwork burden for this requirement is covered under § 224.15.*				
224.109(a)—Inspection, repair, and replacement—Railroad freight cars—Railroads notification to person responsible for reporting mark after visual inspection for presence and condition when freight car on either side has less than 80% reflective sheeting of the damaged, obscured, or missing sheeting.	Association of American Railroads/300 car shops.	33,380 notifications	5 minutes	2,781.67	186,677.87
—(b) Locomotive record of freight retroreflective sheeting defects found after inspection kept in locomotive cab or in railroad accessible electronic database that FRA can access upon request.	783 railroads & freight car owners.	2,609 records	5 minutes	217.42	14,591.06
Total [4]	783 railroads & freight car owners.	36,001 responses	N/A	3,159	215,017

Total Estimated Annual Responses: 36,001.

Total Estimated Annual Burden: 3,159.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $215,017.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

[3] The dollar equivalent cost is derived from the 2022 STB Full Year Wage A&B data series using the employee group 200: (Professional & Administrative), hourly wage rate of $49.10, and group 400 (Maintenance of Equipment & Stores). The total burden wage rate, (Straight time plus 75%), used in the table is $85.93 ($49.10 × 1.75 = $85.93), except for sections 224.109(a) and 224.109(b) which used $67.11 ($38.35 × 1.75 = $67.11).

[4] Totals may not add due to rounding.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–24198 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–13]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before January 2, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0621) in any correspondence submitted. FRA will summarize comments received in a subsequent 30-day notice and include them in its information collection submission to OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Workforce Development Survey.

OMB Control Number: 2130–0621.

Abstract: FRA has statutory responsibility to ensure the safety of railroad operations under 49 U.S.C. 20103. To conduct safe railroad operations, the workforce must have the requisite knowledge and skills to operate equipment and utilize technologies. FRA therefore seeks to promote workforce development policies and standards to ensure that the workforce has the necessary knowledge and skills to conduct safe railroad operations. Due to an increasingly dynamic and maturing workforce, combined with continual changes in knowledge and skills required to use new technologies, there is an increasing risk of not having the necessary talent pools to fill critical railroad operational positions. FRA uses this information collection to survey a select group of railroad industry personnel to gain insight into the current workforce development strategies.

In this 60-day notice, FRA adjusted the respondent universe from 847 to 967 to reflect the current number of passenger railroads, Class I Freight, and short line railroads, labor unions, railroads Associations, and railroad learning institutions. Additionally, FRA adjusted the estimated total annual burden hours from 89 hours to 107 hours and increased the estimated total annual responses from 213 to 258. This increase is a result of expanded outreach and engagement to obtain a more robust view of the industry.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Class I freight and passenger railroads, short line and regional railroads, labor unions, railroad associations, academia, and specialty experts.

Form(s): FRA F 240.

Respondent Universe: 967.

Frequency of Submission: One-time.

Reporting Burden:

Workforce development professionals	Respondent universe	Total annual responses (A)	Average time per responses (minutes) (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S dollar (D = C * wage rates) [1]
Passenger Railroads	34 railroads	14	25	5.83	$267.07
Class 1 Freight Railroads	6 railroads	50	25	20.83	954.22
Short Line & Regional Railroads	752 railroads	150	25	62.50	2,863.13
Labor Unions (with specific focus on workforce membership and railroad programs).	45 labor unions	12	25	5.00	229.05
Associations (with focus on railroad workforce membership and the rail industry).	30 railroad associations.	12	25	5.00	229.05
Academia (Learning institutions with dedicated curriculum and training programs for railroad industry).	100 learning institutions.	20	25	8.33	381.60
Total [2]	967	258	N/A	107	4,924

Total Estimated Annual Responses: 258.

Total Estimated Annual Burden: 107.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $4,924.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2023–24200 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–06–P

[1] The dollar equivalent cost is derived from the Department of Labor, Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES), May 22, Management Analyst 13–1111 estimated median hourly wage of 45.81. The wage rate used in the table is 45.81.

[2] Totals may not add up due to rounding.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Decommissioning and Disposition of the National Historic Landmark Nuclear Ship Savannah; Notice of Information Session

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces an information session for the National Historic Landmark (NHL) Nuclear Ship *Savannah* (NSS). MARAD is decommissioning the nuclear power plant of the NSS, which will result in the termination of the ship's Nuclear Regulatory Commission (NRC) license, making the ship available for disposition, including potential conveyance or preservation. The information session will provide interested parties an opportunity to ask questions about the NSS to assist in determining if they may wish to consider acquiring the ship for preservation purposes, as prescribed in the recently executed Programmatic Agreement (PA) covering the decommissioning and disposition of the ship.

DATES: The information session will be held on November 18, 2023, from 10 a.m. to 4 p.m. eastern standard time (EST). Requests to attend the information session must be received one (1) week in advance, by November 11, 2023, to facilitate entry or to receive instructions to participate online. Requests for accommodations for a disability must also be received one (1) week in advance.

ADDRESSES: The information session will be held onboard the NSS, online, or by phone. The NSS is located at Pier 13 Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21124.

FOR FURTHER INFORMATION CONTACT: Erhard W. Koehler, (202) 680–2066 or via email at *marad.history@dot.gov.* You may send mail to N.S. Savannah/Savannah Technical Staff, Pier 13 Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21224, ATTN: Erhard Koehler.

SUPPLEMENTARY INFORMATION:

I. Background

The decommissioning and disposition of the NSS is an Undertaking under Section 106 of the NHPA. Section 106 requires that federal agencies consider views of the public regarding their Undertakings; therefore, in 2020, MARAD established a Federal docket at *https://www.regulations.gov/docket/MARAD-2020-0133* to provide public notice about the NSS Undertaking. The federal docket was also used in 2021 to solicit public comments on the future uses of the NSS. MARAD is continuing to use this same docket to take in public comment, share information, and post agency actions.

The NHPA Programmatic Agreement (PA) for the Decommissioning and Disposition of the NSS is available on the MARAD docket located at *www.regulations.gov* under docket id ''MARAD–2020–0133.'' The PA stipulates a deliberative process by which MARAD will consider the disposition of the NSS. This process requires MARAD to make an affirmative, good-faith effort to preserve the NSS. To that end, a Notice of Availability/Request for Information (NOA/RFI) was developed in accordance with Stipulation IV of the PA and was published in the **Federal Register**. The purpose of the NOA/RFI process is to determine preservation interest from entities that may wish to acquire the NSS.

II. Agenda

The agenda will include (1) welcome and introductions; (2) information about the ship; and (3) questions and answers. The agenda will also be posted on MARAD's website at *https://www.maritime.dot.gov/outreach/history/maritime-administration-history-program* and on the MARAD docket located at *www.regulations.gov* under docket id ''MARAD–2020–0133.''

III. Public Participation

The information session will be open to the public. Members of the public who wish to attend in person or online must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Members of the public may also call-in using the following number: +1–312–600–3163, Phone Conference ID: 531709929#.

Special services. The NSS is not compliant with the Americans with Disabilities Act (ADA). The ship has some capability to accommodate persons with impaired mobility. If you require accommodations to attend PRG meetings in-person, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR 1.81 and 1.93; 36 CFR part 800; 5 U.S.C. 552b.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–24203 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0090; Notice 2]

Nissan North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Nissan North America, Inc. (Nissan) has determined that certain replacement windshield glass panes manufactured by Central Glass Co., Ltd., outsourced to Japan Tempered & Laminated Glass Co., Ltd., and sold to Nissan as replacement parts for use in certain Nissan motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials.* Nissan filed a noncompliance report dated June 29, 2020. Nissan subsequently petitioned NHTSA on July 29, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces grant of Nissan's petition.

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366–0661, *jack.chern@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Nissan has determined that certain replacement windshield glass panes manufactured by Central Glass Co., Ltd., outsourced to Japan Tempered & Laminated Glass Co., Ltd., and sold to Nissan as replacement parts for use in certain Nissan motor vehicles do not fully comply with the requirements of paragraph S6.2 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205). Nissan filed a noncompliance report dated June 29, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Nissan subsequently petitioned NHTSA on July 29, 2020, for an exemption from the

notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Nissan's petition was published with a 30-day public comment period, on April 13, 2021, in the **Federal Register** (86 FR 19319). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2020–0090.''

II. Windshields Involved

Approximately 1,934 replacement windshield glass panes sold as replacement service parts, manufactured between April 1, 2000, and April 30, 2012, are potentially involved. These replacement windshield glass panes were manufactured by Central Glass Co., Ltd., who subsequently outsourced to a subsidiary company, Japan Tempered & Laminated Glass Co., Ltd., and sold to Nissan as replacement parts for Nissan motor vehicles.

III. Noncompliance

Nissan stated that the glass manufacturer, Central Glass Co., Ltd., outsourced glass production to a subsidiary company, Japan Tempered & Laminated Glass Co., Ltd. (JTLG), in April 2000. Instead of using its own certification mark ''166,'' JTLG used the certification mark ''44,'' which is assigned to its parent company, Central Glass Co.

IV. Rule Requirements

Paragraph S6.2 of FMVSS No. 205 includes the requirements that a prime glazing manufacturer add a manufacturer's code mark, that NHTSA assigns to the manufacturer, to its glazing.

V. Summary of Nissan's Petition

The following views and arguments presented in this section, ''V. Summary of Nissan's Petition,'' are the views and arguments provided by Nissan and do not reflect the views of the Agency. Nissan describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Nissan offers the following reasoning:

1. Nissan states that although the manufacturer's code mark is incorrect, the certification mark affixed to the subject parts features the correct AS Item number and model number. In addition, the windshield glass panes were fabricated in full compliance with the technical requirements of 49 CFR 571.205 applicable to laminated glass for use in motor vehicles.

2. Nissan says that many of the 1,934 windshield glass components that may contain an incorrect manufacturer's code mark are located in non-U.S. markets. For this reason, Nissan believes the actual number of subject parts is substantially lower than the 1,934 possible windshield glass panes because only a small number of potentially affected windshield glass panes were shipped to the U.S. market for use as service parts between April 1, 2000, and April 30, 2012.

3. Nissan also states that the part number remains accurate, despite the manufacturer's code mark discrepancy. The subject noncompliance, accordingly, is unlikely to result in the use of an incorrect replacement part in an OEM application because the part would be ordered using Nissan's unique part number and not the ''DOT'' number. In Nissan's ordering system, parts with the incorrect manufacturer's code mark are indistinguishable from parts with the correct code. In fact, the parts are traceable to Central Glass Co., Ltd., since the incorrect code used by their subsidiary, JLTG, is the code for the parent company, Central Glass Co., Ltd.

4. Nissan believes that there is a low likelihood of a vehicle requiring this replacement part because the average age of potentially affected vehicles (MY 1991–1999) is 25+ years old. Currently, only one replacement windshield glass service part (727120M010) is in stock and available. However, Nissan instructed the Sagamihara Part Center in Japan to suspend shipment for this part. Even so, if a vehicle previously received or were to receive a subject replacement part, the part fully complies with the technical requirements of 49 CFR 571.205. In no way is the actual safety aspect of the windshield glass compromised by the misprinted manufacturer's code mark.

5. Nissan contends that in similar situations, NHTSA has granted the applications of other petitioners. For example, 80 FR 3737 (January 23, 2015) Petition by Custom Glass Solutions Upper Sandusky Corporation. Nissan cited NHTSA, saying ''NHTSA believes that the subject labeling errors are inconsequential to motor vehicle safety because the marking of glazing as 'Tempered' or 'Laminated' is not required by FMVSS No. 205, the probability of anyone in the United States obtaining the subject incorrectly marked glazing as replacement glazing is very unlikely since the affected glazing is specifically designed for use in mining vehicles manufactured by Atlas Copco in Australia. In addition, there is no concern that the wrong model number on the subject glazing would result in an incorrect replacement part being used because replacement parts are ordered by referring to the glazing part number or by identifying the vehicle for which the replacement glazing is intended.''

Nissan concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

1. General Principles

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have not justified granting an inconsequentiality petition.[1] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant or a consumer who is exposed to the consequence of that noncompliance.[2] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

[1] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[2] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

2. Response to the Arguments From Nissan

Paragraph S6.2 of FMVSS No. 205 requires a prime glazing manufacturer to mark its glazing with a manufacturer's code mark that NHTSA assigns to the manufacturer.

Nissan pointed out that many of the subject 1,934 windshield glass components that may contain an incorrect manufacturer's code mark are located in non-U.S. markets. As previously stated, NHTSA does not consider arguments that the noncompliance involves only a small number of items of motor vehicle equipment when determining whether the noncompliance is inconsequential to motor vehicle safety. Instead, NHTSA considers the consequences of the noncompliance and how that may impact a consumer exposed to it. For purposes of this petition, NHTSA considered whether the noncompliance impacted the functional safety of the impacted windshield and also whether the noncompliance would impact any potential future recalls.

First, as part of NHTSA's consideration of Nissan's petition, NHTSA reviewed information submitted by Nissan in support of its statements that the subject windshields met all of the applicable performance requirements specified in FMVSS No. 205. Based on its review of the test data submitted by Nissan, NHTSA believes that Nissan's certifications of the safety performance of the subject windshields were made based on reasonable bases. Accordingly, NHTSA has no reason to believe that the windshields are otherwise noncompliant with the performance requirements in FMVSS No. 205.

Second, NHTSA considered whether the noncompliance could impact the efficiency of a recall if the affected windshields were subject to one. Based on the information presented, NHTSA believes that if the affected windshields were subject to a future recall, Nissan or consumers would be able to identify the affected windshields in order to have the recall completed. This is because, while the marking does not identify the fabricating manufacturer, it does identify the parent company and the correct model number and would, therefore, be traceable to an entity who would accept responsibility for conducting a recall. Based on the foregoing reasons, NHTSA does not believe the noncompliance poses a consequential risk to motor vehicle safety.

NHTSA also requested that Nissan provide information about what Nissan, Central Glass Co., Ltd., and Japan Tempered & Laminated Glass Co., Ltd. (JTLG) are doing to ensure this type of noncompliance does not happen again. Nissan responded that Central Glass Co. has informed Nissan that in the time since this issue took place, change management policies have been implemented, with all new changes to products now being reviewed by the Central Glass HQ quality assurance department for approval. Additionally, JTLG also reviewed U.S. certification and marking requirements and made updates to their own processes, where appropriate, to ensure future compliance. Nissan states that any future manufacturing process changes would be detected and corrected prior to production.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Nissan has met its burden of persuasion that the subject FMVSS No. 205 noncompliance in the affected windshield glass panes is inconsequential to motor vehicle safety. Accordingly, Nissan's petition is hereby granted and Nissan is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles and equipment that Nissan no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle and equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles and replacement windshield glass panes under their control after Nissan notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2023–24140 Filed 11–1–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments Form 5307

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 5307, Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans.

DATES: Written comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–0200 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans.

OMB Number: 1545–0200.

Form Number: Form 5307.

Abstract: An adopting employer of a nonstandardized pre-approved plan that has made modifications to the terms of the pre-approved plan that are not extensive, or an adopting employer of any pre-approved plan (either standardized or nonstandardized) that amends its pre-approved plan solely to add language to satisfy the requirements of Internal Revenue Code (IRC) sections 415 and 416 due to the required aggregation of plans, use Form 5307 to request a determination letter from the IRS. The IRS uses the information to determine if the adopted plan is qualified under IRC sections 401(a) and 501(a). The form may not be used to

request a determination letter for a multiple employer plan.

Current Actions: There are changes to the existing collection. The form was revised to eliminate features of the determination letter program that are of limited utility to plan sponsors in comparison with the burdens they impose. The form was also revised to enable electronic submission on *Pay.gov.*

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time per Respondent: 31 hours, 29 minutes.

Estimated Total Annual Burden Hours: 3,151,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 27, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–24158 Filed 11–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Forms 14134 and 14135

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 14134, Application for Certificate of Subordination of Federal Tax Lien, and Form 14135, Application for Certificate of Discharge of Property from Federal Tax Lien.

DATES: Written comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–2174 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Discharge from or Subordination of Federal Lax Lien.

OMB Number: 1545–2174.

Form Number: Forms 14134 and 14135.

Abstract: Form 14134 is used to apply for a Certificate of Subordination under Internal Revenue Code (IRC) sections 6325(d)(1) and 6325(d)(2) to allow a named creditor to move their junior creditor position ahead of the United States' position for the property named in the certificate. Form 14135 is used to apply for a Certificate of Discharge under IRC section 6325(b) to remove the United States' lien from the property named in the certificate.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Government.

Estimated Number of Responses: 10,362.

Estimated Time per Respondent: 2 hours, 11 minutes.

Estimated Total Annual Burden Hours: 22,665.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 27, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–24155 Filed 11–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 15320

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 15320, Application for Security Summit Membership.

DATES: Written comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–2295 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Application for Security Summit Membership.

OMB Number: 1545–2295.

Form Number: Form 15320.

Abstract: The IRS has joined with representatives of the software industry, tax preparation firms, payroll and tax financial product processors and state tax administrators to combat identity theft refund fraud to protect the nation's taxpayers. The Security Summit consists of IRS, state tax agencies and the tax community, including tax preparation firms, software developers, payroll and tax financial product processors, tax professional organizations and financial institutions. Applicants use Form 15320 to apply for membership.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, and Tribal Governments, and business or other for-profit organizations.

Estimated Number of Responses: 62.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 27, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–24154 Filed 11–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 13551

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 13551, Application to Participate in the IRS Acceptance Agent Program.

DATES: Written comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–1896 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Application to Participate in the IRS Acceptance Agent Program.

OMB Number: 1545–1896.

Form Number: Form 13551.

Abstract: New and current Acceptance Agents use Form 13551 to apply to participate in the IRS Acceptance Agent Program or renew their participation in the program. Acceptance Agents are individuals or entities that have entered into formal agreements with the IRS that permit them to assist alien individuals and other foreign persons with obtaining Tax Identification Numbers (TIN).

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, Businesses or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal government.

Estimated Number of Responses: 4,422.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 2,211.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 27, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–24156 Filed 11–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 8826

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8826, Disabled Access Credit.

DATES: Written comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–1205 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Disabled Access Credit.

OMB Number: 1545–1205.

Form Number: Form 8826.

Abstract: Internal Revenue Code section 44 allows eligible small businesses to claim a credit of 50% of the eligible access expenditures that exceeds $250 but do not exceed $10,000. Form 8826, Disabled Access Credit, is used by eligible small businesses to claim the 50 percent credit eligible access expenditures to comply with the requirements under the Americans with Disabilities Act of 1990. The credit is part of the general business credit. Form 8826 is used to figure the credit and the tax liability limit.

Current Actions: There is no change to the existing collection. However, However, the estimated number of responses was updated to eliminate duplication of the burden associated with individual and business respondents captured under OMB control numbers 1545–0074 and 1545–0123.

Type of Review: Extension of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Responses: 55.

Estimated Time per Respondent: 5 hours, 7 minutes.

Estimated Total Annual Burden Hours: 281.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–24265 Filed 11–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Treasury Decision (TD) 8686, Requirements To Ensure Collection of Section 2056A Estate Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Treasury Regulations section 20.2056A–2 published in TD 8686 regarding requirements to ensure collection of Internal Revenue Code (IRC) section 2056A estate tax.

DATES: Written comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–1443 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW,

Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Requirements for a Qualified Domestic Trust.

OMB Number: 1545–1443.

Regulation Project Number: TD 8686.

Abstract: This document contains final regulations that provide guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under IRC section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOTs) described in IRC section 2056A(a). To ensure collection of the tax, the regulation provides various security options that may be selected by the trust and the requirements associated with each option. Under certain circumstances, the trust is required to file an annual statement with the IRS disclosing the assets held by the trust.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Responses: 4,390.

Estimated Time per Respondent: 1 hour, 23 minutes.

Estimated Total Annual Burden Hours: 6,070.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 27, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–24157 Filed 11–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 4952

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 4952, Investment Interest Expense Deduction.

DATES: Written comments should be received on or before January 2, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–0191 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Investment Interest Expense Deduction.

OMB Number: 1545–0191.

Form Number: Form 4952.

Abstract: Interest expense paid by an individual, estate, or trust on a loan allocable to property held for investment may not be fully deductible in the current year. Form 4952 is used to compute the amount of investment interest expense deductible for the current year and the amount, if any, to carry forward to future years.

Current Actions: There is no change to the existing collection. However, the estimated number of responses was updated to eliminate duplication of the burden associated with individual respondents captured under OMB control numbers 1545–0074.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 128,500.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 192,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 27, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–24159 Filed 11–1–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Department of the Treasury.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), proposes to modify a current Treasury system of records titled, ''Department of the Treasury, .017—Correspondence, Contact Information, and Meeting Records—Treasury'', by expanding the title, purpose, and categories of records in this system of records, along with new routine uses.

DATES: Submit comments on or before December 4, 2023. The new and/or significantly modified routine uses will be applicable on December 4, 2023. The new routine uses will not be applicable should Treasury receive comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal electronically at *http://www.regulations.gov.* Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records. All comments received, including attachments and other supporting documents, are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions and questions regarding privacy issues, please contact: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records (202–622–5710), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury proposes to modify a current Treasury system of records titled, ''Department of the Treasury, .017—Correspondence, Contact Information, and Meeting Records—Treasury.''

The systems are maintained for the purpose of mailing informational literature or responses to those who request it; maintaining lists of individuals who attend Treasury sponsored events, conferences, work activities, or events in which Treasury or one of its bureaus or offices participated, including meetings or conferences; and for other purposes for which mailing or contact lists may be created.

This notice modification is an expansion of the title and purpose of this system of records. As identified in sections below, the categories of records in the system have been updated to include records related to meetings, consolidation of record types, and new routine uses related to breaches of this system of records.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury, .017—Correspondence, Contact Information, and Meeting Records—Treasury

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are located in Treasury bureaus and offices, both in Washington, DC and at field locations as follows:

(1) *Departmental Offices:* 1500 Pennsylvania Ave. NW, Washington, DC 20220;

(2) *Alcohol and Tobacco Tax and Trade Bureau:* 1310 G St. NW, Washington, DC 20220.

(3) *Office of the Comptroller of the Currency:* Constitution Center, 400 Seventh St. SW, Washington, DC 20024;

(4) *Fiscal Service:* Liberty Center Building, 401 14th St. SW, Washington, DC 20227;

(5) *Internal Revenue Service:* 1111 Constitution Ave. NW, Washington, DC 20224;

(6) *United States Mint:* 801 Ninth St. NW, Washington, DC 20220;

(7) *Bureau of Engraving and Printing:* Eastern Currency Facility, 14th and C Streets SW, Washington, DC 20228 and Western Currency Facility, 9000 Blue Mound Rd., Fort Worth, TX 76131;

(8) *Financial Crimes Enforcement Network:* Vienna, VA 22183;

(9) *Special Inspector General for the Troubled Asset Relief Program (SIGTARP):* 1801 L St. NW, Washington, DC 20220;

(10) *Office of Inspector General:* 740 15th St. NW, Washington, DC 20220;

(11) *Office of the Treasury Inspector General for Tax Administration:* 1125 15th St. NW, Suite 700A, Washington, DC 20005; and

(12) *Financial Stability Oversight Council (FSOC):* 1500 Pennsylvania Ave. NW, Washington, DC 20220.

SYSTEM MANAGER(S):

Deputy Assistant Secretary, Office of Privacy, Transparency, and Records, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The systems are maintained to mail informational literature or responses to those who request it; maintain lists and other information about individuals who attend or present at Treasury sponsored events, conferences, work meetings and other activities, or events in which Treasury participates; maintain lists and credentials of individuals who Treasury may consult professionally in furtherance of its mission; maintain records related to meetings, including video/audio recordings, transcripts, and for other purposes for which mailing, correspondence, contact lists, or meeting records may be created.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Individuals who serve on Treasury boards and committees;
- Third parties who identify potential contacts or who provide information Treasury uses to determine an individual's inclusion on a mailing or contact list;
- Individuals who provide contact information, or otherwise consent to having their contact information used, for facilitating communication with Treasury, including but not limited to, members of the public, government officials, representatives of industry,

media, non-profits, academia, and others who express an interest in Treasury-related programs and activities;

- Individuals who request information or inclusion on mailing lists for information or updates from Treasury or one of its bureaus or offices, concerning specific issues or topics;
- Treasury employees, contractors, grantees, fiscal agents, financial agents, interns, and detailees, members of the public, government officials, and representatives of industry, media, non-profits, academia, and others, paid or non-paid, attending or presenting at a Treasury sponsored event, work activity, or an event in which Treasury participated, including meetings, events, or conferences;
- Emergency contact information for the individual point-of-contact for organizations in the event that individual suffers an injury on Treasury premises;
- Alternative points-of-contact information provided by individuals or organizations included in a mailing or contact list; and
- Individuals who voluntarily join a Treasury-owned and operated web portal for collaboration purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name (including preferred name);
- Business or organization name;
- Business or organization type;
- Business mailing address;
- Job or functional title or business affiliation;
- Business/personal address;
- Business/personal phone number(s);
- Business/personal mobile phone/fax number(s);
- Pager number;
- Video or audio recordings;
- Meeting summaries/transcripts;
- Meeting or event attendance or sign in sheets;
- Business/personal electronic mail (Email) addresses;
- Personal or other alternative contact information provided by individuals while on travel or otherwise away from the office or home;
- Assistant or point of contact's name, title, or other contact information;
- Information related to meetings, including:

- Preferred contact method(s) and contact rules (any specific rules to be followed when considering contacting an individual);
- Communications between Treasury employees and members of the public, Federal, State and local government officials, and representatives of industry, media, non-profits, and academia;
- General descriptions of particular topics or subjects of interest as related to individuals or organizations who communicate with Treasury;
- Information regarding curricula vitae, including memberships in professional societies, affiliation with standards bodies, any teaching positions held, or any publications associated with the individual;
- Travel preferences (individuals who serve on Treasury boards and committees only);
- Identification number assigned by computer in cases where created in order to retrieve information.

RECORD SOURCE CATEGORIES:

Information contained in these systems is obtained from affected individuals, organizations, and facilities; public source data; other government agencies; and information already in other Treasury records systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, all or a portion of the records or information contained in these systems may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a (b) (3), as follows:

1. To the Department of Justice (including United States Attorneys' Offices) or other Federal agencies conducting litigation or in proceedings before any court or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

a. Treasury or any component thereof;

b. Any employee of Treasury in his/her official capacity;

c. Any employee of Treasury in his/her individual capacity where the Department of Justice or Treasury has agreed to represent the employee; or

d. The United States or any agency thereof.

2. To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

3. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

4. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

5. To appropriate agencies, entities, and persons when:

a. Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

b. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

6. To contractors and their agents, grantees, experts, consultants, fiscal agents, financial agents, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to the system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

7. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person authorizing the disclosure.

8. To sponsors, employers, contractors, facility operators, grantees, experts, fiscal agents, financial agents, and consultants, paid or non-paid, in connection with establishing an access account for an individual or maintaining appropriate points of contact and when necessary to accomplish a Treasury mission function or objective related to the system of records.

9. To other individuals in the same operational program supported by an information technology resource, where appropriate notice to the individual has been made that his or her contact information will be shared with other members of the same operational program in order to facilitate collaboration.

10. To Federal agencies, councils, and offices, such as the Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, the Federal

Labor Relations Authority, the Government Accountability Office, the Financial Stability Oversight Council, and the Equal Employment Opportunity Commission in the fulfillment of these agencies' official duties.

11. To international, Federal, State, local, Tribal, or private entities for the purpose of the regular exchange of business contact information in order to facilitate collaboration for official business.

12. To the news media and the public, with the approval of the Senior Agency Official for Privacy, or her designee, in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of Treasury or is necessary to demonstrate the accountability of Treasury's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

13. To appropriate agencies, entities, and person when (1) the Department of the Treasury suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

14. To another Federal agency or Federal entity, when the Department of the Treasury determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in these systems are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment. Records, whether paper or electronic, may be stored in Departmental Offices or at the bureau or office level.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information may be retrieved, sorted, and/or searched by an identification number assigned by computer, facility, business affiliation, email address, name of the individual, or other data fields previously identified in this System of Records Notice.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are securely retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 12, item 2a. Files may be retained for up to three years depending on the record. For records that may be used in litigation, the files related to that litigation will be retained for three years after final court adjudication.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in these systems is safeguarded in accordance with applicable laws, rules, and policies, including Treasury Directive 85–01, Department of the Treasury Information Technology (IT) Security Program. Further, security protocols for these systems of records will meet multiple National Institute of Standards and Technology security standards from authentication to certification and authorization. Records in these systems of records will be maintained in a secure, password protected electronic system that will use security hardware and software to include: multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a ''need to know,'' using locks, and password protection identification features. Treasury file areas are locked after normal duty hours and the facilities are protected by security personnel who monitor access to and egress from Treasury facilities.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any record contained in these systems of records, or seeking to contest its content, may submit a request in writing, in accordance with Treasury's Privacy Act regulations (located at 31 CFR 1.26), to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *https://home.treasury.gov/footer/freedom-of-information-act* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

No specific form is required, but a request must be written and:

- Be signed and either notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;
- State that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Include information that will enable the processing office to determine the fee category of the user;
- Be addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);
- Reasonably describe the records;
- Give the address where the determination letter is to be sent;
- State whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and
- Include a firm agreement from the requester to pay fees for search, duplication, or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at 5 U.S.C. 552(a)(4)(A)(iii).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on November 7, 2016 (81 FR 78266) as the Department of the Treasury, Treasury-wide .017—

Correspondence and Contact Information.

[FR Doc. 2023–24222 Filed 11–1–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Insurance Office Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data

AGENCY: Federal Insurance Office, Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: Pursuant to the Federal Insurance Office Act of 2010 (FIO Act), the Federal Insurance Office (FIO) of the U.S. Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA), on or after the date of publication of this notice. This data collection will assist FIO's assessment of the potential for any major disruptions of private insurance coverage in regions of the country particularly vulnerable to climate change impacts. The public is invited to submit comments on this request.

DATES: Comments must be received by December 4, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted at *https://www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Elizabeth Brown, Senior Insurance Regulatory Policy Analyst, by emailing *Elizabeth.Brown@treasury.gov,* calling (202) 597–2869, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Federal Insurance Office Climate-Related Financial Risk Data Collection for U.S. Homeowners Multi-Peril Underwriting Data.

OMB Control Number: 1505–NEW.

Type of Review: Request for a new OMB Control Number.

Description: On May 20, 2021, President Biden issued the Executive Order on Climate-Related Financial Risk, Exec. Order No. 14030 (E.O. 14030), which called on FIO to: (1) ''assess climate-related issues or gaps in the supervision and regulation of insurers'' and (2) ''further assess, in consultation with States, the potential for major disruptions of private insurance coverage in regions of the country particularly vulnerable to climate change impacts.'' [1] This information collection is necessary for FIO to advance its statutory mandates (including to monitor the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products, and to monitor all aspects of the insurance industry) and to fulfill the second undertaking for FIO under E.O. 14030.[2]

Under FIO's data collection, FIO will obtain consistent, granular, and comparable homeowners insurance data that is not otherwise publicly available on a nationwide level. This nationwide view is critical to understanding how climate-related financial risks impact families and individuals across state markets and the United States, and how these effects could impact the broader financial system.

FIO Authorities

Under the FIO Act, FIO's authorities include monitoring all aspects of the insurance sector, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance sector or the U.S. financial system; monitoring the extent to which traditionally underserved communities and consumers, minorities, and low- and moderate-income persons have access to affordable insurance products; collecting data and information on and from the insurance industry and insurers; analyzing and disseminating data and information; and issuing reports regarding all lines of insurance that FIO monitors.[3] Each of these authorities is relevant to FIO's planned data collection.

Efforts To Collect Data From Other Sources

Before FIO seeks to collect data directly from insurers, the FIO Act requires FIO to coordinate with relevant insurance regulators in the 50 states, the District of Columbia, and the five U.S. territories (collectively, the State Insurance Regulators), relevant federal agencies, and any publicly available sources in accordance with procedures set forth in the FIO Act before FIO collects the data directly from insurers.[4] Prior to publishing FIO's October 2022 notice and request for comment related to the proposed data collection (October 2022 FRN), FIO coordinated with State Insurance Regulators to determine if they could provide in a timely manner the data that FIO proposed collecting.[5] Following those efforts, as described in detail in the October 2022 FRN, FIO determined that the data that FIO was proposing to collect was not available or could not be obtained in a timely manner from any of the State Insurance Regulators, relevant federal agencies, or publicly available sources.[6]

After the end of the comment period for the October 2022 FRN, FIO had additional meetings with the NAIC and the State Insurance Regulators to offer increased coordination and collaboration between FIO's proposed data collection and any efforts of the NAIC and State Insurance Regulators. On August 15, 2023, the NAIC

[1] Executive Order on Climate-Related Financial Risk, Exec. Order No. 14030, 86 FR 27,967 (May 20, 2021) (E.O. 14030).

[2] 31 U.S.C. 313(c); E.O. 14030. FIO addressed the first undertaking for FIO under E.O. 14030 with the publication of its report *Insurance Supervision and Regulation of Climate-Related Risks* (June 2023), *https://home.treasury.gov/system/files/311/FIO-June-2023-Insurance-Supervision-and-Regulation-of-Climate-Related-Risks.pdf.*

[3] 31 U.S.C. 313–314.

[4] 31 U.S.C. 313(e)(4) provides that ''Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, and may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act), in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.''

[5] Agency Information Collection Activities; Proposed Collection, Comment Request; Federal Insurance Office Climate-Related Financial Risk Data Collection, 87 FR 64,134 (October 21, 2022) (October 2022 FRN).

[6] October 2022 FRN, 87 FR at 64,140.

announced a plan to issue a data call to assist State Insurance Regulators to collect data from insurers to better understand property markets and coverages and protection gaps, citing the ''increasing frequency and severity of weather events, rising reinsurance costs, and inflationary pressures'' that were creating insurance availability and affordability issues.[7] FIO supports continued coordination and collaboration efforts that would enable it to fulfill its statutory mission while minimizing any burdens on insurers, to the extent feasible. It is unclear when the NAIC data call may be implemented and whether all State Insurance Regulators will participate in any proposed NAIC data call. FIO will continue to engage with the NAIC and monitor its development of a homeowners insurance data collection template and the use of that template or similar templates by State Insurance Regulators.

In sum, FIO has determined that the nationwide ZIP Code level data that it seeks to collect is not available or may not be obtained in a timely manner and has therefore determined to use its data-collection authorities under the FIO Act to obtain the necessary data directly from certain insurance groups.[8]

Importance of Data Collection

The proposed data collection would provide FIO with a nationwide view of homeowners insurance that is critical to understanding how climate-related financial risks impact families and individuals across the United States and how these effects could impact the broader financial system. Since the publication of the October 2022 FRN, multiple homeowners insurers have announced decisions to exit certain areas or to decline to renew certain policies.[9] As Treasury stated in a recent report: ''Some evidence shows that states with exposure to climate hazards are already experiencing higher insurance costs, and the availability of insurance could have differential impacts for mortgage availability.'' [10] Price increases often disproportionately impact traditionally underserved and disadvantaged communities and consumers, including those who are low- and moderate-income.[11] Price increases could make insurance unavailable for such groups because they may be priced out of the market. A recent survey showed that about half of U.S. homeowners who did not purchase homeowners insurance had household incomes under $40,000 per year.[12] FIO's work will facilitate further research and analysis to better understand the effects of climate-related risks on housing and the resulting ramifications for household finances and homeowners.

Purpose of Data Collection

FIO plans to use the information obtained from this data collection to perform a nationwide analysis to advance its statutory mandates and to respond to E.O. 14030. FIO will assess the impact of climate-related risk on the availability and cost of homeowners insurance in the United States. The primary goal of this data collection is to obtain consistent, comparable, and granular homeowners insurance data that is not otherwise publicly available that will enable FIO to assess the impact that climate-related physical risks have had on the homeowners insurance market since 2017 at a ZIP Code level. Data of the type FIO seeks is, at present, generally available only at the national or state level, with limited data available at a more granular level. Using the data from this collection, FIO will analyze nationwide trends, including comparisons of trends in homeowners insurance availability and costs. This data collection and analysis will benefit a wide variety of stakeholders, including insurers, reinsurers, homeowners, mortgage lenders, and policyholders, and inform policymakers by establishing a framework for granular, consistent, and comparable data with which to assess the localized impact of climate-related events and conditions on trends in homeowners insurance availability and cost. This data will help highlight underwriting trends and help identify areas where less-available or more-costly insurance is associated with higher risks from climate-related events. Such information may also help inform private and public efforts at the federal, state, and local levels to target pre-disaster mitigation measures and to improve policy in this area.

The narrower focus of this data collection includes data that will help establish a national baseline for analytics in this area. There is also potential value in collecting and analyzing more detailed information in this area. FIO intends to conduct climate-related data collections and analyses in the future, with a goal of doing so on an annual basis. In its initial analysis, FIO will focus on understanding nationwide trends in underwriting data. In future data collections, FIO may analyze in more detail, among other things, climate-related impacts on traditionally underserved communities or consumers, minorities, and/or low- and moderate-income persons.

FIO will not publish data or analysis of specific companies or groups or comparisons of results across companies or groups. FIO also will not publish data on or analysis of the solvency of insurance companies or groups based on the data collected. When FIO publishes analyses based on the data it collects, such analyses will be based on group-level submissions that will be aggregated across insurance groups to the ZIP Code level.

Data Collection's Key Elements

The October 2022 FRN provided the rationale for the proposed data collection and its eight key elements: (1) a focus on insurer underwriting, (2) insurance lines of business, (3) insurers, (4) data fields, (5) reporting framework, (6) reporting period, (7) geographic granularity, and (8) geographic scope.

Figure 1 below describes the initial proposed scope as well as FIO's changes to narrow that scope based in large part on stakeholder feedback. Among other things, FIO is removing data fields for which information is substantially similar to other fields, cannot be collected consistently at this time, or is not necessary for FIO's initial analysis. FIO believes that the narrower focus of this collection will improve data consistency and homogeneity and reduce the burden on the responding insurers.

[7] NAIC, ''NAIC to Issue Data Call to Help Regulators Better Understand Property Markets,'' news release, August 15, 2023, *https://content.naic.org/article/naic-issue-data-call-help-regulators-better-understand-property-markets.*

[8] 31 U.S.C. 313(e).

[9] *See, e.g.,* Christopher Flavelle, *et al.*''Climate Shocks Are Making Parts of America Uninsurable. It Just Got Worse,''*New York Times* May 31, 2023, *https://www.nytimes.com/2023/05/31/climate/climate-change-insurance-wildfires-california.html.*

[10] U.S. Department of the Treasury, *The Impact of Climate Change on American Household Finances* (September 2023), 12, *https://home.treasury.gov/system/files/136/Climate_Change_Household_Finances.pdf.*

[11] *See, e.g.,* White House Council of Economic Advisors, *Economic Report of the President* (March 2023), Box 9–2, 281, *https://whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf;* U.S. Department of the Treasury, *The Impact of Climate Change on American Household Finances,* 6.

[12] Insurance Information Institute, *Homeowners Perception of Weather Risks: 2023 Q2 Consumer Survey* (2023), 2, *https://www.iii.org/sites/default/files/docs/pdf/2023_q2_ho_perception_of_weather_risks.pdf.*

FIGURE 1—CHANGES TO FIO'S DATA COLLECTION

Key elements	Proposed scope in October 2022 FRN	Summary of changes
Underwriting Focus.	Physical risk from underwriting by P&C insurers, excluding liability risk [13].	*No changes.*
Insurance Lines of Business.	Homeowners Multi-Peril with 6 form types covering Mobile Homeowners, Owner Occupied Homeowners, and Other Homeowners policy form types.	Homeowners Multi-Peril with 1 form type covering Owner Occupied Homeowners (form type HO–3, the most common homeowners policy form).
Insurers	Nationwide insurers writing above a premium threshold of $100 million in 2021 homeowners insurance direct premiums written. Additional insurers in order to achieve at least an 80 percent market share threshold in each of 10 states that are potentially the most prone to climate-related disasters.	Top nationwide homeowners insurance groups with 1 percent or more share of the homeowners insurance market based on direct premiums written in 2022, and request data to be aggregated and submitted at an insurance group level for all homeowners insurance entities identified within the group. FIO has identified 14 homeowners insurance groups with 240 homeowners insurance entities meeting the selection criterion.
Data Fields	15 data fields covering information regarding claims, premiums, and losses that correspond to data fields reported by U.S. insurers to State Insurance Regulators in annual filings, as well as additional policy information not collected on statutory filings.	7 data fields (removing 8 data fields from proposed collection for which information is substantially similar to other fields, cannot be collected consistently at this time, or is not necessary for the proposed initial analysis). Revise 1 data field for clarity (to collect number of policies not renewed or retained rather than premiums not renewed). Remove exclusion of non-weather-related damages from reporting on claims and losses.
Reporting Framework.	Accident year reporting basis	Accident year reporting basis for loss- and claims-related data, and calendar year reporting basis for premium-related data and policy information. (This change provides clarity on alignment with the format of statutory filings).
Reporting Period	5 years of underwriting data (2017–2021)	6 years of underwriting data (2017–2022).
Geographic Granularity.	ZIP Code level for all U.S. ZIP Codes applicable to in-scope insurers	*No changes.*
Geographic Scope.	Nationwide	*No changes.*

Underwriting Focus and Line of Business

FIO's data collection remains focused on the physical risk from underwriting by property & casualty insurers. The data collection also remains focused on the homeowners insurers multi-peril line of business. However, in large part in response to comments, this data collection will seek data relating to policies on a single form type (rather than the six forms proposed in the October 2022 FRN). Specifically, FIO will focus on owner-occupied homeowners multi-peril insurance policies issued on form ''HO–3,'' the most common homeowners insurance policy form in the United States.[14]

Insurers

For this initial data collection, FIO plans to collect data from the top homeowners insurance groups that have 1 percent or more of the U.S. homeowners insurance market as measured by aggregate homeowners insurance direct premiums written in 2022. FIO has identified 14 homeowners insurance groups that meet this criterion (the Representative Sample Insurers). FIO's selection includes one standalone entity which is not part of a group. FIO's references to ''group'' include this standalone entity. These 14 groups (out of the 195 homeowners insurance groups operating in the United States) collectively underwrite about 70 percent of the direct homeowners insurance premiums written in the 50 states, the District of Columbia, and U.S. territories, based on 2022 financial statements. The Representative Sample Insurers have 240 homeowners insurance entities domiciled in 29 states and operating in many other states nationwide. FIO is taking a representative sample approach for two reasons: (1) FIO anticipates, for the purposes of its analyses, that the Representative Sample Insurers collectively have a sufficient market share for analyzing impacts in the U.S. market, and (2) the focus on the largest insurance groups will reduce the burden on small insurers.

Data Fields

FIO plans to collect data from the Representative Sample Insurers using the FIO Climate Data Collection: U.S. Homeowners Multi-Peril Form 2023–1 (Data Collection Form), which is an Excel spreadsheet that FIO will provide to them.[15] In the October 2022 FRN, FIO proposed collecting 15 data fields. Based in large part on the comments that FIO received, FIO has decided to collect only seven data fields: (1) Number of Policy In-Force Exposures (on a calendar year basis (CY)); (2) Total Dollar Value of Coverage for Dwelling, Other Structures, Personal Property, and Loss of Use (CY); (3) Number of Policies Not Renewed or Retained (CY); (4) Direct Premiums Written (CY); (5) Total Direct Losses Paid (on an accident year basis (AY)); (6) Total Direct Incurred Losses (AY); and (7) Cumulative Number of Claims Closed With Loss Payment (direct claims on AY). Data from all seven fields is necessary for FIO to advance its objectives described above.

The *Number of Policy In-Force Exposures* field represents the count of policies that are in effect (*i.e.,* in-force) as of December 31 for each reporting calendar year, where one policy in-force corresponds to one home covered in that year. (This field does not include policies that lapsed or were canceled during the year). The field is necessary for FIO to calculate several metrics on a per-policy basis to allow for comparison across ZIP Codes. For example, FIO will calculate the average

[13] Liability risk is ''a risk where an insured is liable to a third party as a result of or caused by any act, error, omission representation or statement by the insured.'' ''*Liability Risk Definition,*'' Law Insider, *https://lawinsider.com/dictionary/liability-risk.*

[14] HO–3 policies comprise 55.5 percent of all homeowners insurance policies and 78.3 percent of all owner-occupied homeowners insurance policies. *See* NAIC, *Dwelling Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominimum/Coorperative Unit Owner's Insurance Report: Data for 2020* (December 2022), 4, *https://naic.soutronglobal.net/Portal/Public/en-GB/DownloadImageFile.ashx?objectID=9803&ownerType=0&ownerId=2006.*

[15] For more details on the data fields, a copy of the Data Collection Form and the instructions for filling it out can be found on FIO's webpage, *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/reports-notices.*

premiums, claims, losses, and policy non-renewals based on the total policies in a given ZIP Code; this field will also support calculation of changes in total policy counts over time.

The *Total Dollar Value of Coverage for Dwelling, Other Structures, Personal Property, and Loss of Use* field represents the total estimated value of insurance coverage for the dwellings or other property covered by the policies (*i.e.,* the potential exposures) in a ZIP Code, as recorded at the effective date of the policies or the date of their most recent renewal. This field is necessary because the premiums charged for policies will vary with the value of the properties insured as well as other factors. The dollar value of coverage and various calculated fields derived from that (*e.g.,* average premium per $1,000 in coverage) are commonly relied upon as metrics for accessing cost of coverage.[16] The field will help FIO, among other things, assess the variation in the amount of financial protection for properties across ZIP Codes and over time for a given premium, while holding constant changes in insurance coverage. The field will also enable FIO to compare losses across ZIP Codes by calculating losses per $1,000 of insurance coverage.

The *Number of Policies Not Renewed or Retained* field addresses the number of policies that are not renewed or retained at any time during the reporting year, including non-renewals that are either insurer-initiated or policyholder-initiated. This field is necessary because understanding the percentage of policies not renewed will help FIO to assess availability issues. FIO notes that non-renewals alone may not be an adequate representation of availability issues because policies could be discontinued by the policyholder for various reasons, such as homeownership changes or switching to insurers that are not Representative Sample Insurers.

This field is replacing the field proposed in the October 2022 FRN that asked for the ''Amount of Direct Premiums Written Renewed or Retained.'' FIO is making this change because it is a more commonly reported measure of non-renewals. Some states (*e.g.,* California) and the NAIC's Market Conduct Annual Statement require insurers to report the number of policies not renewed or retained. [17] To the best of FIO's knowledge, no state currently requires insurers to report ''Amount of Direct Premiums Written Renewed or Retained.'' Also, the ''Number of Policies Not Renewed or Retained'' is a subset of the data field that asks for the ''Number of Policy in-force Exposures,'' because in order to provide the ''Number of Policy in-force Exposures,'' an insurer would need to know both (1) the number of policies that it renewed or retained and (2) the number of policies not renewed or retained (*i.e.,* the information FIO is requesting).

FIO is retaining a data field for non-renewals because many commenters noted the importance of collecting information on non-renewals in order to understand where insurers may be pulling back coverage. Monitoring the number of non-renewals will allow FIO to understand non-renewal rates as distinct from changes in premiums.

The *Direct Premiums Written* field is a measure of policyholders' cost of obtaining coverage, and is necessary because the average premium per home or per $1,000 of coverage (premiums divided by number of policies or premiums divided by the amount of coverage) indicates what homeowners pay for property insurance on a comparable per-unit basis. That information, in turn, is necessary because changes in premiums over time and comparisons of average premium per home on a nationwide basis can provide meaningful insights into insurance costs. Collecting this data on a calendar year basis will provide FIO with up-to-date information on pricing trends. Premium data can also support analysis of the availability of homeowners insurance in ZIP codes.

The *Total Direct Losses Paid* field is necessary to understand how loss trends in each ZIP Code affect the availability and cost of homeowners insurance. Direct losses paid is the amount of money to date (for each accident year) that has been paid to, or on behalf of, policyholders, and does not include estimates of losses that have been incurred but not yet paid. FIO will analyze trends in paid losses (including on a per claim basis) by ZIP Code. FIO will also use this field to examine trends by ZIP Code in paid loss ratios (by dividing by premiums) and claims severity (by dividing by claims closed with loss payment) to better understand how underwriting metrics may reflect weather-related events.

The *Total Direct Incurred Losses* field is necessary because it provides a comprehensive measure of the value of an insurer's loss experience in a reporting period by ZIP Code. Unlike losses paid, incurred losses reflect the total value of losses that an insurer incurs during a given period, regardless of whether the losses have been paid out (*i.e.,* it includes reserves), and is used to estimate total losses for a given year. FIO will analyze trends in incurred losses (including on a per-claim basis) by ZIP Code. FIO also will use this field to look at trends by ZIP Code in incurred-loss ratios (by dividing by premiums) to better understand how underwriting metrics may reflect weather-related events.

The Cumulative Number of Claims Closed With Loss Payment field is necessary because the average amount insurers pay for each claim will provide insight on the impact of an event (or events) in a given area, helping FIO to identify exposure frequency and severity.[18] During the underwriting process, an insurer must gauge the average value it will pay out per claim.[19] Historically, the average cost of claims has been one of the primary factors behind the price increases and the tightened availability of homeowners insurance.[20] FIO will be

[16] *See, e.g.,* NAIC, *Dwelling Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance Report: Data for 2020* (2022), Table 3, 4, and 5, *https://naic.soutronglobal.net/Portal/Public/en-GB/DownoadImageFile.ashx?objectId=9803&ownerId=2006;* Massachusetts Division of Insurance, Annual Home Insurance Report for Calendar Year 2020, 11, *https://www.mass.gov/doc/the-2020-massachusetts-market-for-home-insurance/download.*

[17] *See* California Department of Insurance, ''FACT SHEET: Data on Insurance Non-Renewals and FAIR Plan,'' news release, December 20, 2021, *https://www.insurance.ca.gov/0400-news/0100-press-releases/2021/upload/nr117DataNon-RenewalsandFAIRPlan12202021.pdf;* NAIC, *Property & Casualty Market Conduct Annual Statement Homeowner Data Call & Definitions, https://content.naic.org/sites/default/files/inline-files/industry_mcas_data_call_def_homeowners_2020.pdf.* While the ''Number of Policies Not Renewed or Retained'' is not an annual statutory filing field, the NAIC collects statewide information on ''Number of Company-Initiated non-renewals during the period,'' ''Number of cancellations for non-pay or non-sufficient funds,'' and ''Number of cancellations at the insured's request'' from insurers writing homeowners policies as part of its Market Conduct Annual Statement data call, and these fields collectively sum to the number of policies not renewed or retained.

[18] LexisNexis Risk Solutions, ''Annual U.S. Home Insurance Trends Report Confirms Upward Trend in Loss Cost and Severity across All Perils,'' news release, October 13, 2022, *https://risk.lexisnexis.com/about-us/press-room/press-release/20221013-home-insurance-trends-report;* Pat Howard & Kara McGinley,'' Homeowners Insurance Claims Statistics in 2023,'' *Policygenius,* December 22, 2022, *https://www.policygenius.com/homeowners-insurance/homeowners-insurance-statistics/.*

[19] AM Best, *Best's Guide to Understanding the Insurance Industry* (2023), 6, *https://web.ambest.com/information-services/sales-information/best-s-guide-to-understanding-the-insurance-industry.*

[20] *See* Martin Grace & Robert Klein, ''Homeowners Insurance: ''Markets Trends, Issues and Problems,'' *SSRN Electronic Journal,* August 2003, *https://www.researchgate.net/publication/228227047_Homeowners_Insurance_Market_Trends_Issues_and_Problems.*

evaluating claims frequency and severity on a nationwide basis to see if they are associated with average premiums growth or a decrease in the availability of homeowners insurance. This data field will thus enable FIO to better understand how underwriting metrics may reflect weather-related events.

The seven data fields described above include three data fields not collected by State Insurance Regulators (the number of policy in-force exposures; the number of policies not renewed or retained; and the total dollar value of coverage for dwelling, other structures, personal property, and loss of use). The seven data fields also include four fields to collect ZIP Code level information nationwide regarding premiums, claims, and losses that correspond to four state-level data fields reported by U.S. insurers to State Insurance Regulators in annual filings.

Reporting Framework

The Data Collection Form and accompanying instructions now clarify that Representative Sample Insurers should use accident year reporting basis for loss- and claims-related data and calendar year reporting basis for premium-related data and policy information.[21] This change to the instructions provides clarity on alignment with the format of statutory filings; there is no fundamental change.

Reporting Period

FIO seeks to collect six years of underwriting data, 2017 through 2022 (Reporting Period). This is a one-year expansion over the Reporting Period proposed in the October 2022 FRN. Expanding the reporting timeframe by one additional year will allow FIO to capture more current data, including the impact of recent climate-related disasters such as Hurricanes Ian and Nicole, and responds to stakeholder feedback recommending a longer Reporting Period.

[21] Insurance information may be reported on either a calendar year or an accident year basis, depending on the type of information being reported. Accident year reporting monitors loss development of a claim over time (and typically includes losses when they occur, not when they are reported). For example, if a hurricane occurs in 2017, then 2017 would be the accident year. Losses and claims associated with the hurricane could occur in 2017 but could also develop into subsequent years as policyholders submit claims and receive payments over time but would be reported for the 2017 accident year. On the other hand, calendar year reporting does not change or develop over time beyond the calendar year. For example, premiums based on a 2017 calendar year would include premiums from January 1 to December 31, 2017.

Geographic Scope and Granularity

FIO will collect data at a ZIP Code level for all U.S. ZIP Codes in which the homeowners insurance entities within the Representative Sample Insurers have written owner-occupied multi-peril homeowners multi-peril policies corresponding to policy form HO–3 during the Reporting Period in order to conduct a granular, nationwide assessment to advance its statutory mandates and respond to the second undertaking described in E.O. 14030. The October 2022 FRN outlines several reasons why ZIP Code level data is critical for FIO's analysis, and those reasons remain valid.[22]

Collection Process

Data will be collected from the Representative Sample Insurers on the Data Collection Form, which is a revised version of the template discussed in the October 2022 FRN. A copy of the Data Collection Form and the instructions for filling it out can be found at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/reports-notices.* Each of the Representative Sample Insurers will be asked to aggregate and report the nationwide data requested by the Data Collection Form at a ZIP Code level for all owner-occupied homeowners multi-peril policies corresponding to policy form HO–3 that the homeowners insurance entities within its group have written during the Reporting Period.

Changes in Data Collection Based on Comments and Feedback Received

In response to the October 2022 FRN, FIO received 35 formal written comments with over 9,400 signatories. Commenters included individuals, brokers, insurance industry trade associations, State Insurance Regulators, public interest groups, consumer advocates, climate and environmental groups, and others. Following the close of the comment period of the October 2022 FRN, FIO met with a wide range of stakeholders, including the NAIC and some State Insurance Regulators, large writers of homeowners multi-peril insurance, and consumer and environmental groups, regarding the proposed data collection. In addition, FIO and members of the Federal Advisory Committee on Insurance (FACI) discussed the proposed data collection during two public FACI meetings and at meetings of the FACI Climate Subcommittee.

Based on the public comments and stakeholder feedback, FIO has revised several aspects of its data collection, including the scope of the forms included in the homeowners insurance multi-peril line of business, the selection of insurers, the number of data fields, and the reporting period for the collection. FIO also revised the instructions for the Data Collection Form to clarify how the data should be reported, such as indicating that premium-related data and policy information should be provided on a calendar year basis and requiring all claims and losses to be reported, not just weather-related claims and losses. These changes, taken together, should lessen the burden on the insurers while also enhancing FIO's analyses.

[22] *See, e.g.,* October 2022 FRN, 87 FR at 64,138.

Revised Focus Within Homeowners Line of Business

FIO has revised its data collection to focus only on the owner-occupied homeowners multi-peril policy form known as HO–3. In response to the October 2022 FRN, insurers highlighted the difficulty of collecting consistent, comparable data across multiple policy form types. Limiting the collection to one form will allow FIO to collect more consistent, comparable data as compared to the proposal set forth in the October 2022 FRN, which proposed collecting six homeowners insurance policy forms.

Revised Data Fields

Based on the comments received and FIO's decision to narrow the scope of the data collection, FIO removed eight of the fifteen data fields proposed in the October 2022 FRN. FIO removed fields for which the information is substantially similar to other fields (*e.g.,* direct premiums earned), cannot be collected consistently at this time (*e.g.,* total dollar amount of insurance deductible), or is not necessary for FIO's initial analyses (*e.g.,* number of claims reported). The narrower focus of this data collection includes data that will help establish a national baseline for analytics in this area.

Revised Insurer Selection

FIO did not receive many comments related to the proposed methodology for selecting the insurers for the proposed data collection, although it did receive comments on the overall burden of the proposed data collection, as well as on the potential use of the data for entity-specific analyses, and the operational burden of having groups report their subsidiaries on separate templates. In the October 2022 FRN, FIO's proposed selection criteria for insurers were: (1) nationwide insurers writing above a premium threshold of $100 million in

2021 homeowners insurance premiums; and (2) additional insurers in order to achieve at least an 80 percent market share threshold in each of 10 states that are potentially the most prone to climate-related disasters.

Although FIO did not receive many specific comments on the selection of insurers, FIO is changing the selection criteria to cover only the largest homeowners insurance groups, *i.e.,* those with 1 percent or more of the U.S. homeowners market nationwide, resulting in the selection of the top 14 homeowners insurance groups by direct premiums written in 2022. FIO has revised the selection criteria in order to: (1) reduce the burden on smaller insurers; (2) alleviate concerns that FIO would be conducting entity-specific analyses; and (3) make the data operationally easier for insurers to report and for FIO to collect and analyze.

Revised Reporting Period

FIO is increasing the reporting period from the proposed five years (2017–2021) to six years (2017–2022) because expanding the reporting timeframe by one additional year will allow FIO to capture the impact of recent climate-related disasters, including Hurricanes Ian and Nicole. A number of commenters supported a longer reporting period, although many of these called for adding multiple additional years. The overall burden for the Representative Sample Insurers will not increase, because FIO is removing eight of the fifteen data fields that it proposed in the October 2022 FRN and focusing on only one policy form (HO–3), instead of six policy forms.

No Change to Geographic Scope or Granularity

FIO received many comments on the proposal to collect data at the ZIP Code level, both for and against.[23] FIO plans to move forward with ZIP Code level collection. As many commenters noted, state-level data would be insufficient for FIO's analysis because climate-related risks and socioeconomic factors vary across geography, and state-level trends could differ from trends seen on a more granular level. While FIO understands the potential additional benefits of collecting census tract level data relative to ZIP Code information, FIO's discussions with insurers and other stakeholders leads FIO to conclude that ZIP Code information tends to be collected by insurers as part of the address in a homeowners policy, while other geographic information, such as census tracts, may not be collected by insurers. Consequently, collecting data at a census tract level could increase the burden on insurers to produce information at that granularity. FIO believes that ZIP Code collection most appropriately balances the need for granular data with the responsibility to minimize collection burden.

Revised Instructions

FIO has revised the instructions for the Data Collection Form relating to the data fields. The proposed template instructions provided with the October 2022 FRN directed insurers to report data only for losses and claims for weather-related damages. In discussions with FIO, however, insurers noted that it can be difficult or impossible to exclude non-weather-related damage from other loss estimates, based on how information is stored within insurers' systems. In addition, information from the Insurance Information Institute shows that about 90 percent of homeowners insurance losses have been due to physical damage from wind, hail, water damage, freezing, fire, and lightning.[24] Therefore, FIO has modified the instructions for the Data Collection Form to remove the exclusion of non-weather-related damages in connection with the reporting of claims and losses.

Revised Burden Estimate

FIO received many comments, including in follow-up stakeholder engagements, regarding its burden estimates, including the number of hours estimated (hour burden) and average salary used (hourly rate). Multiple comments stated that the hour burden estimate was too low and that the hourly rate should be higher to reflect the need for subject matter experts in actuarial and finance roles to respond to the collection. Other commenters supported FIO's estimate and emphasized that the importance of the information collected outweighed the burden.

FIO has revised its estimate of the hour burden to reflect that the data will be collected for: (1) only seven data fields, not the 15 data fields originally proposed; (2) only one policy form of homeowners insurance, not six as originally proposed; (3) one additional year, 2022, beyond the original proposed five years (2017–2021); and (4) the change in insurer selection criteria.[25]

FIO updated the estimated hourly rate to reflect the salary and benefit increases between June 2022 and July 2023 reported by the U.S. Bureau of Labor Statistics. FIO has not, however, made any other adjustments to the hourly rate because the FIO data collection is largely an operational task focused on data already collected by insurers.

FIO estimates the annual burden for its data collection is between 14,400 and 48,000 hours at a total cost of $839,520 to $2,798,400 for the Representative Sample Insurers, collectively.[26] For reference, the Representative Sample Insurers reported aggregate revenues of over $372 billion in 2022.[27] FIO's revisions to its data collection have lowered the burden estimate by about 30 per as compared to the estimates in

[23] Commenters that opposed ZIP Code level collection cited, among other things, the burden to insurers, the potential for misleading conclusions based on ZIP Code level claims data, and the possibility of exposing personally identifiable information or proprietary data in ZIP Codes with few policies. Those in favor of granular data collection tended to encourage FIO to collect data at an even finer granularity than ZIP Code, with census tract being the most common unit proposed. Those that preferred census tracts cited various rationales, including that they are comparable, have similar numbers of residents, tend to be internally similar, and align with census-defined geographies better than ZIP Codes.

[24] ''Facts + Statistics: Homeowners and Renters Insurance,'' Insurance Information Institute, *https://www.iii.org/fact-statistic/facts-statistics-homeowners-and-renters-insurance.*

[25] The Representative Sample Insurers encompass 240 homeowners insurance entities, which is more than the 213 entities that would have been covered under the selection criteria outlined in the October 2022 FRN. Any increase in burden from including more entities will be offset for two reasons. First, FIO is requesting that the 14 Representative Sample Insurers aggregate responses across all of their insurance entities, which should reduce the burden on any given entity and allow the groups to submit one consolidated response. Second, FIO is reducing the number of data fields and number of policy forms for which data should be collected, which will enable reduction of burden relative to the proposed estimate, even with the proposed change to add one more year of reporting.

[26] FIO estimates that each individual homeowners insurance entity within a Representative Sample Insurer will take between 60 and 200 hours total to collect the requested data for six years (2017 to 2022). The 14 Representative Sample Insurers have 240 homeowners insurance entities (with the number of entities per group ranging from 1 to 44, so the burden for each Representative Sample Insurer would vary). The overall estimated burden hours are 14,400 (240 entities × 60 hours) to 48,000 (240 entities × 200 hours). The average fully loaded hourly rate for insurance employees in July 2023 was $58.30. Based on data from ''Insurance Carriers and Related Activities: NAICS 524,'' U.S. Bureau of Labor Statistics, *https://www.bls.gov/iag/tgs/iag524.htm,* the average wage rate for all insurance employees was $43.31 in July 2023, and the total benefit compensation in the 2nd Quarter of 2023 was 34.6 percent, which is a benefit multiplier of 1.346. Therefore, a fully-loaded wage rate for insurance employees is $58.30, or $43.31 × 1.346. Thus, the total cost for all Representative Sample Insurers to comply with the data collection would be between approximately $839,520 (14,400 hours × $58.30/hour) and $2,798,400 (48,000 hours × $58.30/hour).

[27] Data on revenues for the 13 groups was derived from S&P Global Market Intelligence (S&P Global) on October 18, 2023. Data for the revenue of the standalone entity came from its annual statement for 2022.

the October 2022 FRN (Figure 2). In addition, the Representative Sample Insurers are the 14 largest homeowners insurance groups and, as a result, they may experience internal synergies and efficiencies when completing the Data Collection Form. Thus, the total number of hours that it may take all Representative Sample Insurers to collect, process, and complete the Data Collection Form may be less than the number of hours that FIO has estimated here.

FIGURE 2—COMPARISON OF BURDEN ESTIMATES

	October 2022 FRN	Current estimates
Hours per homeowners insurance entity	100 to 350	60 to 200
Total hours for all Representative Sample Insurers	21,300 to 74,550	14,400 to 48,000
Hourly rate	$54.27	$58.30
Total cost for all Representative Sample Insurers	$1,155,951 to $4,045,829	$839,520 to $2,798,400

Analysis of Data Collected

FIO currently plans to analyze the data collected using trend or time-series analysis. In the time-series analysis, FIO will assess trends in underwriting, claims, and loss metrics, normalized on a per-policy, premium, or coverage basis to allow for comparison across ZIP Codes, for owner-occupied homeowners multi-peril (HO–3 form) policies over the last six years. In addition to the data collected on the Data Collection Forms, FIO's analysis will rely on several types of data that may include, but are not limited to, publicly available insurance information such as residual market information, information on the relative risks that locations face from climate-related events, and data used to control for other changes in a ZIP Code that could influence insurance markets (*e.g.,* inflation, real estate values, or changes in population). At a later stage, FIO may consider using additional methodologies, including multivariate statistical analysis.

Submission of Data

Reporting under this data collection would be mandatory for all Representative Sample Insurers. If OMB approves this data collection, the Representative Sample Insurers will be expected to submit the completed Data Collection Form through a secure Treasury web portal within 90 days of FIO publishing a **Federal Register** notice announcing the start of the data collection. (FIO has extended the time period which the Representative Sample Insurers will have to submit the information from 60 days to 90 days to ensure that they have sufficient time to gather and provide the requested data.)

FIO intends to provide training and additional resources within the data collection period to facilitate the proper completion of reporting templates.

Given the potential sensitivity of some of the requested data, FIO will seek to maintain the data submitted in a confidential manner. The FIO Act includes provisions addressing the privacy or confidentiality of submissions of non-publicly available data and information to FIO.[28] In accordance with the FIO Act, submissions pursuant to this data collection will not constitute a waiver of, or otherwise affect, any privilege arising under federal or state law to which the data or information is otherwise subject.[29] FIO expects that data it receives under this collection will likely contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' This type of information is subject to withholding under exemption 4 of the Freedom of Information Act.[30]

All data collection is expected to be completed through a secure portal maintained by Treasury, and FIO will not publish confidential firm-specific data from individual submissions. FIO may publish aggregated analyses of the submitted information.

Form: FIO Climate Data Collection: U.S. Homeowners Multi-Peril Form 2023–01.

Affected Public: Businesses and other for-profit institutions and not-for-profit entities.

Estimated Number of Respondents: 14.

Frequency of Response: On occasion, although FIO aims to conduct annual data collections.

Estimated Total Number of Annual Responses: 14.

Estimated Time per Response: Varies from 60 hours to 8,800 hours depending upon the number of homeowners insurance entities within a respondent group. The estimated total annual burden hours are 60 to 200 hours per homeowners insurance entity within a respondent group. The number of homeowners insurance entities within a respondent group varies from 1 to 44, with the average number being 17. Thus, the average estimated time per response ranges from 1,020 hours to 3,420 hours.

Estimated Total Annual Burden Hours: Approximately 14,400 to 48,000 hours total for all respondents together. The estimated total annual number of burden hours for each respondent will be based on the number of homeowners insurance entities within each respondent group. The estimated total annual burden hours are 60 to 200 hours per homeowners insurance entity within a respondent group.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2023–24248 Filed 11–1–23; 8:45 am]

BILLING CODE 4810–AK–P

[28] 31 U.S.C. 313(e)(5).

[29] 31 U.S.C. 313(e)(5)(A).

[30] 5 U.S.C. 552(b)(4).

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: November 7, 2023, 10 a.m. to 1 p.m., mountain time.

PLACE: This meeting shall take place at the Salt Lake City Marriott University Park, 480 Wakara Way, Salt Lake City, UT 84108. This meeting will also be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 999 1833 7574, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJ0kduGrrTwvHdC_v5GnxjaRGZbf1VnECKf2.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Finance Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

The agenda will be reviewed, and the Subcommittee will consider adoption of the agenda.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Subcommittee Minutes From the June 27, 2023, Meeting—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the June 27, 2023, Subcommittee meeting in Providence, RI will be reviewed. The Subcommittee will consider action to approve.

V. Revenues From 2023 and 2024 Fees—UCR Depository Manager/Plan Administrator

The UCR Depository Manager/Plan Administrator will review the revenues received from the 2023 and 2024 plan year fees.

VI. Management Report—UCR Finance Subcommittee Chair and UCR Depository Manager

The UCR Finance Subcommittee Chair and UCR Depository Manager will provide an update on UCR finances including current year 2023 budget versus expenditures and related topics.

VII. Review of 2024 Administrative Budget—UCR Depository Manager/Plan Administrator

For Discussion and Possible Subcommittee Action

The UCR Depository Manager/Plan Administrator will lead a discussion regarding the 2024 UCR administrative budget. The Subcommittee may take action to recommend to the Board adoption of the 2024 budget.

VIII. Finance Subcommittee Meetings in 2024—UCR Finance Subcommittee Chair and UCR Executive Director

The UCR Finance Subcommittee Chair and UCR Executive Director will discuss upcoming Finance Subcommittee meetings in 2024.

IX. Other Business—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

X. Adjourn—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, October 30, 2023 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–24281 Filed 10–31–23; 11:15 am]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the VA is modifying the system of records titled, ''Administrative Data Repository–VA'' (150VA19). This system is used as the source for the information necessary to uniquely identify a person across the Veterans Health Administration (VHA), act as a record locator system for person records across the Administration, master the identity data and synchronize updates and changes to all the systems that know that person.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Administrative Data Repository–VA'' (150VA19). Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, VHA Chief Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; *Stephania.Griffin@va.gov,* telephone number 704–245–2492 (Note: this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA is amending the system of records by revising the System Name; System Number; System Location; System Manager; Purpose; Categories of Individuals Covered by the System; Categories of Records in the System; Record Source Categories; Routine Uses of Records Maintained in the System; Policies and Practices for Storage of Records; Policies and Practices for Retention and Disposal of Records; Record Access Procedure; Contesting Records Procedures; Notification Procedure; and Administrative, Technical and Physical Safeguards. VA is republishing the system notice in its entirety.

The System Name is being updated from ''Administrative Data Repository–VA'' to ''Enterprise Identity and Demographics Records–VA''.

The System Number will be changed from 150VA19 to 150VA10 to reflect the current VHA organizational routing symbol.

The System Location has been updated to replace Austin Automation

Center with Austin Information Technology Center (AITC). The section will include that records are also hosted in a Federal Information Security Management Act (FISMA)—high VA Enterprise Cloud (VAEC). At the Enterprise Level this information is stored and maintained within the VA Master Person Index (VA MPI), which is defined as the authoritative data source for this information. The section was also amended to remove the statement, ''Information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, VA Data Processing Centers, VA CIO Field Offices, Veterans Integrated Service Network.''

The System Manager is being updated to remove ''Chief Information Officer'' and replace ''Director National Data Systems'' with ''Director Data Quality *vha105highealthinfogovdqleadership@va.gov,* Enterprise Help Desk 855–673–4357.''

The Purpose has been amended to remove that the following: ''records are used to establish person identity throughout only the VHA enterprise'' and has been expanded to the VA enterprise. The purpose of the system of records is to provide a repository for the administrative information that is used to accomplish the purposes described within this document including determining Veteran benefits and eligibility. The records include information provided by patients, providers, employees, volunteers, trainees, contractors and others that receive IT access to our computer systems and information obtained during routine work, including VHA patient care. Quality assurance information that is protected by 38 U.S.C. 7311 and 38 CFR 17.500–17.511 is not within the scope of the Privacy Act and, therefore, is not included in this system of records or filed in a manner in which the information may be retrieved by reference to an individual identifier.''

The Purpose section will now reflect the following language: ''The purpose of these records is to serve as the source for the information necessary to uniquely identify a person across Veterans Health Administration, act as a record locator system for person records across the Administration, master the identity data and synchronize updates and changes to all the systems that know that person. The data may be used for VA's extensive research programs in accordance with VA policy. The data is used to identify and provide benefits for all persons of interest to VA and to establish the Integration Control Number (ICN) as VA's unique enterprise identifier. The information will also be used to identify the VA MPI as authoritative for this data and defines the mastering and synchronizing of this data with integrated partners. The VA MPI also provides authoritative data for the identity of Veterans and beneficiaries; current and former patients; Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA) beneficiaries; employees; providers; volunteers; trainees; contractors; and individuals working collaboratively with VA. These identity management services are used across the enterprise and with external sharing partners.''

The Categories of Individuals Covered by this System is being amended to include caregivers; patients; current and former VHA, VBA, and NCA beneficiaries. Also included are individuals examined or treated under contract or resource sharing agreements; individuals who have applied for 38 U.S.C. ch. 1 benefits, but do not meet the requirements under 38 U.S.C. ch. 1 to receive such benefits; individuals who were provided medical care under emergency conditions for humanitarian reasons and pensioned members of allied forces provided healthcare services under 38 U.S.C. ch. 1.

The Categories of Records in the System is being amended to replace ''1. Administrative assignments or categorization of duties of certain VHA personnel'' with ''1. Information used to establish unique enterprise identifiers, VA ICNs and all associated system identifiers and related metadata. This information is used to create a unique identifier for all persons of interest to VA and all other systems that have integrated with the VA MPI.''

The following text within Categories of Records in the System will be removed: ''2. education and continuing education (*e.g.,* name and address of schools and dates of attendance, courses attended and scheduled to attend, grades, type of degree, certificate, etc.); information related to military service and status; qualifications for employment (*e.g.,* license, degree, registration or certification, experience); Veteran enrollment and eligibility information including financial assessments.'' This will now be replaced with ''2. Identity information such as name, date of birth, birth sex, administrative sex, self-identified gender identity, pronoun, preferred name, Social Security Number, taxpayer identification number, date of death). Other demographic information such as home and/or mailing address, home telephone number, emergency contact information such as name, address, telephone number and relationship; and associated audit and necessary metadata.''

Additionally, being removed from this section is: ''3. Electronic messages used for network communication between VHA systems.''

Record Source Categories is being updated to remove: ''Information in this system of records is provided by patients, employees, providers, IT users, and others that work collaboratively with VHA.'' This section will now reflect the following language: ''Information in this system of records is provided by Veterans, VA employees, VA Health Eligibility Center, VHA Program Offices, VA medical facilities, VISNs and the following Systems Of Records: Veterans Health Information Systems and Technology Architecture (VistA) Records–VA (79VA10), Veterans Affairs Profile–VA (VA Profile) (192VA30) and any associated system of records that is utilizing VA MPI identity management services.''

The following routine uses have been added:

12. Federal Agencies, for Research: To a Federal agency to conduct research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and the VHA Office of Informatics has determined prior to the disclosure that VHA data handling requirements are satisfied.

13. Housing and Urban Development (HUD): To HUD for the purpose of reducing homelessness among Veterans by implementing the Federal strategic plan to prevent and end homelessness as well as by evaluating and monitoring the HUD Veterans Affairs Supported Housing program.

14. Federal Agencies, for Computer Matches: To other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA benefits or medical care under title 38.

15. Non-VA Health Care Providers, for Treatment: To a non-VA healthcare provider, such as the Department Health and Human Services, for the purpose of treating any VA patient, including Veterans.

16. Governmental Agencies, Health Organizations, for Claimants' Benefits: To Federal, State and local government agencies and national health organizations as reasonably necessary to

assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and ensure they are receiving all benefits to which they are entitled.

17. Law Enforcement, for Locating Fugitive: To any Federal, State, local, Territorial, Tribal, or foreign law enforcement agency in order to identify, locate, or report a known fugitive felon, in compliance with 38 U.S.C. 5313B(d).

18. Business Partners, for Collaborative Efforts: To individuals or entities with whom VA has a written agreement or arrangement to perform such services as VA may deem practical for the purpose of laws administered by VA or for identifying and correlating patients.

19. Data Breach Response and Remediation, for VA: To appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities or persons reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

Policies and Practices for Storage of Records is being updated to replace ''Records are maintained at the Corporate Franchise Data Center which is a VA operated facility. Information is stored on disk media.'' with ''Records are stored electronically.''

Policies and Practices for Retrieval of Records is being updated to include date of birth and ICN.

Policies and Practices for Retention and Disposal of Records is being modified to include: ''The records are maintained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedule 4, item 2.''

Administrative, Technical and Physical Safeguards are being updated to include: ''4. The system is hosted in Amazon Web Services Government Cloud infrastructure as a service cloud computing environment that has been authorized at the high-impact level under the Federal Risk and Authorization Management Program. The secure site-to-site encrypted network connection is limited to access via the VA trusted internet connection.''

Record Access Procedure is being updated to reflect the following language: ''Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above, or write, call or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.''

Contesting Records Procedures is being updated to reflect the following language: ''Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above, or write or visit the VA facility location where they normally receive their care. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.''

Notification Procedure is being updated to state: ''Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.''

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on September 27, 2023 for publication.

Dated: October 30, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Enterprise Identity and Demographics Records–VA'' (150VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are hosted in a containerized environment at a federally rated Federal Information Security Management Act (FISMA)-high data center in the Department of Veterans Affairs (VA) Austin Information Technology Center (AITC) at 1615 Woodward Street, Austin, Texas 78772. Records are also hosted in a FISMA-high VA Enterprise Cloud (VAEC). At the Enterprise Level this information is stored and maintained within the VA Master Person Index (VA MPI) which is defined as the authoritative data source for this information.

SYSTEM MANAGER(S):

Director Data Quality, *vha105highealthinfogovdqleadership@va.gov* or the Enterprise Help Desk at 855–673–4357, Corporate Franchise Center, 1615 Woodward Street, Austin, Texas 78772.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 501 and 7304.

PURPOSE(S) OF THE SYSTEM:

The purpose of these records is to serve as the source for the information necessary to: uniquely identify a person across the Veterans Health Administration (VHA), act as a record locator system for person records across the Administration, master the identity data and synchronize updates and changes to all the systems that know that person. The data may be used for VA's extensive research programs in accordance with VA policy. The data is used to identify and provide benefits for all persons of interest to VA and to establish the Integration Control Number (ICN) as VA's unique enterprise identifier. The information is also used to identify the VA MPI as authoritative for this data and defines the mastering and synchronizing of this data with integrated partners. The VA MPI also provides authoritative data for the identity of Veterans and beneficiaries; current and former patients; Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) and National Cemetery Administration (NCA) beneficiaries; employees; providers; volunteers; trainees; contractors; and individuals working collaboratively with VA. These identity management services are used across the enterprise and with external sharing partners.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information on caregivers; patients; current and former VHA, VBA, and NCA beneficiaries;

employees; providers; volunteers; trainees; contractors; as well as individuals working collaboratively with VHA. Also included are individuals examined or treated under contract or resource sharing agreements; individuals who have applied for 38 U.S.C. ch. 1 benefits, but who do not meet the requirements under 38 U.S.C. ch. 1 to receive such benefits; individuals who were provided medical care under emergency conditions for humanitarian reasons; and pensioned members of allied forces provided healthcare services under 38 U.S.C ch. 1.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include information related to:

1. Information used to establish and maintain unique enterprise identifiers for VA ICNs and all associated system identifiers and related metadata. This information is used to create a unique identifier of all persons of interest to VA and all other systems that have correlated to the VA MPI.

2. Identity information such as name, date of birth, birth sex, administrative sex, self-identified gender identity, pronoun, preferred name, Social Security Number, taxpayer identification number, date of death. Other demographic information such as home and/or mailing address; home telephone number; emergency contact information such as name, address, telephone number, and relationship; and associated audit and necessary metadata.

3. Healthcare providers' Social Security Number and National Provider Identifier.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by Veterans, VA employees, VA Health Eligibility Center, VHA Program Offices, VA medical facilities, VISNs, VBA, NCA and the following systems of records: Veterans Health Information Systems and Technology Architecture (VistA) Records–VA (79VA10), Veterans Affairs Profile–VA (VA Profile) (192VA30), and any associated system of record notices that is utilizing VA MPI identity management services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. Congress: To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. National Archives and Records Administration (NARA): To NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

3. Disclosure may be made to other Government agencies in support of data exchanges of electronic medical record information approved by the individual.

4. Law Enforcement: To a Federal, State, local, Territorial, Tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal, or regulatory in nature, or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates such a violation or potential violation. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. Department of Justice (DoJ), Litigation, Administrative Proceeding: To DoJ, or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in their official capacity;

(c) Any VA employee in their individual capacity where DoJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

6. Contractors: To contractors, grantees, experts, consultants, students and others performing or working on a contract, service, grant, cooperative agreement or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. Federal Agencies, Fraud and Abuse: To other Federal agencies to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

8. Equal Employment Opportunity Commission (EEOC): To the EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs or other functions of the Commission as authorized by law.

9. Federal Labor Relations Authority (FLRA): To the FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised; matters before the Federal Service Impasses Panel; and the investigation of representation petitions and the conduct or supervision of representation elections.

10. Merit Systems Protection Board (MSPB): To the MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. Data Breach Response and Remediation, for Another Federal Agency: To another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

12. Federal Agencies, for Research: VA may disclose information to a Federal agency for the conduct of research and data analysis to perform a statutory purpose of that Federal agency upon the prior written request of that agency, provided that there is legal authority under all applicable confidentiality statutes and regulations to provide the data and the VHA Office of Informatics has determined prior to the disclosure that VHA data handling requirements are satisfied.

13. Housing and Urban Development (HUD): To HUD for the purpose of reducing homelessness among Veterans by implementing the Federal strategic plan to prevent and end homelessness as well as by evaluating and monitoring the HUD Veterans Affairs Supported Housing program.

14. Federal Agencies, for Computer Matches: To other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA benefits or medical care under title 38.

15. Non-VA Health Care Providers, for Treatment: To a non-VA healthcare

provider, such as the Department Health and Human Services, for the purpose of treating any VA patient, including Veterans.

16. Governmental Agencies, Health Organizations, for Claimants' Benefits: To Federal, State and local government agencies and national health organizations as reasonably necessary to assist in the development of programs that will be beneficial to claimants, to protect their rights under law, and ensure they are receiving all benefits to which they are entitled.

17. Law Enforcement, for Locating Fugitive: To any Federal, State, local, Territorial, Tribal, or foreign law enforcement agency in order to identify, locate, or report a known fugitive felon, in compliance with 38 U.S.C. 5313B(d).

18. Business Partners, for Collaborative Efforts: To individuals or entities with whom VA has a written agreement or arrangement to perform such services as VA may deem practical for the purpose of laws administered by VA or for identifying and correlating patients.

19. Data Breach Response and Remediation, for VA: To appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities or persons reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by identifiers such as full name, Social Security Number, date of birth, ICN and other assigned unique identifiers of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are maintained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedule 4, item 2.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to file information is controlled at two levels: the systems recognize authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from this system and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Access to the AITC is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA healthcare facilities, Information Systems Centers, VA Central Office and Veteran Integrated Service Networks. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

4. The system is hosted in Amazon Web Services Government Cloud infrastructure as a service cloud computing environment that has been authorized at the high-impact level under the Federal Risk and Authorization Management Program. The secure site-to-site encrypted network connection is limited to access via the VA trusted internet connection.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above, or write, call or visit the VA facility location where they are or were employed or made contact. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above, or write, call or visit the VA facility location where they are or were employed or made contact. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None

HISTORY:

73 FR 72117 (November 26, 2008)

[FR Doc. 2023–24193 Filed 11–1–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified matching program.

SUMMARY: This is an 18-month re-establishment computer matching agreement (CMA) with the Defense Manpower Data Center (DMDC), Department of Defense (DoD) and the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), regarding Veterans who are in drilling status and also in receipt of compensation or pension benefits. The purpose of this CMA is to re-establish the agreement between VA, Veterans Benefits Administration (VBA) and the DoD, Defense Manpower Data Center (DMDC). DoD will disclose information about individuals who are in drill pay status. VBA will use this information as a match for recipients of Compensation and Pension benefits for adjustments of awards.

DATES: Comments on this matching program must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment

is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''CMA 89 Drill Pay''. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Allison Conn (VBA), Program Analyst, Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420, *Allison.Conn@va.gov.*

SUPPLEMENTARY INFORMATION: This agreement continues an arrangement for a periodic computer-matching program between the United States Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA) as the matching recipient agency and the Department of Defense (DoD), Defense Manpower Data Center (DMDC) as the matching source agency. This agreement sets forth the responsibilities of VBA and DoD with respect to information disclosed pursuant to this agreement and takes into account both agencies' responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, and the regulations promulgated thereunder, including computer matching portions of a revision of OMB Circular No. A–130, 65 FR 77677 dated December 12, 2000.

Participating Agencies: The United States Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA) as the matching recipient agency and the Department of Defense (DoD), Defense Manpower Data Center (DMDC) as the matching source agency.

Authority for Conducting the Matching Program: The legal authority for conducting the matching program for use in the administration of VA's Compensation and Pension Benefits Programs is contained in 38 U.S.C. 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The law (10 U.S.C. 12316) prohibits the receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.''

Purpose(s): The purpose of this matching program between VBA and DoD is to identify those Veterans and VA beneficiaries who are in receipt of certain VA benefit payments and are in drilling status. VBA has the obligation to reduce or suspend compensation and pension benefit payments to veterans who are in drilling status. VBA will use the DoD records provided in the match to update the master records of veterans and VA beneficiaries receiving benefits and to adjust their VA benefits, accordingly, if needed.

Categories of Individuals: 1. Veterans who have applied for compensation for service-connected disability under 38 U.S.C. Chapter 11. 2. Veterans who have applied for nonservice-connected disability under 38 U.S.C. Chapter 15. 3. Veterans entitled to burial benefits under 38 U.S.C. Chapter 23. 4. Surviving spouses and children who have claimed pensions based on nonservice-connected death of a veteran under 38 U.S.C. Chapter 15. 5. Surviving spouses and children who have claimed death compensation based on service-connected death of a veteran under 38 U.S.C. Chapter 11. 6. Surviving spouses and children who have claimed dependency and indemnity compensation for service connected death of a veteran under 38 U.S.C. Chapter 13. 7. Parents who have applied for death compensation based on service connected death of a veteran under 38 U.S.C. Chapter 11. 8. Parents who have applied for dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. Chapter 13. 9. Individuals who applied for educational assistance benefits administered by VA under title 38 of the U.S. Code. 10. Individuals who applied for educational assistance benefits maintained by the Department of Defense under title 10 of the U.S. Code that are administered by VA. 11. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77. 12. Any VA employee who generates or finalizes adjudicative actions using the Benefits Delivery Network (BDN) or the Veterans Service Network (VETSNET) computer processing systems. 13. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102–484. 14. Representatives of individuals covered by the system.

Categories of Records: The record, or information contained in the record, may include: 1. Name; 2. Social Security Number 3. Date of birth 4. Paid Inactive-duty training days 5. Paid Active-duty days.

System(s) of Records: Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58 VA 21/22/28), published at 86 FR 61858 (November 8, 2021). DMDC 01, entitled ''Defense Manpower Data Center Data Base,'' last published in the **Federal Register** on May 27, 2022, 87 FR 32145 and ''Veterans Affairs/Department of Defense Identity Repository (VADIR)-VA (138VA005Q)'', last amended at 87 FR 79066 (December 23, 2022).

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John Oswalt, Chief Privacy Officer and Chair of the Data Integrity Board, Department of Veterans Affairs approved this document on October 25, 2023 for publication.

Dated: October 27, 2023.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

[FR Doc. 2023–24167 Filed 11–1–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 205

National Organic Program (NOP); Organic Livestock and Poultry Standards; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–21–0073]

RIN 0581–AE06

National Organic Program (NOP); Organic Livestock and Poultry Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) amends the organic livestock and poultry production requirements by adding new provisions for livestock handling and transport, slaughter, and avian (poultry) living conditions; and expanding and clarifying existing requirements covering livestock care and production practices and non-avian living conditions. These changes will ensure organically produced foods meet a transparent and consistent standard to allow the industry to maintain consumer confidence in USDA organic products, to align with consumer expectations regarding outdoor access, and to further facilitate interstate commerce in organic products.

DATES:

Effective Date: This rule is effective January 2, 2024.

Compliance Dates: All organic operations must comply with the requirements of this rule by January 2, 2025, except:

(1) Currently certified organic layer operations and layer operations that are certified before January 2, 2025, must comply with the §§ 205.241(c)(2), (c)(4), and (c)(5), concerning outdoor stocking density requirements and soil and vegetation requirements, by January 2, 2029.

(2) Currently certified organic broiler operations and broiler operations that are certified before January 2, 2025, must comply with §§ 205.241(b)(10), (c)(2), and (c)(6), concerning indoor and outdoor stocking density requirements and soil and vegetation requirements, by January 5, 2029.

(3) Currently certified organic poultry operations and poultry operations that are certified before January 2, 2025 must comply with § 205.241(b)(4), concerning poultry house exit area requirements, by January 2, 2029.

For more information, see the IMPLEMENTATION AND COMPLIANCE DATES FOR THE FINAL RULE section of this document.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, Telephone: (202) 720–3252; Email: *erin.healy@usda.gov*.

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Part 205—National Organic Program

Executive Summary

A. Introduction

The Organic Livestock and Poultry Standards (OLPS) final rule amends the USDA organic regulations (7 CFR part 205) related to the production of livestock, including poultry, marketed as organic. The rule adds detailed regulations related to animal health care, indoor and outdoor space standards, manure management, temporary confinement of livestock, access to the outdoors, transportation conditions, and humane euthanasia and slaughter. USDA expects that the detailed regulations established by this final rule will clarify aspects of the existing USDA organic regulations that are not interpreted or enforced in a consistent manner. In turn, the detailed regulations in this final rule will better assure consumers that organic livestock products meet a consistent standard, as intended by the Organic Foods Production Act (OFPA or ''the Act'').

The OLPS proposed rule received extensive public comment that indicated broad support for its policy changes. Ninety-four percent of the public comments and petition signatures that AMS received support the rule and its goals. Many comments also suggested policy revisions and provided helpful economic data, which AMS took into account when writing this final rule.

B. Summary of Provisions

Livestock that are certified organic under the USDA organic regulations include mammalian species (*e.g.,* cattle, swine, sheep, goats), avian or poultry species (*e.g.,* chickens, turkeys, ducks), and other animal species used for food or in the production of food, fiber, feed, or other agricultural-based consumer products. The changes in this rule address a range of topics related to the care of organic livestock, including:

Livestock health care practices—the rule specifies which physical alteration procedures are prohibited or restricted for use on organic livestock. The livestock health care practice standards include requirements for euthanasia to reduce suffering of irreversibly sick or disabled livestock;

Living conditions—the rule sets livestock living condition standards that reflect the needs and behaviors of different types of animals and consumers' expectations about the living conditions of animals in organic production. The avian (or poultry) livestock living standards include indoor and outdoor space requirements and require that housing provides sufficient exit areas for birds to access the outdoors;

Transport of animals—the rule adds new requirements for the transport of organic livestock to sale or slaughter;

Slaughter—the rule adds a new section to clarify how organic facility slaughter practices and USDA Food Safety and Inspection Service (FSIS) regulations work together to support animal welfare.

C. Costs and Benefits

AMS analyzed the rule's impact on the organic broiler market and the organic egg market. Table 1 summarizes the full range of benefits and costs related to the implementation of this rule. AMS has sought to quantify these benefits and costs to the greatest extent possible in Section F of the RIA.

TABLE 1—QUALITATIVE SUMMARY OF RULE'S BENEFITS AND COSTS

Benefits	Costs
Reduces information asymmetries between producers and consumers, resulting in a more optimal distribution of organic and other value-added products. *Reduces consumer search costs* for consumers aware of these inconsistencies.	*On-going compliance costs:* more indoor space for organic broilers and more outdoor space for organic layers.*
Adds value to organic products: consistent minimum animal welfare standards, increased space for organic broilers*, and increased outdoor access for organic layers.*	*Temporary losses of economic welfare:* total surplus in organic egg market decreases more than total surplus increases in the cage-free egg market as organic egg production unable to comply with the rule shifts to cage-free markets.*
Reduces risk to the integrity of the organic label, increasing the likelihood of sustained demand and continued growth of organic sales.[1]	

* These benefits/costs are quantified in the analysis.

Table 2 below captures the monetized costs, benefits, and net benefit in these markets. AMS estimates annual costs for organic layer operations of $28.1–$32.9 million and costs for organic broiler operations of $4.8–$5.5 million. Additionally, AMS estimates that organic egg production exiting for the cage-free egg market will lead to a temporary economic welfare loss of approximately $8.7–$16.0 million over the first 20 years of the rule. AMS estimates annual benefits for layer operations of $76.6–$89.6 million and benefits for organic broiler operations of $31.5–$35.6 million. In total, AMS anticipates this rule will produce an annualized net benefit ranging from $59.1 million (assuming a 7% discount rate overall) to $78.1 million (assuming a 3% discount rate overall). For more detailed discussion of the economic analysis, including its assumptions and methods, see the Regulatory Impact Analysis for this rule.

TABLE 2—EXECUTIVE SUMMARY: UNIT COSTS AND BENEFITS FOR EGGS AND BROILERS

	Eggs	Broilers
Unit Benefits and Costs		
Avg. Benefit Per Unit (Consumer Willingness to Pay)*	0.205/dozen	0.14/lb.
Cost Change in Average Total Cost of Production Per Unit	0.06/dozen	0.02/lb.
Net Benefit per Unit Gaining Outdoor Access	0.145/dozen	0.16/lb.
Total Annualized Benefits and Costs		
20-Year Annualized Discounted Benefits (3%) ($1,000)*	$89,564	$35,641
20-Year Annualized Discounted Benefits (7%) (1,000)*	76,641	31,467
20-Year Annualized Discounted Costs (3%) (1,000)	32,893	5,491
20-Year Annualized Discounted Costs (7%) (1,000)	28,147	4,848
20-Year Annualized Discounted Economic Welfare Loss (3%) (1,000)	8,709	0
20-Year Annualized Discounted Economic Welfare Loss (7%) (1,000)	16,046	0
Total Annualized Net Benefits		
20-Year Annualized Discounted Net Benefits (3%) (1,000)	47,962	30,149
20-Year Annualized Discounted Net Benefits (7%) (1,000)	32,448	26,619
One-time Domestic Information Collection Cost (1,000)		*4,930*

* Layer benefit reports the mid-point benefits of the two estimates ($0.16/dz. and $0.25/dz.).

I. General Information

Does this action apply to me?

You may be affected by this action if you are engaged in the meat, egg, poultry, dairy, or animal fiber industries. Potentially affected entities may include, but are not limited to:

—Individuals or business entities that are considering organic certification for a new or existing livestock farm or slaughter facility;

—Existing livestock farms and slaughter facilities that are currently certified organic under the USDA organic regulations; and

—Certifying agents accredited by USDA to certify organic livestock operations and organic livestock handling operations.

This listing is not intended to be exhaustive but identifies key entities likely to be affected by this action. Other types of entities could also be affected. To determine whether you or your

[1] AMS finds it likely that controversy or confusion about one product under the organic scheme will cause secondary effects to the overall label and other products, including, but not limited to, risk to consumer confidence, trust, and demand. Because of the unique nature of the organic label, quantifying or monetizing this risk based on existing literature is not possible. See further discussion in Section F. For general information on the relationship between trust reputations and labels see: Jahn, G., Schramm, M., & Spiller, A. (2005). The reliability of certification: Quality labels as a consumer policy tool. Journal of Consumer Policy, 28, 53–73. For more on the relation between trust and organic label sales see: Janssen, M., & Hamm, U. (2014). Governmental and private certification labels for organic food: Consumer attitudes and preferences in Germany. Food Policy, 49, 437–448. For more information on the erosion of trust see: Golan, E., Kuchler, F., Mitchell, L., Greene, C., & Jessup, A. (2001). Economics of food labeling. Journal of Consumer Policy, 24(2), 117–184.

business may be affected by this action, you should carefully examine the regulatory text. If you have questions regarding the applicability of this action to a particular entity, consult the person listed above under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. Purpose and Need for the Rule

The purpose of this rule is to address several inconsistencies in organic livestock production that have arisen due to varying interpretations of the current livestock standards. This rule will add detail to the organic livestock health care and living conditions standards and add new standards specific to avian species. This additional detail will help producers and certifiers interpret and apply the organic livestock regulations more consistently, ensuring fair competition between producers and bolstering consumer confidence in the organic label.

In 2021, U.S. sales of organic livestock and poultry were $2.2 billion, and sales of organic livestock and poultry products were $2.9 billion.[2] Compared to 2011, this represents a 715 percent increase in sales of organic livestock and poultry and a 175 percent increase in sales of organic livestock and poultry products.[3] The organic regulations have included general standards for livestock production since they were first published in 2000, however, the regulations lack specific standards for certain topics such as physical alterations, euthanasia, transport, slaughter, and avian-specific living conditions. This means producers and certifying agents must interpret and apply these general standards to different livestock production systems, each of which has its own unique needs and practices. This has led to different interpretations of the organic regulations—both differences in how some operations produce organic livestock and differences in how some certifying agents enforce the organic livestock standards.

Production practices may differ substantially among different producers and certifiers, and a key purpose of this rule is to resolve widely divergent interpretations of existing organic production standards. For example, the existing regulation at § 205.239(a)(1) requires ''[y]ear-round access for all animals to the outdoors.'' Some operations and certifying agents have interpreted this general requirement for outdoor access to mean that organically managed poultry need only to have access to fresh air and sunlight, and this can be satisfied by screened, elevated patio structures known as ''porches.'' Other certifying agents require operations to provide outdoor spaces with soil and vegetation, but even then, may differ in their interpretations of how much space must be provided outdoors. The final rule also details requirements for other aspects of organic livestock production for the purpose of reducing divergent interpretations of the regulations and divergent practices among organic livestock producers. These aspects include living conditions (both indoors and outdoors), health care practices, transport, and slaughter conditions.

Inconsistencies in livestock practices and enforcement such as these have several detrimental effects on the organic market: producers can have significantly different production costs for the same organic product, and in some cases, consumers are unaware that not all organic products are produced with attributes they desire (*e.g.,* outdoor access), resulting in consumers paying for an attribute they are not receiving.[4] If consumers become aware that they are paying for an attribute that does not exist, like access to soil and vegetation, they are likely to lose confidence in the organic label.

AMS has found that inconsistent application of the organic livestock standards has likely produced a market failure, that has been in some part allowed to exist through government failure (action or inaction). ''Market failure'' occurs when the free market does not allocate resources efficiently—in other words, there is some market distortion such as information asymmetry—despite consumers making rational economic choices; analogously, ''government failure,'' for the purposes of this document, is the government's failure to refine its approach to addressing information asymmetry through regulation or through other government action. For example, if consumers are paying for an attribute that they believe they are receiving, such as an animal's full access to the outdoors, the money they spend on an attribute they do not receive is likely associated with the combination of information asymmetry from market and government failure. After reviewing the economic data, AMS believes that inconsistent application of the organic program standards has led to information asymmetry within the organic egg market and could be present in other organic livestock markets.[5] For more discussion of market failure, see Section II.D, ORGANIC LIVESTOCK REGULATORY HISTORY, and this rule's Regulatory Impact Analysis (RIA).

As a result of these failures, some consumers are losing trust in the organic label. In public comments, consumers conveyed they lost trust when they became aware that the organic label has not necessarily meant animals are raised under the conditions they expected. During the public comment period for the proposed OLPS rule, over 26,000 members of the public submitted letters that specifically referenced their diminished trust in the organic label. For example, AMS received more than 6,000 thousand copies of one letter saying, ''the lack of clear standards undermines consumer confidence in the organic label,'' and more than 700 copies of another saying, ''I expect the USDA Organic seal to include robust standards for animal welfare and outdoor access . . . without [that], I'm left wondering what I'm really getting when I purchase products with the USDA Organic seal.'' Similarly, the extensive and detailed comments submitted by several organic producers and trade groups identified loss of consumer confidence in the organic label as a primary concern. For more information on the relationship between trust and demand for labels, see Section F of the RIA.

Additionally, public comments highlighted the uneven production costs due to the inconsistencies in outdoor access.[6] One comment specifically stated that ''The allowance by some ACAs of ''porches'' to satisfy the outdoor access requirements, created an uneven competitive landscape as well as ''certifier shopping'' which is unrebutted evidence of inconsistency in the federal standards as well as

[2] USDA, National Agricultural Statistics Service, 2021 Certified Organic Survey (released December 15, 2022), *https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Organic_Production/.*

[3] USDA, National Agricultural Statistics Service, 2011 Certified Organic Survey (released October 2012), *https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Organic_Production/.*

[4] Recent survey data shows that 65% of frequent organic purchasers and 54% of all organic purchasers think that all organic animals have outdoor access throughout the day. See ASPCA and the Animal Welfare Institute survey, September 2022. *https://www.aspca.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf.*

[5] For example, based on data from the ASPCA/AWI Organic Consumer Survey, AMS estimates that at least 31.5% of organic eggs are purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture. See Section II Subsection D for more detail.

[6] See *https://www.regulations.gov/comment/AMS-NOP-21-0073-39096* and *https://www.regulations.gov/comment/AMS-NOP-21-0073-39082.*

evidence of inconsistent products in the stream of commerce.'' [7]

Market failure, uneven production costs, and loss of trust in the organic label are three consequences that AMS seeks to address with this rule. The rule will establish avian-specific living conditions for poultry and provide more detail on living conditions and health care standards for all organic livestock. As a result of this rulemaking, AMS predicts that producers and certifying agents will be able to interpret and apply the organic regulations more consistently, assuring consumers that organically produced products meet a consistent and uniform standard, and safeguarding confidence in the organic label.

B. Statutory Authority To Issue Final Rule

Introduction

USDA is issuing these regulations under its authority as delegated by OFPA and described below. In particular, USDA has statutory authority to promulgate the regulations in the final rule pursuant to USDA's authority: (1) to better assure consumers that organic livestock products meet a consistent standard (7 U.S.C. 6501); (2) to establish a national organic certification program (7 U.S.C. 6503(a)); (3) to promulgate ''other terms and conditions as may be determined by the Secretary to be necessary'' to the organic program (7 U.S.C. 6506(a)(11)); and (4) to develop and implement standards for livestock production under the organic program (7 U.S.C. 6509). A discussion of public comments received on the topic of USDA's authority, and AMS's responses, can be found below in Section III., OVERVIEW OF PUBLIC COMMENTS.

Reasons for Changing Interpretation From the OLPP Withdrawal Rule

USDA acknowledges that its position on USDA's statutory authority to issue this rule differs from the rationale that USDA relied on for the withdrawal of the Organic Livestock and Poultry Practices (OLPP) final rule (Withdrawal Rule) in March 2018 (83 FR 10775). The sequence of events related to this rule is outlined below in the section titled ''OLPP Rule and Legal Challenges.'' USDA discusses the reasons for its change in position following a brief discussion of USDA's previous rationale for the withdrawal of the OLPP final rule.

In the Withdrawal Rule, USDA stated it withdrew the OLPP rule based on its then-interpretation of 7 U.S.C. 6509, which it believed did not ''authorize the animal welfare provisions of the OLPP final rule'' (83 FR 10776). At the time, USDA held that its authority under sec. 6509 to issue regulations for the ''care'' of livestock was limited to physical health care issues for livestock like those described in sec. 6509(d)(1), *i.e.,* relating to the ''ingestion of chemical, artificial, or non-organic substances'' (83 FR 10776). Based on this interpretation, USDA stated that the OLPP final rule had included ''stand-alone animal welfare regulations'' that Congress had not specifically authorized under sec. 6509. Additionally, the Withdrawal Rule reasoned that if the statutory text could be construed as ''silent or ambiguous,'' its interpretation was entitled to deference and based on a permissible statutory construction'' (83 FR 10776).

USDA now disagrees with the rationale and narrow textual reading in the Withdrawal Rule, and USDA finds it has ample authority to issue this final rule based on the text and structure of sec, 6509 and the statute's plain meaning (at sec. 6509 and elsewhere, including 7 U.S.C. 6501, 7 U.S.C. 6503(a), 7 U.S.C. 6506(a)(11)). Additionally, USDA's longstanding interpretation of OFPA both prior to and since the Withdrawal Rule, as reflected in numerous regulations promulgated by AMS, confirms USDA's statutory authority to issue this rule (see ''D. Organic Livestock Regulatory History'').

With this rule, USDA is using its authority to address regulatory issues that (1) prevent fair competition among producers (as the regulations are not interpreted consistently or applied equally to producers), and (2) lead to such widely varying practices among some producers that consumers cannot be assured an organic product meets a consistent standard—a key purpose of OFPA. The promulgation of this final rule is preferred to the alternative of relying on current regulations that are inconsistently interpreted and enforced (see Purpose and Need for the Rule). Data indicates that nothing since the withdrawal of the OLPP final rule has changed to reduce the inconsistency in practices, which continues to cause harm to consumers (see additional discussion of Market/Government Failure in the RIA for this final rule). Taking no action when known inconsistencies exist would run counter to a fundamental purpose of OFPA to assure consumers that organically produced products meet a consistent standard (7 U.S.C. 6501). This final rule addresses these inconsistencies and, in turn, satisfies OFPA's purposes. For these reasons above and others discussed throughout this final rule, USDA finds that it has good reasons to revise its previous position from the Withdrawal Rule and issue this final rule.

Long-Standing Interpretation of OFPA and Promulgation of Livestock Regulations

Since the implementation of the December 2000 final rule (65 FR 80548) that established the AMS National Organic Program (NOP) and the USDA organic requirements, organic livestock producers have been required to meet requirements related to origin of livestock (§ 205.236), livestock feed (§ 205.237), livestock health care practice standards (§ 205.238), and livestock living conditions (§ 205.239). These regulations address measures to avoid disease and illness; provisions about feed and pasture; principles governing housing, pasture conditions, sanitation practices; and requirements for access to the outdoors and a natural environment. As described in the December 2000 final rule, a producer must, ''establish and maintain livestock living conditions for the animals under his or her care which accommodate the health and natural behavior of the livestock. The producer must provide access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment.'' These regulations that have been effective since April 2001 (66 FR 15619) reflect our longstanding interpretation of care of livestock, and necessarily implicate animal welfare considerations.

USDA, through its National Organic Program (NOP), oversees the entirety of the national organic certification program, from production standards to accreditation of USDA-accredited certifying agents, to noncompliance and appeal procedures, to international organic agreements, and more. The NOP does this through its comprehensive regulations at 7 CFR part 205. While the bulk of these specific regulations were published by USDA in December 2000, the NOP has elaborated on the regulations regularly since December 2000 under its authority delegated by OFPA.

AMS has updated the organic livestock regulations, specifically, multiple times since 2000. Notably, the 2010 Access to Pasture final rule (75 FR 7153) expanded the organic regulations to, ''satisfy consumer expectations that ruminant livestock animals are grazing pastures and that pastures are managed to support grazing throughout the

[7] *https://www.regulations.gov/comment/AMS-NOP-21-0073-39082.*

grazing season.'' [8] The rule specifically addressed areas related to production of organic ruminants (*e.g.,* cattle, sheep, goats), including pasture management, recordkeeping, access to the outdoors, temporary confinement from the outdoors and pasture, and the amount of pasture required in proportion to the total diet or ration. More recently, a 2022 Origin of Livestock final rule (87 FR 19740) clarified the manner in which organic dairy operations can transition livestock to organic production to increase uniformity in production practices for organic dairy animals and reduce variance between certifying agents. The regulatory history demonstrates a long precedent of AMS promulgating detailed regulations on organic livestock production. Similarly, this rule clarifies requirements for livestock production and supports the purposes of OFPA (7 U.S.C. 6501).

Congress has also amended OFPA multiple times, but amendments to OFPA have never sought to restrict the types of organic livestock production practices that USDA may regulate under its delegated authority. In fact, Congress has occasionally urged USDA to finalize certain livestock regulations rather than clarify requirements through amendments to OFPA. For example, in the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94, div. B, title VII, sec. 756, Dec. 20, 2019, 133 Stat. 2654)), Congress directed USDA to issue a final rule based on the ''Origin of Livestock'' proposed rule that AMS published in April 2015.

OFPA Provisions and OFPA History

The plain language and the legislative history of OFPA and USDA's longstanding interpretation of the statute support USDA's authority to issue these regulations. OFPA includes few details about organic livestock production, organic crop production, and handling of organic products. In all cases, the USDA organic regulations (7 CFR part 205) have, since their inception, include more detailed requirements than included in OFPA, as Congress authorized and intended. For livestock, Congress was particularly clear in stating that the livestock requirements in OFPA were not fully developed, and delegated rulemaking authority to USDA to develop more detailed livestock production requirements and standards (7 U.S.C. 6509(g)).

As stated in the Conference Report of October 22, 1990 (p. 1177):

> The Conference substitute adopts the House provision with an amendment which requires the Secretary to hold hearings and develop regulations regarding livestock standards in addition to those specified in this title . . . the Managers recognize the need to further elaborate on the standards set forth in the title and expect that by holding public discussions with interested parties and with the National Organic Standards Board, the Secretary will determine the necessary standards . . .

Moreover, as stated in the Senate Report, Congress made clear that USDA would develop ''more detailed'' livestock production standards, as well as implement them:

> More detailed standards are enumerated for crop production than for livestock production. This reflects the extent of knowledge and consensus on appropriate organic crop production methods and materials. With additional research and as more producers enter into organic livestock production, the Committee expects that USDA, with the assistance of the National Organic Standards Board will elaborate on livestock criteria. The Committee recommends as well that, over time, USDA and the Organic Standards Board develop standards for aquaculture products.

S. Rep. No. 101–357, at 292 (1990).

In addition, OFPA grants USDA authority to establish standards for the national organic program. Sec. 6503(a) states: ''The Secretary shall establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this chapter,'' and 7 U.S.C. 6506(a)(11) which provides: ''A program established under this chapter shall require such other terms and conditions as may be determined by the Secretary to be necessary.''

OFPA also specifically authorizes USDA to develop detailed requirements for animal production practices (7 U.S.C. 6509). 7 U.S.C. 6509(a) specifies that ''Any livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with this chapter.'' ''Organically produced,'' as defined by OFPA, is broad. It is defined as ''an agricultural product that is produced and handled in accordance with this chapter.'' [9] Sec. 6509(d)(1) addresses a handful of specific prohibited health care practices related to use of medications and feed on organic farms. Notably, OFPA specifies at subsection 6509(d)(2): ''The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) [titled ''Prohibited practices''] for the care of livestock to ensure that such livestock is organically produced.'' Finally, 7 U.S.C. 6509(g) also provides that ''the Secretary shall hold public hearings and shall *develop detailed regulations,* with notice and public comment, to guide the implementation of the standards for livestock products provided under this section'' (italics added). USDA has long interpreted these provisions to grant the authority to address animal welfare as part of the organic standards, regularly developing and promulgating detailed regulations that implicate animal welfare through the statutorily outlined process of consulting NOSB and offering notice and public comment on additional standards developed.

In withdrawing the OLPP Rule, USDA at that time asserted that standards for animal care practices are limited to physical health care practices similar to those specified in 7 U.S.C. 6509(d)(1) and could not encompass concerns about animal welfare. However, sec. 6509(d)(2) provides that the NOSB shall consider and propose additional standards, and the language of that section broadly allows the NOSB to recommend standards for the ''care of livestock'', and nowhere explicitly limited to provisions that prohibit the ingestion or administration of chemical, synthetic, or non-naturally occurring substances for livestock. Indeed, the two subsections of sec. 6509(d) address certain prohibited health care practices and other types of care separately, suggesting Congress's intent that the NOSB consider and propose standards for each type of care. Sec. 6509(d)(1) lists ''prohibited practices'' in health care of livestock, including prohibiting administering routine antibiotics, synthetic internal parasiticides, or any medication beyond vaccines, in the absence of illness. Sec. 6509(d)(2) instead provides that NOSB shall recommend ''standards in addition to'' those prohibited practices ''for the care of livestock to ensure that such livestock is organically produced.'' (7 U.S.C. 6509(d)(2)). That Congress went to the effort of distinguishing certain prohibited medical practices from the general ''care'' for which NOSB can recommend standards reflects an intent that USDA's authority to regulate livestock production practices extends beyond the medication and feed examples in sect. 6509(d)(1).

In addition, OFPA did not define ''raised,'' ''health care,'' or ''care,'' and instead authorized USDA to promulgate regulations and implement standards for the organic program, generally, and for organic livestock products more specifically. Moreover, the plain meaning of the terms ''care,'' (7 U.S.C.

[8] *https://www.federalregister.gov/d/2010-3023/p-453.*

[9] 7 U.S.C. 6502(15).

6509(d)(2)) ''raised,'' (7 U.S.C. 6509(a) and (e)) and ''health care,'' (7 U.S.C. 6509(d)) includes considerations of animal welfare. Merriam-Webster defines ''care'' as ''charge, supervision . . . *especially:* responsibility for or attention to health, well-being, and safety.'' [10] Similarly, the American Heritage Dictionary defines ''care'' as ''watchful oversight; charge or supervision,'' [11] and the Cambridge Dictionary defines ''care'' as ''the process of protecting or providing for the needs of someone or something.'' [12] Merriam-Webster defines ''raise'' as ''to breed and bring (an animal) to maturity,'' [13] and the American Heritage Dictionary defines ''raise'' as ''to breed and care for to maturity: *raise cattle.*'' [14] In addition, ''health care'' is defined as ''efforts made to maintain or restore physical, mental, or emotional well-being especially by trained and licensed professionals.'' [15]

In contrast to the narrow interpretation of the OFPA term ''health care'' used in the Withdrawal Rule, the OLPS final rule returns to USDA's longstanding interpretation of ''health care'' which goes beyond specific healthcare practices for organic livestock and can reasonably encompass production practices related to the welfare and well-being of livestock. This interpretation aligns with longstanding organic regulations related to health care at 7 CFR 205.238 titled ''Livestock health care practice standard'' and included in the 2000 final rule. Section 205.238(a) includes provisions that support livestock health, including provisions related to housing, feed, sanitation, species selection, exercise and movement, and conditions which allow for reduction of stress.

The aforementioned terms (''care,'' ''raised,'' and ''health care'') connote a broader conception of livestock health care and livestock care that includes livestock living conditions and considerations of welfare, and these terms allow USDA to prescribe modes of caring for livestock that extend beyond prohibiting specific health care practices such as the ''ingestion of chemical, artificial, or non-organic substances.'' (83 FR 10776). The language in sec. 6509, including allowing the NOSB to recommend regulations ''in addition to'' those in subsection 6509(d)(1) ''for the care of livestock'' indicates that the scope of USDA's authority extends beyond regulations prohibiting the ingestion of chemical, artificial, or non-organic substances. Sec. 6509(e)(1) and (2) describe ''additional guidelines'' for ''rais[ing] and handl[ing]'' poultry and dairy livestock, respectively. The use of the phrase ''[r]aised and handled in accordance with this chapter'' (6509(e)(1), (2)(A)) suggests a more comprehensive understanding of care that goes beyond narrow conceptions of medical care of organic livestock and can reasonably encompass production practices related to livestock living conditions and welfare. Thus, USDA believes that sec. 6509 supports the promulgation of these regulations concerning the humane raising of livestock. However, even if the text of sec. 6509 were silent or ambiguous about this issue, USDA believes that its interpretation is a permissible reading, an interpretation that is entitled to deference.

Animal Welfare

This rule's focus on animal welfare, especially outdoor access requirements, supports the organic regulations' existing principles of resource cycling and ecological balance (see ''organic production'' defined at 7 CFR 205.2 and § 205.239(e)). Nevertheless, USDA recognizes that NOSB recommendations and public comments that have shaped this final rule may have intended to enhance the welfare or well-being of animals marketed as organic. Many in the contemporary organic industry do not view animal welfare as distinct from the concerns expressly reflected in the statutory text of OFPA. A growing body of research is showing that livestock and poultry with access to pasture and the outdoors to forage and engage in natural behaviors may be positively associated with the following outcomes: improved well-being of the animals, environmental benefits, and healthier livestock and poultry products [16] for human consumption.[17]

Public perception and the expectations of organic consumers parallel this research. For example, a 2021 study found that consumers expect less need for antibiotics and other medications that sec. 6509(d) expressly limits when animals are raised with practices that improve the health and welfare of livestock.[18] Since OFPA was enacted, expectations for the conditions under which animals are raised (*i.e.,* animal welfare) have become an integral part of organic production, as evidenced by the hundreds of thousands of public comments that USDA has received on this topic over three decades, as well as an emerging body of research on the motivations that drive consumers to buy organic livestock products. Several studies point to animal welfare concerns as significant or even primary drivers for organic consumers.[19] Likewise, consumers perceive organic livestock to be raised according to higher animal welfare standards than non-organic livestock.[20] Literature also suggests government-sponsored ecolabels provide the highest levels of consumer confidence.[21]

The March 2018 Withdrawal Rule reasoned that OFPA did not authorize ''stand-alone animal welfare regulations.'' USDA's current position is that the OLPS final rule is not a stand-alone animal welfare regulation. Some provisions of the rule may improve animal welfare, but USDA's primary objective is to clarify requirements for products sold as ''organic.'' This role and its corresponding authority are clearly intended by OFPA, where Congress delegated authority to USDA ''to establish an organic certification program for producers and handlers of agricultural products'' (7 U.S.C. 6503(a)) and develop standards for the care of

[10] Merriam-Webster Dictionary, available at *https://www.merriam-webster.com/dictionary/care.*

[11] American Heritage Dictionary, available at *https://www.ahdictionary.com/word/search.html?q=care.*

[12] Cambridge Dictionary, available at *https://dictionary.cambridge.org/dictionary/essential-american-english/care.*

[13] Merriam Webster, available at *https://www.merriam-webster.com/dictionary/raise.*

[14] American Heritage Dictionary, available at *https://www.ahdictionary.com/word/search.html?q=raise.*

[15] Merriam Webster, available at *https://www.merriam-webster.com/dictionary/health%20care.*

[16] Is Grassfed Meat and Dairy Better for Human and Environmental Health? Frederick D. Provenza, Scott L. Kronberg, and Pablo Gregorini, Front Nutr. 2019; 6: 26. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6434678/.*

[17] Palupi, Eny; Jayanegara, Anuraga; Ploegera, Angelika and Kahla, Johannes (2012) ''Comparison of nutritional quality between conventional and organic dairy products: a meta-analysis,'' *Journal of the Science of Food and Agriculture,* Vol. 92, pp. 2774–2781. *https://pubmed.ncbi.nlm.nih.gov/22430502/.*

[18] Wemette, M., Safi, A.G., Wolverton, A.K., Beauvais, W., Shapiro, M., Moroni, P., . . . & Ivanek, R. (2021). Public perceptions of antibiotic use on dairy farms in the United States. Journal of Dairy Science, 104(3), 2807–2821 *https://pubmed.ncbi.nlm.nih.gov/33455793/.*

[19] Alonso, Marta E.; González-Montaña, José R.; and Lomillos, Juan M. (2020) ''Consumers' Concerns and Perceptions of Farm Animal Welfare,'' *Animals,* Vol. 10, pp. 385–397. McEachern, M.G.; Willock, J. (2004) ''Producers and consumers of organic meat: A focus on attitudes and motivations.'' *British Food Journal,* Vol. 106, pp.534–552.

[20] Harper, Gemma C; Makatouni, Aikaterini (2002) ''Consumer perception of organic food production and farm animal welfare.'' *British Food Journal;* Vol. 104, Iss. 3–5, pp. 287–299.

[21] Kim Mannemar S. Ānderskov, and Carsten Daugbjerg. ''The State and Consumer Confidence In Eco-labeling: Organic Labeling In Denmark, Sweden, The United Kingdom and The United States.'' Agriculture and human values, v. 28,.4 pp. 507–517. doi: 10.1007/s10460–010–9295–5.

livestock (7 U.S.C. 6509) to meet the purposes of the OFPA, including ''to assure consumers that organically produced products meet a consistent standard'' (7 U.S.C. 6501(2)). Since the enactment of OFPA, the USDA has worked to establish, develop, and administer standards on numerous aspects of organic production, including standards for the care of livestock that extend beyond the Withdrawal Rule's narrow interpretation of ''health care.'' USDA maintains that, notwithstanding the novel interpretation of the Withdrawal Rule, the authority of its national organic certification program to establish, develop, and administer livestock standards—including those that implicate the welfare of animals used in organic production—is confirmed by USDA's present and longstanding interpretation of OFPA.

NOSB Consultation (OFPA) and Development of OLPS

Congress directed USDA to consult with the NOSB to establish a national organic certification program (7 U.S.C. 6503(c), 6509(d)) and develop detailed livestock regulations with notice and public comment (7 U.S.C. 6509(g)). USDA has done just that in developing this and previous livestock regulations (see, for example, ''History of AMS Livestock Policy'' in Section D; to see recommendations related to the OLPS rule, see ''C. NOSB Recommendations on Livestock Production''). The vast majority of NOSB recommendations and public comments agree with and support the USDA's decision to establish the regulations included in the OLPS final rule.

Conclusion

AMS is issuing this rule after determining, in consultation with the National Organic Standards Board (NOSB) and following notice and public comment, that regulations are necessary to clarify the existing livestock production standards. This follows the process intended for livestock standards development authorized by OFPA at 7 U.S.C. 6503 and 6509. USDA determined that existing organic livestock production regulations have not been interpreted or enforced in a consistent manner among certifiers to assure consumers that organic livestock and products from livestock (*e.g.,* eggs) meet a consistent standard. Under the authority granted by OFPA, AMS is issuing this rule with clearer standards to address inconsistencies in livestock production regulations.

Comment summaries and AMS responses on the topic of USDA's statutory authority to promulgate these regulations can be found below in Section III, OVERVIEW OF PUBLIC COMMENTS.

C. NOSB Recommendations on Livestock Production

The NOSB is a federal advisory committee established by OFPA (7 U.S.C. 6518) to provide recommendations to USDA on the development of organic standards and regulations. NOSB recommendations are developed through a rigorous process involving technical information, stakeholder input through public comment, open meetings, and a decisive two-thirds majority vote of the Board. Although the Board cannot direct or bind USDA through its recommendations, USDA utilizes the NOSB recommendations to inform rulemaking, including this rulemaking.

Between 1994 and 2011, the NOSB made nine recommendations regarding livestock health care, living conditions, and welfare in organic production. Between 1997 and 2000, AMS issued two proposed rules and a final rule regarding national standards for the production and handling of organic products, including livestock and their products. Members of the public commented on these rules regarding the health care and welfare of livestock. Summarized below are the key actions from that period that led to the development of the existing standards for organic livestock and that have informed this OLPS final rule.

(1) In June 1994, the NOSB recommended a series of provisions to address the care and handling of livestock on organic farms. Within this recommendation, the NOSB developed much of the framework for organic health care and welfare of livestock, including health care standards, living conditions, and transportation of livestock practices.

(2) In April and October 1995, the NOSB made a series of recommendations as addenda to the June 1994 recommendations. These recommendations further addressed various health care practices, a requirement for outdoor access, and the use of vaccines.

(3) On December 16, 1997, AMS incorporated the 1994 and 1995 NOSB recommendations in a proposed rule to establish the NOP (62 FR 65850). Consistent with the NOSB's recommendation, the proposed language would have required that organic livestock producers develop a preventive health care plan and use synthetic drugs only if preventive measures failed. The 1997 proposed rule also included standards for livestock living conditions, including when livestock could be confined. That proposed rule was not finalized.

(4) In March 1998, the NOSB reaffirmed its earlier recommendations on livestock health care and living conditions. The 1998 NOSB recommendation also stressed the importance of treating sick livestock by recommending that any organic producer who did not take specified actions to provide care for a diseased animal would lose certification. This recommendation also included provisions to clarify when livestock could be confined indoors and defined ''outdoors'' as having direct access to sunshine.

(5) On March 13, 2000, AMS published a second proposed rule to establish the National Organic Program (65 FR 13512) that incorporated public feedback on the December 1997 proposed rule. AMS also incorporated the NOSB's March 1998 recommendations related to livestock health care and living conditions. AMS proposed that organic producers must use disease prevention practices first, then approved synthetic medications only if preventive measures failed. However, a producer would need to use all appropriate measures to save the animal even if the animal lost organic status. In addition, AMS proposed that the living conditions for organic livestock must maintain the health of the animals and allow for natural behaviors, including access to the outdoors.

(6) On December 21, 2000, AMS published a final rule establishing the USDA organic regulations (65 FR 80548) (''NOP Rule''). Through this action, AMS finalized the standards for health care practices and livestock living conditions. This rule addressed a range of matters related to organic livestock production, including organic feed; use of hormones and supplements; measures to avoid disease and illness; veterinary biologics, medications, synthetic parasiticides, and other drugs; and general principles governing housing, pasture conditions, sanitation practices, and physical alterations. The NOP Rule also generally required producers to provide organic livestock with ''access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment,'' but allowed producers to satisfy those criteria in different ways. That rule became effective on April 21, 2001 (correction of effective date; 66 FR 15619) and was fully implemented on October 21, 2002.

(7) In May 2002, the NOSB again addressed outdoor access, stating this should include open air and direct access to sunshine.[22] In addition, the May 2002 recommendation stated that bare surfaces other than soil do not meet the NOP Rule's intent for outdoor access for poultry. This recommendation also included clarifications as to when livestock could be temporarily confined.

(8) In March 2005, the NOSB recommended that the temporary confinement provision for ''stage of production'' be changed to ''stage of life.'' [23] The NOSB reasoned that confinement for a ''stage of life'' would limit producers from confining animals for long periods, such as confinement during the entire period that a dairy animal is lactating. ''Stage of life'' was reasoned to be more specific than ''stage of production.''

(9) On October 24, 2008, AMS published a proposed rule on access to pasture for ruminant livestock (73 FR 63584), based on several NOSB recommendations regarding ruminant livestock feed and living conditions and public comments. AMS published the final rule, Access to Pasture (Livestock), on February 17, 2010 (75 FR 7154). This rule amended numerous areas of the organic livestock regulations, including 7 CFR 205.237, 205.239, 205.240, as described below in Section D, ''Organic Livestock Regulatory History.''

(10) Between 2009 and 2011, the NOSB issued a series of recommendations on livestock welfare. These were intended to incorporate prior NOSB recommendations that AMS had not addressed. The November 2009 recommendation suggested revisions and additions to the livestock health care practice standards and living conditions standards.[24] The NOSB recommended banning or restricting certain physical alterations and requiring organic producers to keep records on livestock that were lame and/or sick and how they were treated. This recommendation proposed to separate mammalian living conditions from avian living conditions sections of the USDA organic regulations so that the provisions could be more directly tailored to various livestock species. In the mammalian section, the NOSB proposed mandatory group housing of swine and a requirement for rooting materials for swine. In the avian section, the NOSB proposed a variety of provisions, including maximum ammonia levels, perch space requirements, and outdoor access clarifications.

(11) In October 2010, the NOSB passed a recommendation on the use of drugs for pain relief.[25] The NOSB recommended changing the health care practice standards to allow the administration of drugs in the absence of illness to prevent disease or alleviate pain. In April 2010, the NOSB passed a recommendation to clarify that milk from animals treated with allowed synthetic medical treatments and annotated with a milk withholding time may be fed to young organic livestock still receiving milk in their diet.[26] The NOSB stated that such changes would improve the welfare of organic livestock.

(12) In December 2011, the NOSB passed an additional livestock welfare recommendation.[27] The 2011 recommendation added definitions for terms related to livestock production and provisions for health care standards and living conditions. The NOSB also revised its prior recommendation on physical alterations to provide a broader list of prohibited procedures. In the mammalian living conditions section, the NOSB recommended that outdoor access for swine include a minimum of 25 percent vegetative cover at all times. For avian species, the NOSB recommended specific indoor and outdoor space requirements, *e.g.,* stocking densities, among other provisions for living conditions specific to poultry. For layers, the NOSB recommended a minimum of 2.0 ft^2 per bird indoors and outdoors.

(13) In December 2011, the NOSB passed a separate recommendation to add standards for the slaughter process, including transportation of livestock to slaughter facilities.[28] The NOSB's recommendation for transport included provisions for veal calves and the trailers/trucks used to transport animals to ensure continuous organic management. The NOSB recommended that slaughter facilities meet certain performance-based standards assessed via observations of animal handling and any slips, falls or vocalizations before and during slaughter.

The series of recommendations described above demonstrate the collective effort of NOSB to develop specific standards for certain livestock production topics such as physical alterations, euthanasia, transport, slaughter, and avian-specific living conditions. AMS has utilized these recommendations to inform standards set forth in the OLPS rule. In doing so, NOSB and AMS have followed the process required by OFPA to consult with the NOSB (7 U.S.C. 6503(c)) to develop detailed regulations for livestock production (7 U.S.C. 6509(d) and (g)).

D. Organic Livestock Regulatory History

History of AMS Livestock Policy

This final rule clarifies and expands on the original December 2000 organic requirements (the ''NOP Rule'') to support consistent interpretation and enforcement of organic livestock standards. USDA has revised the regulations related to organic livestock production since December 2000. On October 29, 2002, AMS issued a memorandum to clarify outdoor access and temporary confinement requirements for livestock under the USDA organic regulations.[29] The memorandum stated that producers are required to balance accommodations for an animal's health and natural behavior with measures to ensure an animal's safety and well-being. It further explained that the USDA organic regulations do not specify an outdoor space allowance or stocking rate, nor do they require that all animals in the herd or flock have access to the outdoors at the same time. This memorandum explained how producers could provide evidence of compliance to support temporary confinement.[30] However, NOP determined that additional specificity was required to improve compliance and enforcement and satisfy consumer expectations.

On July 15, 2002, an operation applied for organic certification of its

[22] NOSB, 2002. Recommendation Access to Outdoors for Poultry. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[23] NOSB, 2005. Formal Recommendation by the NOSB to NOP. NOSB recommendation for Rule change—''Stage of Production'' to ''Stage of Life.'' Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[24] NOSB, 2009. Formal Recommendation by the NOSB to the NOP, Animal Welfare. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[25] NOSB, 2010. Formal Recommendation by the NOSB to the NOP, Clarification of 205.238(c)(2). Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[26] NOSB, 2010. Formal Recommendation by the NOSB to the NOP, Clarification of 205.238(c)(1). Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[27] NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Welfare and Stocking Rates. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[28] NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Handling and Transport to Slaughter. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[29] National Organic Program, 2002. Access to the Outdoors for Livestock. Retained as Policy Memo 11–5. Available in the NOP Handbook: *https://www.ams.usda.gov/sites/default/files/media/Program%20Handbk_TOC.pdf.*

[30] This memorandum was incorporated into the NOP Handbook (as ''PM 11–5'') on January 31, 2011.

egg laying operation with a USDA-accredited certifying agent. As part of the application, the operation's organic system plan (OSP) stated that outdoor access would be provided through covered and screened ''porches'' (enclosed, covered, and screened areas attached to a poultry house, either elevated or at ground level). The certifying agent denied certification for failing to provide hens with access to the outdoors. The certifying agent stated that a porch did not provide outdoor access as required by the USDA organic regulations. The operation appealed the Denial of Certification to the AMS Administrator on October 22, 2002. The Administrator sustained the appeal on October 25, 2002, and directed the certifying agent to grant organic certification to the operation retroactively to October 21, 2002.

The certifying agent objected to the Administrator's decision and appealed to the USDA Office of the Administrative Law Judge (ALJ). On November 4, 2003, the USDA ALJ dismissed the appeal. On December 11, 2003, the certifying agent appealed to the USDA Judicial Officer. On April 21, 2004, the USDA Judicial Officer dismissed the appeal. On September 27, 2005, the certifying agent filed an appeal with the U.S. District Court, District of Massachusetts. On March 30, 2007, the U.S. District Court granted USDA's motion to dismiss the case (*Massachusetts Independent Certification, Inc.* v. *Johanns,* 486 F. Supp. 2d 105). As a result of these adjudications, use of porches to meet the requirement in the USDA organic regulations for outdoor access expanded, and certain producers have settled on production practices that rely on porches, leading to inconsistencies with producers that offer animals access to outdoor spaces with soil, vegetation, direct sunlight, and considerable space per animal.

While the use of porches was expanding in the organic poultry industry, AMS was more precisely defining outdoor access for other species. On February 17, 2010, AMS published a final rule adopting new provisions relating to organic livestock production. The Access to Pasture Rule was informed by NOSB's 2005 recommendation and extensive public input requesting clear outdoor access requirements for ruminant livestock. It required that ruminants graze at least 120 days per year, described situations that warrant denying ruminants access to the outdoors (*e.g.,* birthing cows or newborn calves), required that ruminants receive not less than 30 percent of dry matter intake from grazing, and addressed several other matters related to the management of pasture and feeding yards, pads, and lots. The Access to Pasture Rule also clarified that the requirements for outdoor access and species-appropriate access to shade, shelter, exercise, fresh air, and direct sunlight required by the NOP Rule must be provided for all organic livestock, including poultry, on a year-round basis.

In March 2010, the USDA Office of the Inspector General (OIG) issued a report concerning, in part, AMS guidance on outdoor access for organic livestock.[31] The OIG found inconsistent certification practices regarding outdoor access for poultry. For example, one operation they visited provided a total of 300 square feet of outdoor access for approximately 15,000 chickens, while two other operations provided large pasture areas. Of the four certifying agents OIG visited, only one had developed stocking density requirements for livestock. The OIG recommended that AMS issue further guidance on outdoor access for livestock, especially poultry.

In response, AMS published draft guidance, Outdoor Access for Organic Poultry, on October 13, 2010 and sought public comment.[32] The draft guidance advised certifying agents to use the 2002 and 2009 NOSB recommendations as the basis for certification decisions regarding outdoor access for poultry.[33] It informed certifying agents and producers that maintaining poultry on soil or outdoor runs would demonstrate compliance with the outdoor access requirement in 7 CFR 205.239.

AMS received 69 comments on the draft guidance. Comments varied widely. Several commenters, including organic poultry producers, requested a change to the draft guidance language to say that poultry, when outdoors, should be maintained on soil, pasture, or vegetation. They described health benefits and protection of the environment that a pasture or other vegetated outdoor access area would afford. Additionally, some supported more specific and stringent stocking densities. Commenters suggested a maximum stocking rate of 1.75 square feet per bird in henhouses that provide access to perches, with an additional 5 square feet per bird available in vegetated outdoor runs accessible to all birds at the same time.

On the other hand, some commenters favored allowing porches as acceptable outdoor access, citing biosecurity and animal health concerns. One trade association, some organic egg producers, and consultants described several benefits in the use of production systems that limit outdoor access via the use of enclosed porches that keep poultry from contact with soil or pasture. These benefits included protection from predation and parasites, and seclusion from contact with pathogens that cause food safety problems and wild birds that could carry diseases. The commenters asserted that these systems are consistent with the 2002 NOSB recommendation and noted that organic egg producers had made substantial investments in facilities with porches. Some also expressed concerns that placing birds on soil would affect their ability to comply with the Food and Drug Administration's *Salmonella* prevention food safety regulations (21 CFR part 118). Several producers expressed concern with the 2009 NOSB recommendation that pullets be given outdoor access at 6 weeks of age, because layers are not fully immunized (including for protection against *Salmonella*) until 16 weeks of age. These producers said that pullets should not be exposed to uncontrolled environments until that time.

However, many comments suggested that AMS's draft guidance was unenforceable, and rulemaking would be a better action. These stated that certifying agents would be able to enforce a rule more clearly and decisively than guidance. Given this request that USDA address the issue of outdoor access for poultry through the rulemaking process, AMS determined to pursue rulemaking and did not finalize the draft guidance.

OLPP Rule and Legal Challenges

In April 2016, AMS published a proposed rule, Organic Livestock and Poultry Practices (OLPP), which incorporated NOSB recommendations. The proposed rule included provisions related to livestock health care practices (such as physical alteration procedures, euthanasia, and treatment of sick animals), living conditions for mammalian and avian livestock (including minimum indoor and outdoor space requirements for avian livestock), and requirements for care during transport and for slaughter practices. It received 6,675 written comments during the 90-day comment period, and petition signatures numbering in the tens of thousands. Comments were received from

[32] On October 13, 2010, AMS also published a Notice of Availability of Draft Guidance and Request for Comments in the **Federal Register** (75 FR 62693).

[33] The 2002 and 2009 NOSB recommendations included daily outdoor access from an early age and access to direct sunlight, open air and soil.

producers, producer associations, handlers, certifying agents, consumers and consumer groups, animal welfare organizations, veterinarians, state government agencies, foreign government agencies, and trade associations or organizations. They provided insight on topics such as regulatory authority, import impact, trade agreements, and alternatives to regulation. Comments generally found the rule beneficial for the industry and the organic label, but several raised challenges with the proposed standards.

In response to public comment, AMS made a number of changes to the proposed rule to further clarify the requirements and mitigate economic impact on the industry. AMS published the Organic Livestock and Poultry Practices final rule (OLPP Rule) on January 19, 2017 (82 FR 7042). Prior to the OLPP Rule becoming effective, USDA (under a new Administration) delayed the effective date of the rule to allow the Administration to review it.[34]

After delaying the OLPP Rule's effective date and conducting its review, AMS proposed withdrawing the OLPP Rule. It determined that the agency lacked the legal authority to issue the rulemaking, cited substantive errors in OLPP's economic analysis, and maintained that there was no market failure (82 FR 59988, December 18, 2017). On March 13, 2018, AMS published a final rule withdrawing the OLPP Rule for those reasons (Withdrawal Rule; 83 FR 10775). Plaintiffs challenged USDA's delay and subsequent withdrawal the OLPP Rule. The Center for Food Safety (CFS) and Center for Environmental Health (CEH) sued USDA, and the Organic Trade Association (OTA) separately filed a suit, *see Organic Trade Association* v. *USDA,* No. 17–cv–1875–RMC (D.D.C.); *CEH* v. *USDA,* No. 3:18–cv–1763 (N.D. Cal.)).

In March 2020, the U.S. District Court for the District of Columbia granted USDA's motion to remand to USDA for purposes of clarifying and supplementing the records regarding the economic analyses underlying the OLPP Rule and the Withdrawal Rule. The District Court set a deadline of 180 days for USDA to complete these economic analysis actions.

AMS reviewed the economic analyses for both the OLPP Rule and the Withdrawal Rule. It discovered additional errors in the OLPP Rule, beyond those already cited by the Withdrawal Rule, and substantive errors in the economic analysis of the Withdrawal Rule itself. AMS published the Organic Livestock and Poultry Practice Economic Analysis Report on April 23, 2020, describing all the errors and seeking public comment on the Report (85 FR 22664). After considering the comments, AMS published the Final Decision on Organic Livestock and Poultry Practices Rule and Summary of Comments on the Economic Analysis Report on September 17, 2020 (85 FR 57937). In the Final Decision, AMS concluded that ''[t]o the extent the Withdrawal Rule formed an assessment of the likely costs and benefits of the OLPP Rule based on that flawed analysis, AMS hereby modifies that assessment and concludes simply that the Final RIA does not support promulgation of the OLPP Rule in light of its significant flaws.'' AMS further concluded that ''[i]mplementing the OLPP Rule based on such a flawed economic analysis is not in the public interest'' and decided not to take any further regulatory action with respect to the OLPP Rule (85 FR 57944).

In June 2021, Secretary Vilsack announced that USDA would ''reconsider the prior Administration's interpretation that [OFPA] does not authorize USDA to regulate the practices that were the subject of the [OLPP Rule].'' He further directed NOP ''to begin a rulemaking to address this statutory interpretation and to include a proposal to disallow the use of porches as outdoor space in organic production over time and on other topics that were the subject of the OLPP Final Rule.''

Economic Analysis and Market Failure

In the Economic Analysis Report, AMS described the three errors that had been identified in the economic analysis of the Withdrawal Rule: (1) the incorrect application of the discounting formula; (2) the use of an incorrect willingness to pay value for eggs produced under the new outdoor access requirements; and (3) the incorrect application of a depreciation treatment to the benefit calculations. The Report explained that although the economic analysis of the Withdrawal Rule correctly identified these errors and properly addressed the first two errors (incorrect discounting methodology and willingness-to-pay values), it had not fully removed the incorrect depreciation treatment from the cost and benefit calculations, which erroneously reduced the calculation of both costs and benefits.

The Report went on to identify and discuss four categories of additional errors in the economic analysis of the OLPP Rule that were previously undetected and therefore inadvertently carried forward to the economic analysis of the Withdrawal Rule. These were: (1) inconsistent or incorrect documentation of key calculation variables; (2) an error in the volume specification affecting benefits calculations in two of three scenarios considered; (3) the incorrect use of production values in the benefits calculations that do not account for projected increased mortality loss; and (4) aspects of the cost calculations that resulted in certain costs being ignored, underreported, or inconsistently applied. In addition, the Report described certain minor errors that did not have a material impact on the cost and benefit calculations (85 FR 57938).

In this OLPS final rule, AMS has worked to ensure that the RIA addresses these concerns. Some of the mathematical or descriptive concerns were addressed with rewriting the rule. AMS specifically addressed issues with discounting and depreciation in the analysis and fixed various errors found by the report. Additionally, AMS adjusted the willingness to pay for outdoor access in eggs to the more precise measure suggested by the economic analysis report. While AMS maintains the use of enterprise budgets in the original rule to model costs, AMS updated costs in the rule to the extent possible based on data availability, as they provide the most detailed estimates for the organic industry and USDA ERS has shown that both feed and land costs have remained approximately steady since their development.[35] [36]

Based on data provided through public comment, AMS determined that there is inconsistent application of outdoor access requirements for organic livestock, leading to information asymmetry.[37] This inconsistency and information asymmetry threatens both consumer confidence in the organic label and future industry growth. One of the primary purposes of OFPA is ''to assure consumers that organically produced products meet a consistent standard (7 U.S.C. 6501).'' Therefore, USDA must issue additional regulations to ensure that organic livestock products meet a consistent, nationwide standard across the industry. This rule will

[34] *See* 82 FR 9967 (February 9, 2017); 82 FR 21677 (May 19, 2017); and 82 FR 52643 (November 14, 2017).

[35] USDA ERS. Farmland Value. *https://www.ers.usda.gov/topics/farm-economy/land-useland-value-tenure/farmland-value.*

[36] USDA NASS. Paid Indexes by Farm Origin and Month, Feed and Livestock & Poultry. *https://www.nass.usda.gov/Charts_and_Maps/Agricultural_Prices/prod3.php.*

[37] For example, based on data from the ASPCA/AWI Organic Consumer Survey, AMS estimates that at least 31.5% of organic eggs are purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture. See below for more detail.

minimize the inconsistency and information asymmetry in the organic livestock industry and meet one of OFPA's main purposes.

Third-party certification can result in different certifiers interpreting the standards differently. In the case of organic animals, including organic poultry, there has been significant divergence among certifiers in how the ''access to the outdoors'' requirement in 7 CFR 205.239(a)(1) is interpreted and enforced. As a matter of practice, certifiers determine how much outdoor access is needed to meet the rule's requirements, and this has led to divergent certification and production practices.

While differing practices within a given industry do not necessarily constitute a market failure, highly varied practices under a single marketing label can create a market failure through information asymmetry. Information asymmetry occurs because consumers may not know how their organic livestock products are being produced but producers do, resulting in some organic consumers paying a premium for organic products that they incorrectly believe contain specific attributes (*e.g.,* outdoor access). When consumers pay for a product that does not include certain attributes they expect, this may represent a market failure caused by an information asymmetry between consumers and organic operations. The existence of this information asymmetry has been a driver of the creation and operation of USDA's organic certification program, and organic labeling thus communicates product attributes in accordance with the program's ''organic'' definition, standards, and enforcement; as a result, suboptimal past program choices may have contributed to the baseline market distortions.

In the organic egg industry, AMS estimates that approximately 30% of organic egg production comes from hens with access to outdoor areas that include soil or pasture, while approximately 70% of organic egg production only has access to the outdoors through enclosed porches with no soil or pasture. Recent survey data shows that 65% of frequent organic purchasers and 54% of all organic purchasers think that all organic animals have access to ''outdoor pastures and fresh air throughout the day.'' [38] Using this data, AMS estimates that 31.5% of organic eggs are purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture. This survey also demonstrates consumers may face similar information asymmetries about space and welfare requirements in organic agriculture, with 59% of consumers believing organic animals have more space and 45% of consumers believing organic animals are prohibited from having their beaks and tails removed.

In summary, rulemaking is the best solution to resolve the market/government failure and meet the OFPA purpose of ''assur[ing] consumers that organically produced products meet a consistent standard''—in this case assuring consumers that organic livestock products are produced using consistent animal welfare and outdoor access standards. Given that third-party labels are not regulated by USDA, it would be difficult to attain informational consistency needed to address the information asymmetry. Additionally, stakeholders have expressed concerns about the additional producer costs and consumer confusion these labels may create.[39] [40] This rulemaking aligns with existing third-party labels regarding outdoor access, easing the burden on producers (relative to a hypothetical rulemaking with similar goals but no such alignment). AMS also believes that rulemaking is a better option than increased consumer education about the livestock attributes of the organic label. Consumer education may help consumers know what to expect from the organic label, but it would not address inconsistent production practices among organic livestock producers, which undermines AMS's statutory mission to ensure that products produced and sold under the organic label are meeting a consistent national standard. AMS believes rulemaking is the best option.

Summaries of comments received on the topic of market failure and AMS's responses to comments on the topic are below. Many of the comments received supported AMS's conclusion that there is a market failure caused by a lack of clear standards.

III. Overview of Public Comments

AMS published the OLPS proposed rule on August 9, 2022, opening a 60-day public comment period. On August 19, AMS held an online public listening session on the proposed rule to gather additional feedback; 132 listeners attended the listening session, and 19 gave oral comments. At the request of several organic stakeholders, AMS extended the public comment period another 30 days to allow more time for the public to develop detailed comments on the rule's requirements. By the close of the 90-day public comment period on November 10, 2022, AMS had received 40,336 written comments from a variety of stakeholders, including consumers, operations, certifying agents, retailers, trade associations, and advocacy groups. Some of these comments (which can be found at *Regulations.gov*) included signed petitions, which totaled 57,000 signatures to petitions (in addition to the written comments). The subjects of the comments (including petitions) are discussed below. The organic industry demonstrated considerable interest in this rule and provided AMS detailed feedback on this rule.

By a large majority (94%), public comments and petitions supported the rule, with many saying that consumers already expect outdoor access to be part of the organic label in keeping with animals' natural behaviors. Several organic operations, certifying agents, and organic trade groups asserted the rule is necessary to ensure all producers have a consistent interpretation of what qualifies as outdoor access under the organic regulations. Most of the comments opposing the rule did not think it went far enough in protecting animal welfare and asked AMS to include additional animal welfare protections in the rule. Other comments disputed the need for the rule, AMS's authority to promulgate the rule, and the effect of the rule on animal safety and organic markets. AMS responds to these comments below.

In addition to soliciting general comments, AMS sought specific feedback on USDA's statutory authority to issue this rule, the rule's clarity, the accuracy of its Regulatory Impact Analysis (RIA) and Regulatory Flexibility Analysis (RFA), its consistency with current organic livestock production practices, and on specific implementation timeline options. The implementation timeline received by far the most public comment, with the nearly all commenters on that topic requesting implementation timelines shorter than the 15-year option. Poultry space requirements received the second most attention, and commenters responded in detail to several other livestock production practices and to issues regarding food and animal safety. AMS took public comments into

[38] ASPCA and the Animal Welfare Institute. Survey. September 2022. *https://www.aspca.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf.*

[39] Producer costs under the various requirements are estimated in Section F of the RIA.

[40] Theoretical discussion about the relations between consumer confusion and label trust can be found in Section F of the RIA.

consideration when revising the policy and setting the implementation timeline.

AMS also received many public comments on the specific policies and livestock production practices we proposed. The revisions to this final rule took those public comments into account. Discussion of comments specific to the rule's policy follow in Section IV, OVERVIEW OF FINAL RULE.

A. Responses to Comment on Statutory Authority

(Comment) Many comments posited that AMS is appropriately exercising its authority under OFPA to establish regulations regarding livestock and poultry health care practices, living conditions, and welfare. Comments asserted that OFPA directs AMS to regulate the care of farmed animals, which broadly encompasses animal welfare. Specifically, comments stated that OFPA commands AMS to ''establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods'' and to consult with the NOSB in development of that program.[41] Comments stated that OFPA provides that the NOSB may recommend standards specifically for the ''care of livestock to ensure that such livestock is organically produced'' in addition to provisions related to animal health care.[42] As OFPA does not define ''care,'' comments argued that it should be interpreted by its ordinary use definition [43] to include animal welfare.

Comments asserted that the legislative purpose and history demonstrate that Congress unambiguously intended for animal welfare practices to be required at certified organic operations. These comments argued that to meet OFPA's broad purposes of establishing ''national standards governing the marketing of [organically produced] agricultural products,'' assuring consumers that ''organically produced products meet a consistent standard,'' and facilitating interstate commerce with fresh and processed [organically produced] food,'' [44] AMS must regulate animal welfare to align with consumer expectations.

Comments also cited AMS's historical interpretation that OFPA grants the authority to regulate animal welfare through NOSB recommendations, as AMS did in the 2010 Access to Pasture rule. The Pasture rule was promulgated ''in response to the 2005 NOSB recommendation and extensive public input requesting clear outdoor access requirements for ruminant livestock,'' [45] and received over 4,000 public comments.[46] Comments noted the Pasture rule, which regulates animal welfare, was promulgated through the same process as this rule, based on recommendations, public hearings, and public comments.[47] Similarly, commenters said the OLPS proposed rule is based on NOSB recommendations, so both rulemaking precedent and NOSB recommendations reinforce AMS's authority to regulate animal welfare in the OLPS final rule.

Finally, comments cited concepts of statutory construction to support the notion that both OFPA and current livestock regulations authorize OLPS. One comment argued that ''the accepted canons of statutory construction'' support the interpretation that OFPA ''expressly give[s] USDA authority to set the Organic Livestock Rule standards.'' [48] This comment details how these ''three core canons of statutory construction''—ordinary meaning, whole text, and surplusage—each support AMS's legal authority to regulate animal welfare under OFPA. The *ordinary meaning canon* holds that absent specific definitions, words in a statute must be interpreted using ''their ordinary, contemporary, common meaning.'' [49] Comments stated that the terms ''care,'' ''health,'' and ''health care,'' which are referenced but not defined in OFPA, are broad in their ordinary meanings to include animal welfare. The *whole text canon* calls for interpretation of statutory language to be based on consideration of the entire text and its logical relations.[50] Comments stated that this canon supports USDA's authority to issue this final rule, as OFPA provisions work together to require USDA to expand livestock care standards beyond prohibitions of certain substances: USDA cited §§ 6509(d)(2) and (g) when it promulgated the rule, explaining that § 6509(d)(2) authorizes the NOSB to recommend standards in addition to the OFPA provisions for livestock health care to ensure that livestock is organically produced. Sec. 6509(g) directs the Secretary to develop detailed regulations through notice and comment rulemaking to implement livestock production standards. Comments found that when read as a whole, OFPA's structure supports the USDA's authority to issue this final rule. The *surplusage canon,* which commands that ''every word and every provision is to be given effect,'' [51] prevents interpretations that would render a provision pointless; instead, courts should interpret a provision in a way that ''leaves both provisions with some independent operation.'' [52] Comments found that this provision allows for the agency to adopt additional standards ''for the care of livestock,'' including standards that promote animal welfare.

(Response) ''Care of livestock'' necessarily includes livestock wellbeing and welfare. AMS agrees that ordinary definitions of ''care'' and ''health care''—which are not explicitly defined in OFPA nor its regulations—encompass living conditions included in the rule, and that ''care of livestock'' includes animal welfare.[53] Additionally, as OFPA provides, NOSB has previously issued recommendations regarding organic livestock production, and AMS has revised the organic regulations in response to the recommendations (*e.g.,* ''Access to Pasture'' and ''Origin of Livestock''). Several NOSB recommendations are relevant to this final rule. At its Fall 2009 meeting, NOSB issued a final recommendation on animal welfare,[54] which was updated by subsequent recommendations. These recommendations set the framework for this final rule.

(Comment) Several comments disagreed with AMS's statutory authority to regulate organic livestock welfare. These comments posited that AMS lacks the legal authority to promulgate the rule, arguing that OFPA authority is limited to livestock and poultry feeding and medication practices. In this view, animal handling practices are not a defining characteristic of organic agriculture and are not germane to the NOP as authorized by Congress. Comments also referenced a previous rulemaking that was withdrawn in March 2018, specifically AMS's rationale for withdrawing the OLPP Final Rule. Reasons cited include AMS's own stated

[41] 7 U.S.C. 6503(a), (c).

[42] 7 U.S.C. 6509(d)(2).

[43] *F.D.I.C.* v. *Meyer,* 510 U.S. 471, 476 (1994).

[44] 7 U.S.C. 6501.

[45] 87 FR at 48567.

[46] National Organic Program (NOP)—Access to Pasture (Livestock) Proposed Rule: *https://www.regulations.gov/document/AMS-TM-06-0198-0001.*

[47] 75 FR 7154, 7154–56 (Feb. 17, 2010).

[48] *https://www.regulations.gov/document/AMS-NOP-21-0073-39096.*

[49] *Perrin* v. *United States,* 444 U.S. 37, 42 (1979); see generally A. Scalia & B. Garner, Reading Law 69–77 (1st ed. 2012).

[50] *Mont* v. *United States,* 139 S. Ct. 1826, 1833–34 (2019).

[51] Scalia & Garner, supra at 174.

[52] Scalia & Garner, supra at 176.

[53] 7 U.S.C. 6509(d)(2).

[54] 2009 NOSB Sunset Recommendation: *https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Sunset%20Rec%20Animal%20Welfare.pdf.*

lack of statutory authority to promulgate the OLPP Final Rule, errors in calculating estimated benefits, and a lack of evidence of market failure to justify prescriptive regulatory action.[55]

Many of these comments stated that because OFPA is limited in scope to organic production, regulations enacted pursuant to its authority must be narrowly tailored to specific practices that differentiate organic from any other method of agricultural production—and that animal welfare is not unique to organic production. One comment referenced the NOSB definitions of organic agriculture that omit mention of animal welfare.[56] Additionally, the definition of *organic production* at 7 CFR 205.2 does not explicitly mention animal welfare.[57] Another comment referenced a 2006 USDA Sustainable Agriculture Research and Education bulletin *Transitioning to Organic Production* that describes organic farming as an ecologically focused, input-based system as well as a 2007 USDA Cooperative State Research, Education, and Extension Service publication *Organic Agriculture Overview* that emphasizes biological diversity and economic sustainability. This comment questioned the justification of the proposed rule under OFPA given the cited publications do not mention nor consider animal welfare as a defining characteristic of organic agriculture.

(Response) AMS finds that as animal health and welfare are intertwined, OLPS provisions for both fall under the statutory authority of OFPA. Given OFPA's plain language, legislative purpose and history, and historical regulatory interpretations, OLPS is consistent with the purposes of OFPA, and it establishes standards similar to existing organic standards. As animal welfare is intrinsically part of animal management,[58] AMS is clearly within its statutory bounds to mandate specific animal welfare requirements as part of organic animal management.

Further, the 1990 Senate Report that accompanied OFPA demonstrates Congressional expectation that USDA would update organic standards as organic production systems evolve.[59] The report states that ''with additional research and as more producers enter into organic livestock production, the [Senate Committee on Agriculture, Nutrition, and Forestry] expects that USDA, with the assistance of the [NOSB] will elaborate on livestock criteria.'' [60] The report further states that ''[t]he Board shall recommend livestock standards, in addition to those specified in this bill, to the Secretary.'' [61] Furthermore, in its October 1990 Conference Report, conference members noted, ''[t]he Conference substitute adopts the House provision with an amendment which requires the Secretary to hold hearings and develop regulations regarding livestock standards in addition to those specified in this title.'' (p. 1177). This amendment is reflected in OFPA at sec. 6509(g). For further discussion of the statutory authority to issue this rule, see Section II.B, STATUTORY AUTHORITY TO ISSUE FINAL RULE.

B. Responses to Comment on Market Failure

AMS received approximately 300 comments discussing the market failure addressed by the rule. Discussion of specific themes and AMS's responses are below. Additional discussion of market failure can be found in the rule's Regulatory Impact Analysis.

(Comment) Many comments agreed there is market failure, citing confusion over multiple certifications, cost of maintaining certifications, and consumer expectation that the organic label requires meaningful outdoor access for poultry. Some comments argued that market failure has not occurred in the organic poultry industry, pointing to the industry's rapid growth in the last five years. Most of these comments asked for additional justification of the claim of market failure in the organic label. However, most comments agreed that uneven compliance with and enforcement of the outdoor access requirement in organic livestock regulations creates a market failure. Some comments highlighted the possible negative impacts of this market failure, including loss of consumer confidence in the organic label and economic harm to producers.

Some comments provided context on consumer confusion about organic animal welfare requirements by sharing recent survey results. Several comments cited a 2017 Consumer Reports survey that found 83 percent of organic consumers ''think it's highly important that organic eggs come from hens that were able to go outdoors, and have enough space to move around freely.'' [62] Others cited a 2022 ASPCA survey finding that 65% of ''frequent purchasers'' (respondents who purchased organic animal products once a week or more) believed that ''all animals raised on organic farms have access to outdoor pastures and fresh air throughout the day,'' with another 23% indicating they were not sure.[63]

(Response) AMS agrees with comments that some combination of market failure and government failure (action or inaction) exists in poultry products under the organic label. Market failure can occur even when a market experiences rapid growth because consumers could be paying for attributes they are not receiving. As some organic broilers and layers are not currently raised with ''access to outdoor pastures and fresh air throughout the day,'' AMS concludes, based on the survey data submitted in public comments, that some organic consumers are not receiving attributes they believe they are paying for (for example AMS estimates that at least 31.5% of organic eggs are purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture).[64] This gap in the organic poultry market could impact the entire organic label, as lowered consumer confidence in one product can impact consumer confidence across the label and

[55] 82 FR 59990, Dec. 18, 2017.

[56] ''Organic agriculture is an ecological production management system that promotes and enhances biodiversity, biological cycles and soil biological activity. It is based on minimal use of off-farm inputs and on management practices that restore, maintain and enhance ecological harmony.'' & '' 'Organic' is a labeling term that denotes products produced under the authority of the Organic Foods Production Act. The principal guidelines for organic production are to use materials and practices that enhance the ecological balance of natural systems and that integrate the parts of the farming system into an ecological whole.'' (April 1995 NOSB meeting).

[57] ''A production system that is managed in accordance with the Act and regulations in this part to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.'' (7 CFR 205.2 ''Organic production'').

[58] *https://www.avma.org/resources/animal-health-welfare/animal-welfare-what-it#:~:text=Good%20animal%20welfare%20requires%20disease,humane%20handling%2C%20and%20humane%20slaughter.*

[59] Sen. Rep. No. 101–357 (July 1990)).

[60] Sen. Rep. No. 101–357, at 292 (July 1990).

[61] Sen. Rep. No. 101–357, at 303 (July 1990).

[62] ''Consumer Reports Survey Finds Consumers think it's Important to Have High Animal Welfare Standards for Food Labeled Organic,'' Consumer Reports, April 20, 2017, *https://www.consumerreports.org/media-room/press-releases/2017/04/consumer_reports_survey_finds_consumers_thin_its_important_to_have_high_animal_welfare_standards_for_food_labeled_organic/.*

[63] Organic Consumer Survey, Animal Welfare Institute, 2022, *https://www.aspca.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf.*

[64] Based on data from ASPCA and the Animal Welfare Institute survey, September 2022. *https://www.aspca.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf.*

See Section II Subsection D for more detail.

threatening organic integrity.[65] AMS revised the discussion on market failure for this final rule in response to comments arguing that a market failure likely exists under the current organic regulations. AMS included references to surveys provided in comments where appropriate and discussed concerns from commenters about how to address market distortions in the organic context. Additional information regarding market failure can be found in the RIA.

(Comment) Some comments expressed the view that third-party labels allowed for flexibility in the market, however, most who commented on this topic felt that third-party labels do not address the problem and cause additional consumer confusion. Several comments pointed out that it costs producers to maintain additional third-party animal welfare certifications and asserted that consumers were confused by the various competing labels. A few comments stated that third-party labeling may be sufficient to address the market failure. Comments pointed to the many animal welfare certifying and labeling programs available for both organic and conventional producers, offering flexibility to producers and a range of options for consumers; these represent the diversity of livestock and poultry production, differing priorities of certifying organizations, and evolving scientific understanding of animal welfare.

(Response) AMS believes the existing combination of market failure and government failure cannot be solved solely through third-party labeling. Many organic poultry producers currently incur additional costs by using third-party labels to solve the issue of different production practices between operations. This rule's additional specificity would improve the consistency of production practices and could reduce the need for and cost of additional third-party labels. Further, AMS agrees with other commenters who claim that third-party labels cannot address the problem because they create more consumer confusion. AMS revised the discussion on market failure in this final rule to include discussion of the inability of third-party labels to efficiently solve the observed information asymmetry. (See Section A, ''Need for the Rule,'' in the Regulatory Impact Analysis.)

[65] AMS finds it likely that controversy or confusion about one product under the organic scheme will cause secondary effects to the overall label and other products, including, but not limited to, risk to consumer confidence, trust, and demand. Because of the unique nature of the organic label, quantifying or monetizing this risk was not possible.

See Section F of the RIA for more detail.

IV. Overview of Final Rule and Responses to Comments

AMS provides a detailed description of the final rule below, section by section, and responds to comments received on each section. The descriptions of the requirements are meant to explain AMS's intent and provide examples of how to comply with the requirements.

A. Terms Defined (§ 205.2)

This rule adds seventeen new terms to 7 CFR 205.2: *beak trimming, caponization, cattle wattling, de-beaking, de-snooding, dubbing, indoors or indoor space, induced molting, mulesing, non-ambulatory, outdoors or outdoor space, perch, pullet, religious (or ritual) slaughter, stocking density, toe clipping,* and *vegetation.* The definitions are discussed below.

Eight New Terms To Define Prohibited Physical Alterations

Current organic regulations permit ''physical alterations'' of animals ''as needed to promote the animal's welfare and in a manner that minimizes pain and stress'' (7 CFR 205.238(a)). This rule elaborates on this requirement and prohibits some specific types of physical alterations. Defining these physical alterations supports common understanding of the meaning of the terms, as some terms could otherwise be interpreted in various ways (*e.g.,* ''caponization'' may be referred to as ''castrating'' in some regions). AMS prohibits some alterations because they do not promote animal welfare or may be overly painful or stressful without a corresponding benefit to animal welfare. NOSB recommended prohibiting these specific physical alterations in 2009.

The following terms are defined in this rule: *beak trimming, caponization, cattle wattling, de-beaking, de-snooding, dubbing, mulesing,* and *toe clipping.*

Indoors or Indoor Space

The rule defines ''indoors or indoor space'' as the space inside of an enclosed building or housing structure that is available to livestock. The definition includes four examples of structures that are commonly used in poultry production. These indoor housing types are defined, in part, because space requirements are based on the housing type. AMS also includes an indoor space requirement at § 205.241(b)(8)(v) for housing that does not fit within one of the specific types defined in § 205.2. While all organic livestock must be provided with species-appropriate shelter, structures providing indoor space are not necessarily required. For example, beef cattle raised on pasture or range in mild climates may not need to be provided with indoor space.

The final rule uses the term ''enclosed'' to establish if a space should be considered indoors or outdoors. Under the definition, the space within the building or structure that can be enclosed is considered the indoor space. The rule defines ''outdoors or outdoor space'' separately (see discussion below).

Induced Molting

The rule defines ''induced molting'' as molting that is artificially initiated. The term is broadly defined to include the various methods a producer may use to induce, or force, molting in a flock, such as withdrawal of feed or manipulation of light. The term aligns with the definition that currently appears in FDA requirements related to the production, storage, and transportation of shell eggs at 21 CFR 118.3.

Non-Ambulatory

The rule adds the term ''non-ambulatory'' and references FSIS regulations at 9 CFR 309.2(b). FSIS describes non-ambulatory as ''livestock that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions.'' The rule now requires that any non-ambulatory livestock on organic farms must be medically treated—even if the treatment causes the livestock to lose organic status—or be humanely euthanized.

Outdoors or Outdoor Space

The rule defines ''outdoors or outdoor space'' to clarify the meaning of outdoor areas for mammalian and avian species. ''Outdoors or outdoor space'' is defined as any area outside of an enclosed building or enclosed housing structure. In this definition, ''outdoors or outdoor space'' includes all the non-enclosed space encompassing soil-based areas such as pastures, pens, or sacrifice lots; hardened surface areas such as feedlots, walkways, or loafing sheds; and areas providing outdoor shelter such as windbreaks and shade structures. For avian species, the definition specifies that pasture pens are considered outdoor space. These are floorless pens that are moved regularly and provide direct access to vegetation, soil, and direct sunlight. These pens (often

referred to as ''chicken tractors'') may include roofing to provide shelter for the birds, so long as birds are still able to express natural behaviors (*e.g.,* scratching) and meet all applicable requirements at § 205.241. To assist with the mitigation of biosecurity and predation risks, fencing, netting, or other materials are permitted over all or part of the outdoor areas to prevent predators and other wild birds from entering. For example, bird netting above a chicken pasture, where the chickens still have access to soil underneath, would be permitted. This area would qualify as outdoor space because it is not enclosed and allows access to soil. In contrast, a structure that is enclosed and has a hard floor (*i.e.,* no soil) would not qualify as outdoor space.

The definition also clarifies that enclosed open sided structures do not qualify as outdoors or outdoor space. This includes freestall barns and ''open'' sided poultry housing (enclosed by gates and/or wire, respectively). While housed in these structures, animals cannot be ''outdoors.'' Similarly, screened poultry ''porches'' or ''verandas'' attached to poultry houses and enclosed by wire on the sides, are not considered outdoors.

In this definition, ''outdoors or outdoor space'' includes all the non-enclosed space encompassing soil-based areas such as pastures, pens, or sacrifice lots; hardened surface areas such as feedlots, walkways, or loafing sheds; and areas providing outdoor shelter such as windbreaks and shade structures. For avian species, the definition specifies that pasture pens are considered outdoor space. These are floorless pens that are moved regularly and provide direct access to vegetation, soil, and direct sunlight. These pens (often referred to as ''chicken tractors'') may include roofing to provide shelter for the birds, so long as birds are still able to express natural behaviors (*e.g.,* scratching) and meet all applicable requirements at § 205.241. To assist with the mitigation of biosecurity and predation risks, fencing, netting, or other materials are permitted over all or part of the outdoor areas to prevent predators and other wild birds from entering.

Many producers also use portable or permanent shade structures throughout their pastures, and the definition clarifies that unenclosed structures used for shade are considered outdoor space. For example, the area within a stand-alone, roofed shade structure in a pasture could be included as outdoor space area. Non-enclosed areas under the eaves or the awning of a building can also be considered outdoors. While these areas may have solid roofs overhead, they offer the same quality of outdoor space as uncovered outdoor areas, including natural ventilation/open air and open access to uncovered areas with direct sunlight, soil, and vegetation.

Perch

The rule defines the term ''perch'' as a rod- or branch-type structure above the floor or ground that accommodates roosting and allows birds to utilize vertical space. Perches may be indoors or outdoors. The final rule includes specific requirements for perch space for layers (Gallus gallus) indoors.

Pullets

AMS modified the definition of pullets, which is used by the AMS Livestock, Poultry, and Seed Program, to include species other than chickens. This rule defines ''pullets'' as female chickens or other avian species being raised for egg production that have not yet started to lay eggs. Once avian females begin laying eggs, AMS refers to them as layers. The term ''pullets'' is not used to describe young broilers used for meat production; broilers of any age are referred to as broilers in this rule.

Religious (or Ritual) Slaughter

The rule adds the term ''religious (or ritual) slaughter.'' This definition is very similar to a description in the Humane Methods of Slaughter Act (7 U.S.C. 1902(b)), which allows for ritual slaughter in accordance with religious faith. This method of slaughter relies on the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument. Organic livestock and handling operations may use religious (or ritual) slaughter to convert their mammalian or avian livestock to meat or poultry without loss of organic status.

Stocking Density

The rule defines ''stocking density'' as the liveweight or number of animals on a given area or unit of land. This term is used to describe the indoor and outdoor space requirements for organic livestock. For example, this rule establishes maximum stocking densities for chickens, and the producer must ensure that the area provided is large enough to not exceed the maximum stocking density when all birds in the flock are in the area (*i.e.,* assume all birds are either indoors or all birds are outdoors when calculating space available to each bird).

Vegetation

The rule adds the term ''vegetation'' and defines it as living plant matter that is anchored in the soil by roots and provides ground cover. This term applies to the requirement for vegetation in outdoor areas, which is central to protecting soil and water quality as well as providing for livestock to exhibit their natural behaviors. The roots of vegetation provide stability and structure to soil. Vegetation helps water soak into the soil rather than running off, which can cause erosion. Livestock also have natural behaviors such as grazing, rooting, nesting, etc., which require vegetation.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule. Changes to the final rule are discussed below and are followed by specific topics and themes from public comment.

- AMS added the defined term ''induced molting.'' This term was added to clarify the rule's prohibition on induced molting, as described at § 205.238, Livestock care and practice standards. This term aligns with FDA regulations and includes all methods used to artificially initiate molting.
- AMS revised the definition of ''mobile housing'' to more clearly state that this type of housing must allow birds continuous access to outdoors during the daytime.
- AMS revised the definition of ''outdoors or outdoor space'' to clarify that open-sided but enclosed structures, such as freestall barns, are not considered outdoor space. The revised definition also clarifies that unenclosed shade structures are considered outdoor space.
- AMS revised the definition of avian ''pasture pens'' to clarify that they must allow birds to express natural behaviors.
- AMS revised the definition of ''perch'', so it more broadly applies to perches in indoor and outdoor spaces.
- AMS changed the term ''ritual slaughter'' to ''religious (or ritual) slaughter.'' AMS amended this term for clarification and to better align with current and preferred language.
- AMS restructured the definition of ''slatted/mesh flooring'' into a single paragraph to improve clarity.
- AMS removed the definition of ''soil.'' Soil is a commonly understood term and a definition is not necessary to understand or implement this rule.

Responses to Public Comment

AMS received many public comments from stakeholders across the organic

industry discussing this section of the proposed rule. The majority of comments generally supported AMS's proposed revisions. Many commenters requested further clarification of the proposed changes, particularly regarding the definitions of soil and vegetation, and what qualifies as indoor or outdoor space.

Soil

(Comment) Many of the comments that discussed soil requested either modifying or removing the definition of ''soil'' included in the proposed rule. Some commenters stated that because it did not originate from an NOSB recommendation, it should not be included in the rule. Others argued that defining ''soil'' for the purposes of livestock production standards could lead to unintended effects on other organic production areas, such as crop production.

(Response) AMS agrees that a regulatory definition of ''soil'' should take the entire organic standard into consideration and that defining the term only for use in the livestock area of operation may affect other areas of organic production. Because soil is generally a well-understood term, a regulatory definition is not necessary for the successful implementation of this rule. AMS has removed the definition of ''soil'' from the final rule.

Vegetative Cover

(Comment) Some commenters requested a new definition for the term ''maximal vegetative cover.'' This term was used in the proposed rule to describe a requirement for outdoor areas, but the term was not defined. Comments requested a more exact description of the term to support consistent enforcement of the proposed requirement.

(Response) AMS has elected to maintain the proposed language in the definition of ''vegetation'' and does not define ''maximal vegetative cover'' in this rule. The word ''maximal'' is removed in the final rule from § 205.239(a)(12) and § 205.241(c)(2). Removing ''maximal'' gives operations the necessary flexibility to maintain vegetation in outdoor areas that is appropriate to their region, climate, and other site-specific conditions. See the ''Mammalian and non-avian livestock living conditions'' and ''Avian living conditions'' sections of this preamble for further information about vegetation in outdoor spaces.

Mobile Housing

(Comment) Several commenters stated that the definition of ''mobile housing'' should be revised to better align with the industry's current use of this type of avian indoor living space, and to ensure that these types of structures allow appropriate outdoor access to outdoor areas.

(Response) AMS revised the definition of ''mobile housing'' to specify that mobile housing structures must allow birds to continuously access areas outside the structure during the daytime. AMS also removed the previous term ''during the grazing season'' to clarify that mobile housing is commonly used year-round. These changes better align with how the organic industry uses mobile housing and will allow operations to meet this rule's avian indoor living requirements with this type of structure.

Pasture Pens (Avian)

(Comment) Commenters expressed concern with the definition of ''pasture pen,'' stating that some types of pasture pens (*e.g.,* those with wire or partial floor covering) should not be counted as outdoor space because these pens may prevent the natural behaviors of birds or limit movement of birds.

(Response) AMS recognizes the concerns and has revised the definition of ''pasture pens'' to include the phrase ''allow birds to express their natural behaviors.'' To be considered outdoor space, pasture pens must provide direct access to soil and allow birds to express natural behaviors, such as scratching and dust bathing. Producers with pasture pens must also meet requirements at § 205.241(a).

Stocking Density

(Comment) Some commenters requested changing the word ''animal'' in the proposed definition to ''bird'' because the rule only defines stocking density for poultry, not other types of livestock.

(Response) AMS has chosen to continue using ''animal'' in the definition of ''stocking density.'' The word ''animal'' includes birds and is therefore suitable for discussing and describing stocking densities of birds.

Euthanasia and Death

(Comment) Several comments requested clarification on what the term ''euthanasia'' means, and asked AMS to develop a definition for ''euthanasia,'' ''death'' or ''dead'' to clarify what methods can be used to verify death following a euthanasia procedure.

(Response) AMS has elected not to define ''euthanasia,'' ''death,'' or ''dead'' in the rule. Section 205.238, Livestock care and production practices standard, addresses euthanasia, including how operations must ensure animals are dead following euthanasia. The final rule does not require operations to use a specific method to verify death. However, AMS does recommend that operations use methods of euthanasia and confirmation of death consistent with the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals. See § 205.238(e) of this rule for more information on euthanasia and livestock care practices.

Outdoor Space

(Comment) One comment expressed concern that the proposed rule's definition of outdoor space may allow operations to consider freestall or hoop barns with the sides up as outdoor space. The commenter requested such structures be counted as indoor space only.

(Response) AMS amended the definition *of outdoor space* to specifically clarify that ''enclosed housing structures with open sides (*e.g.,* open-sided freestall barns) are not to be considered outdoors or outdoor space.'' The definition was amended to remove language about roofed areas that are not enclosed being permitted as outdoor space. The language was replaced with a specification that open-sided enclosed structures are not considered outdoor space. Because such structures may not always allow animals free access to outdoor areas, the space is enclosed and therefore considered indoor space, not outdoor space.

B. Livestock Care and Production Practices Standard (§ 205.238)

Description of Final Policy

This final rule updates § 205.238 of the USDA organic regulations. This section discusses requirements for the care and management of organic livestock that apply to all species of livestock. The two following sections of this rule (§§ 205.239 and 205.241) cover living condition requirements specific to mammalian/non-avian and avian species, respectively. The following discussion describes the changes that this final rule makes to § 205.238.

Updates to § 205.238(a) require that producers select a species suitable for the conditions of their site, establish appropriate housing, and provide a feed ration sufficient to the nutritional requirements of the animal. During on-site inspections, certifying agents must verify the suitability of the breed to its housing and living conditions and the adequacy of the animals' diet.

AMS revises § 205.238(a)(5) to clarify the conditions under which operations may perform physical alterations on

livestock. Physical alterations may be performed for identification purposes or the safety of the animal. Alterations must be done at a young age for the species, and in a manner that minimizes the animals' pain and stress during and after the procedure. Alterations may only be performed by an individual who is capable of doing so in a manner than minimizes stress and pain. Operations may use an individual's training or experience to demonstrate that individual's capability to perform physical alterations.

A 2009 NOSB recommendation allowed teeth clipping and tail docking in piglets, but this proposal was retracted in the 2011 NOSB recommendation.[66] Section 205.238(a)(5)(i) of this final rule restricts needle teeth clipping and tail docking. These two types of physical alterations may not be performed on a routine basis, but they are not prohibited in all cases. As § 205.238(a)(5)(i) specifies, needle teeth clipping and tail docking may only be performed in response to documented instances of harm, and only with documentation that alternative steps to prevent such harm failed. For example, an organic swine producer who clipped needle teeth or performed tail docking would need to document excessive needle teeth scarring on the underline of a sow or piglets, or document tail biting on piglets in the litter. In this case, the producer also must document that alternative methods to prevent scarring had failed. Such alternative methods may include, but are not limited to, cross-fostering prior to teat fidelity across litters to minimize weight variation, providing sufficient enrichment materials, and providing vegetation for rooting. Teeth clipping, if performed, is limited to the top third of each needle tooth.

AMS adds new paragraph (a)(5)(ii) to list the physical alterations that an organic operation must not perform. Based on 2011 NOSB recommendations, the following physical alterations to avian species are prohibited: de-beaking, de-snooding, caponization, dubbing, toe clipping of chickens, toe clipping of turkeys unless with infra-red at hatchery, and beak clipping after 10 days of age. In addition, the following physical alterations to mammalian species are prohibited: tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.

[66] Available at *https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

AMS adds new requirements at § 205.238(a)(7) to specify that surgical procedures on livestock to treat illness or injury must be done in a manner that minimizes pain, stress, and suffering. The NOSB recommended that all surgical procedures for livestock be done with the use of anesthetics, analgesics, and sedatives. USDA organic regulations require that all surgical procedures for treatment of disease be undertaken in a manner that employs best management practices in order to minimize pain, stress, and suffering. Operations may only use synthetic anesthetics, analgesics, and sedatives if listed on the National List of Allowed and Prohibited Substances (''National List'') at § 205.603(a) and (b), which lists the synthetic substances that are allowed in organic livestock production.

The final rule adds new § 205.238(a)(8) that requires organic producers to actively monitor lameness within the herd or flock and to undertake timely and appropriate treatment and mitigation strategies. Lameness can be an issue in various livestock species, including broilers, sheep, and dairy cattle. This requirement for producers to create a plan for monitoring and treating lameness in the OSP will enable them to identify and address potential problems among animals before they become widespread.

The final rule amends § 205.238(b) to state that synthetic medications allowed under § 205.603 of the National List may be administered to alleviate pain or suffering, as well as when preventive practices and veterinary biologics are inadequate to prevent sickness. Similarly, parasiticides allowed by the National List may be used on breeder stock, dairy animals, and fiber bearing animals, as allowed under § 205.603. When using these substances, operations must follow all applicable limitations of use as listed in § 205.603, including any withholding or withdrawal periods.

AMS amends § 205.238(c)(1) to clarify that milk from an animal treated with a substance that is allowed on the National List and has a withdrawal period may not be sold, labeled, or represented as organic during that withdrawal period. However, that milk may be fed to organic calves on the same operation during the withdrawal period. This is consistent with the 2010 NOSB recommendation that a calf nursing a cow treated topically with lidocaine or other approved synthetic with a withdrawal period should not lose organic status. For example, if an organic cow became injured and was treated with lidocaine to minimize pain, she could continue to nurse her organic calf during lidocaine's seven-day withholding period, and the calf would not lose its organic status.

The final rule revises § 205.238(c)(2) to clarify that producers may administer allowed synthetic medication (*i.e.,* those on the National List at § 205.603) to alleviate pain and suffering, in addition to use for the treatment of illness.

AMS revises § 205.238(c)(3) to clarify that organic livestock producers are prohibited from administering synthetic or non-synthetic hormones to promote growth, or for production or reproductive purposes. Hormones listed in § 205.603 could be used as medical treatments (*e.g.,* oxytocin). Stakeholders have noted that the USDA organic regulations fail to address use of hormones to stimulate production or for reproductive purposes. AMS is not aware of any hormones used by organic producers for these purposes, and no hormones are included on the National List for these uses. Therefore, the final rule's change maintains the status quo; that is, it affirms and supports the current prohibition on using hormones to promote growth, production, or reproduction. All hormones—unless used as medical treatments and included on the National List—are prohibited in organic production.

The final rule adds new § 205.238(c)(8) to prohibit organic livestock producers from withholding treatment designed to minimize pain and suffering for injured, diseased, or sick animals. Injured, diseased, or sick animals may be treated with any allowed natural substance or synthetic medication that appears on the National List without losing their organic status. However, if no medication allowed for organic production suffices to ease the animal's suffering, organic livestock producers are required to administer treatment even if the animals subsequently lose their organic status. Euthanasia is an acceptable practice for minimizing pain and suffering only when the animal is suffering from disease or injury that cannot be healed by other treatments, including treatments that would cause an animal to lose its organic status.

AMS adds new § 205.238(c)(9), which requires livestock producers to identify and record treatment of sick and injured animals in animal health records. Early identification can lead to more effective prevention or treatment, which can enhance the overall health of the livestock on that operation. Certifiers should review treatment during on-site inspections to verify that operations are individually identifying treated animals

and that treatments comply with the organic regulations.

AMS adds new § 205.238(c)(10) prohibiting induced molting in poultry production. This rule also defines induced molting at § 205.2 as any type of molting that is artificially induced. Section 205.238(a)(2) of this rule requires a nutritionally sufficient feed ration for livestock. Induced molting, a practice by which feed restriction, severe light manipulation, or other management practices are used to rejuvenate egg production, runs counter to the welfare intent of this final rule. An explicit prohibition on induced molting is consistent with the organic regulation's general animal welfare requirements, and the fall 2009 NOSB recommendation.[67]

AMS adds new § 205.238(d) requiring organic livestock operations to have a plan to minimize internal parasite problems in livestock. The plan must include preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak. Certifying agents must approve a livestock operation's parasite control plan as part of the operation's OSP.

In certain cases, livestock may suffer from an illness or injury where recovery is unlikely. AMS adds new § 205.238(e) to address euthanasia based on the 2011 NOSB recommendations. Section 205.238(e)(1) requires livestock producers to maintain written plans for euthanizing sick or injured livestock suffering from irreversible disease or injury. Section 205.238(e)(2) prohibits the following methods of euthanasia: suffocation, manual blows to the head by blunt instrument or manual blunt force trauma, and use of equipment that crushes the neck (*e.g.,* killing pliers or Burdizzo clamps). In the event of an emergency situation where a local, State, or Federal government agency requires the use of a non-organic method of euthanasia, organic livestock operations would not lose organic certification or face other penalties for that instance of euthanasia. The NOSB recommended listing the allowable methods of euthanasia; however, given that new humane euthanasia methods may emerge, AMS does not intend to discourage producers from using these techniques. AMS therefore directs organic livestock producers to use methods of euthanasia consistent with the most recent editions of the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals.[68] The list of specifically prohibited methods could be amended to include other techniques, if needed, through future rulemaking. AMS also requires in § 205.238(e)(3) that organic producers carefully examine livestock to ensure they are dead following a euthanasia procedure.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule. Changes to the final rule are discussed below and are followed by specific topics and themes from public comment.

- AMS removed the phrase ''resulting in appropriate body condition'' from the feed ration requirement in § 205.238(a)(2) because some comments found this phrase to be unnecessarily prescriptive or confusing. Removing this phrase reinforces that this requirement is meant to ensure operations provide adequate and nutritional feed to organic livestock.
- AMS amended the requirements in § 205.238(a)(5) regarding physical alterations. AMS removed the phrase ''to benefit the welfare of the animal'' as this is redundant with ''for . . . the safety of the animal.'' In response to public comment, the final rule clarifies who may perform alterations (''a person . . . capable of performing the physical alteration in a manner that minimizes stress and pain'') and when the alteration may be performed (''at a young age for the species'').
- In response to public comment, AMS amended the surgical procedure requirements in § 205.238(a)(7). AMS clarified that surgical procedures may be required to treat ''illness *or injury*.'' AMS also clarified that the reason for using surgical best practices is to ''promote the animal's wellbeing.''
- AMS removed a requirement to record lameness and the percent of herd suffering from lameness at § 205.238(a)(8) and revised the section to focus on a more general requirement to monitor, treat, and prevent lameness as appropriate to the species. This provides additional flexibility because some species are more prone to lameness.
- To align with changes made by AMS's Origin of Livestock final rule (April 5, 2022; 87 FR 19740) to the preventive medicine and parasiticide livestock practice standards, AMS amended § 205.238(b).
- In response to public comment, AMS clarified in § 205.238(c)(1) that milk from animals treated with synthetic substances that ''have associated withdrawal periods'' cannot be sold, labeled, or represented as organic during the withdrawal period.
- AMS revised the language in § 205.238(c)(10) that prohibits induced molting. The proposed rule used the term ''forced molting or withdrawal of feed to induce molting.'' AMS finds that ''induced molting'' is a more common and comprehensive term that better captures AMS's intent for a total ban on this practice, and it also aligns with the FDA definition of induced molting (21 CFR 118.3).
- AMS removed the sentence in § 205.238(d)(1) stating that ''Parasite control plans shall be approved by the certifying agent.'' Because parasite control plans are part of an OSP, and certifying agents must approve organic systems plans, the sentence was unnecessary, and AMS removed the language to avoid confusion.
- In response to public comment, AMS revised § 205.238(e)(1) to state that euthanasia is for ''sick or injured livestock *suffering from irreversible disease or injury*.'' This change clarifies that euthanasia should be used only if treatment is not an option.

Responses to Public Comment

AMS received many public comments from stakeholders across the organic industry discussing this section of the proposed rule. The topics that received the most public comment were physical alterations, body condition, induced molting, monitoring of lameness, medicines with withholding periods, and euthanasia. AMS summarizes and responds to those comments below.

Physical Alterations

(Comment) Several commenters requested that AMS clarify the requirements in § 205.238(a)(5) for when physical alteration is permitted and who may perform it. Commenters found ''reasonably young age'' (the language in the proposed rule) vague and requested a definition or species-specific listing of ages. Similarly, commenters said the requirement that alterations be performed ''by a competent person'' was vague. Some proposed alternative definitions of ''competent person'' while others asked that the regulation specify the person must be a veterinarian or that that the phrase be replaced with language such as ''a person skilled in the procedure.

(Response) AMS agrees that ''reasonably young age'' is too vague and has instead required that alterations

[67] Available at *https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[68] *https://www.avma.org/resources-tools/avma-policies/avma-guidelines-euthanasia-animals.*

must be performed ''at a young age for the species.'' This clarifies that operations should choose an age that is appropriate to the species of livestock. Similarly, AMS has added a phrase to clarify who may perform physical alterations: ''a person who is capable of performing the physical alteration in a manner that minimizes stress and pain.'' This language avoids being overly prescriptive and leaves flexibility to operations and certifiers while emphasizing that an operator's ability to minimize the animals' stress and pain during the alteration is the key qualification. Operations should choose a person capable of performing physical alterations based on their training and experience. This means that the capability of the person performing the physical alteration should scale with the complexity of the alteration. For example, ear tagging of cattle is a simple procedure that requires minimal knowledge and training, while a physical alteration that necessitates a permitted sedative and pain reliever may require the expertise of a more experienced or specially trained individual such as a veterinarian. These revisions clarify the use of permitted physical alterations, but also provide appropriate flexibility for operations to choose safe and responsible methods that best match their species of livestock.

(Comment) Several comments asked AMS to require that pain relief be administered—some said by a licensed veterinarian—both before and after physical alterations.

(Response) While AMS agrees that pain relief is an important element of physical alteration procedures, we believe that the final rule adequately addresses this concern. The final rule at § 205.238(a)(5) requires that ''physical alterations must be performed . . . in a manner that minimizes stress and pain.'' Operations should provide pain relief before and after physical alterations if this is necessary to minimize the stress and pain of the livestock.

(Comment) Some commenters objected to the proposed requirement to use anesthetics, analgesics, and sedatives for surgical procedures in cattle and sheep. Commenters interpreted the proposed requirement as requiring these drugs for *all* surgical procedures and stated the requirement was, ''inappropriate given that FDA has not approved any post-surgical analgesic products for pain management.''

(Response) Section 205.238(a)(7) of the final rule requires that surgical procedures be conducted using best practices to promote animal well-being and to minimize pain, stress, and suffering. In response to comments about the requirement to use medications for surgical procedures, AMS revised the final rule to clarify that medications should be used, ''as *appropriate*''. This section does not require use of anesthetics, analgesics, and sedatives for *all* procedures, although some surgical procedures may require medication to minimize pain, stress, and suffering. As to the commenters' point about lack of FDA approval for analgesics, AMS is aware that the National List (§ 205.603) includes animal drugs that are not necessarily labeled (*i.e.,* FDA approved) for use on all species. AMS also understands that the Animal Medicinal Drug Use Clarification Act (AMDUCA) allows veterinarians to prescribe ''extra-label'' use of drugs under certain conditions (see *https://www.fda.gov/animal-veterinary/guidance-regulations/animal-medicinal-drug-use-clarification-act-1994-amduca*), which may include use of a drug on a species that is not included on the approved drug label. AMS anticipates that operations will work with veterinarians to determine the appropriate, legal, and safe drugs for surgical procedures to minimize pain, stress, and suffering. The use of any individual substance in § 205.603 in a formulated product that is intended or used as a medical treatment is under the authority of FDA and must comply with all FDA regulations.

(Comment) Several comments requested that AMS add detusking to the list of prohibited pig management practices. Commenters cited that prohibiting tusk removal would align with third party boar welfare standards, namely the Certified Animal Welfare Approved by AGW (AWA), Global Animal Partnership (GAP), Regenerative Organic Certified (ROC), and Certified Humane Standards for pigs. They argued that physical alterations should be limited to those only necessary for an animal's well-being.

(Response) Consistent with NOSB recommendations, the final rule prohibits needle teeth clipping and tail docking as routine procedures and allows them only ''with documentation that alternative methods to prevent harm failed.'' AMS elected not to include detusking among the prohibited practices listed at § 205.238(a)(5)(ii). The NOSB recommendations did not address detusking or recommend that the practice be prohibited, and most pigs are slaughtered prior to an age when tusks would be present. Although not expressly prohibited by the final rule, an operation could only detusk if it could demonstrate it meets the requirements at § 205.238(a)(5).

Body Condition

(Comment) Several commenters pointed out that the proposed rule's requirement in § 205.238(a)(2) that feed and nutrition result in ''appropriate body condition'' was unclear. Many found the term ''appropriate'' too subjective. Others warned that the phrase ''body condition'' could be confused with ''body condition scoring'' as used in the livestock industry and be interpreted to mean that an animal's body condition score would establish whether a producer complied with the requirement.

(Response) AMS appreciates and agrees with these comments and has removed the phrase ''resulting in appropriate body condition'' from the final rule. By removing the phrase, the requirement correctly focuses on an operation's ability to meet nutritional needs by providing an appropriate food ration. Certifying agents and inspectors should verify that operations are meeting this requirement by reviewing an operation's feeding and nutrition practices. In some cases, a body condition score may be an appropriate measure of compliance.

Milk From Animals Treated With Substances That Have a Withdrawal Period

(Comment) Many commenters noted that the proposed regulatory text at § 205.238(c)(1) lacked helpful language from the preamble, which specified that milk from an animal treated with an allowed substance ''which has a withholding time'' could not be sold, labeled, or represented as organic ''during that withholding time.'' Commenters suggested that the language from the preamble should be included in the regulatory text.

(Response) AMS appreciates and agrees with this editorial suggestion. In the final rule, § 205.238(c)(1) specifies that milk from animals treated with substances ''that are allowed under § 205.603 but have associated withdrawal periods'' may not be sold, labeled, or represented as organic ''during the withdrawal period.'' Additionally, the regulatory text now says ''withdrawal period'' rather than ''withholding time'' for consistency with the language in the National List.

Preventive Medicines and Parasiticides

(Comment) Several comments noted that the OLPS proposed language at § 205.238(b) had not been updated to reflect changes to this section of the regulations by a recent AMS final rule

on the ''Origin of Livestock'' (April 5, 2022; 87 FR 19740).

(Response) AMS acknowledges the error and has revised the language at §§ 205.238(b)(2) and (b)(3) to reflect the regulatory text finalized by the Origin of Livestock final rule. The regulatory text now simplifies the reference to dairy and includes a reference to fiber bearing animals.

Induced (Forced) Molting

(Comment) Several comments requested a definition of the term ''forced or induced molting,'' as the term is used but not defined in the rule. Many commenters found it unclear whether all induced molting was prohibited, or only certain practices to induce molting. Some comments noted that the phrase ''or withdrawal of feed to induce molting'' may suggest that some methods of induced molting may be allowed. Commenters overwhelmingly requested that AMS prohibit any form of induced molting.

(Response) The final rule adopts the term ''induced molting'' as it better aligns with existing industry standards. AMS also added ''induced molting'' as a defined term in § 205.2 to mean ''molting that is artificially initiated.'' This term aligns with the FDA's definition of the term (21 CFR 118.3). The definition of induced molting and the language at § 205.238(c)(10) that ''An organic livestock operation must not . . . practice induced molting,'' clarifies that no form of artificially initiated molting is permitted in organic production.

Euthanasia

(Comment) Several commenters requested definitions for the terms ''death'' and ''euthanasia,'' which are used several times in the rule but not defined. Some wanted clarity on how death should be properly assessed following euthanasia.

(Response) AMS has chosen not to define ''death'' or ''euthanasia'' in the rule. AMS appreciates the feedback on this topic; however, commenters asked AMS to require very specific methods of confirming death. AMS believes that requiring such specific ways to confirm death would limit the options available to operations and make the requirement difficult to meet. AMS has chosen to keep the proposed rule's language, which requires that euthanized livestock ''must be carefully examined to ensure that they are dead.'' This will give operations the flexibility needed to confirm death in a way that best matches their livestock, production system and practices, and site-specific conditions. AMS recommends that operations use methods of euthanasia and confirmation of death consistent with the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals.

(Comment) Several commenters requested that the language in § 205.238(e) clearly state that euthanasia should only be used in cases where there is incurable illness or disease and cannot be used in lieu of treatment that would cause an animal to lose its organic status. Some commenters also believed that the proposed rule could be interpreted to suggest that euthanasia is the only or preferred option for sick or injured animals.

(Response) The final rule adds a phrase to clarify that organic operations must have written plans for ''prompt, humane euthanasia for sick or injured livestock *suffering from irreversible disease or injury*.'' Sick or injured livestock must be treated if recovery is possible, even if treatment would cause the animal to lose its organic status. Section 205.238(c)(7) clearly states that operations must not withhold medical treatment to protect organic status. AMS intends for euthanasia to be used in the humane management of irreversibly diseased or injured animals, not as a way to conveniently dispose of sick or injured animals.

Lameness

(*Comment*) One commenter noted that the proposed rule only required producers to monitor for lameness but that the rule did not require producers to treat animals for lameness or to modify conditions on the operation that might contribute to lameness. The comment requested that AMS include these additional requirements in the final rule to better align OLPS with third-party welfare standards.

(*Response*) AMS revised § 205.238(a)(8) to require that, in addition to monitoring lameness, operations provide ''timely and appropriate treatment of lameness'' and ''mitigation of the causes of lameness.'' Like all requirements in § 205.238 and subpart C of the organic regulations, an operation must describe in their OSP how they meet this requirement. However, AMS is not prescribing specific types of recordkeeping or documentation regarding lameness. The requirement in the final rule is sufficient to address monitoring, prevention, and treatment of lameness, while also being flexible enough that producers can choose options that best fit their operation, species of livestock, and site-specific conditions.

(*Comment*) Several comments suggested revising or removing § 205.238(a)(8). One commenter stated that interpretations of lameness can vary greatly, so additional clarification would be needed. Another commenter stated that this requirement is redundant, as recording sick livestock is already required in § 205.238(c)(9), and recordkeeping is required in § 205.103.

(*Response*) AMS agrees that other recordkeeping requirements in the rule and the existing organic regulations are sufficient to address lameness. AMS has removed the proposed rule's requirement to keep ''records of the percent of the herd or flock suffering from lameness and the causes.'' The final rule replaces the recordkeeping language with requirements for ''timely and appropriate treatment of lameness for the species; and mitigation of the causes of lameness.''

Vaccines

(*Comment*) Two certified operations and a veterinarian suggested that poultry vaccines should be allowed regardless of how they are produced.

(*Response*) Like the existing regulations and the proposed rule, the final rule in § 205.238(a)(6) continues to allow ''vaccines and other veterinary biologics'' as part of a producer's preventive health care practices. The status of specific vaccine manufacturing processes under § 205.603(a) (National List) or § 205.105(e) (Excluded Methods) is outside the scope of practice standards addressed in this rule.

C. Mammalian and Non-Avian Livestock Living Conditions (§ 205.239)

Description of Final Policy

The final rule separates the organic regulation's livestock living condition requirements into two distinct sections: one for mammalian and non-avian livestock species and one for avian species. Using two distinct sections acknowledges that these types of animals have different physiologies and therefore require certain unique husbandry practices. Section 205.239 includes requirements for mammalian and non-avian species. Avian living conditions are addressed in new § 205.241. Applicable sections of § 205.239 may be used for the certification of non-avian and non-mammalian livestock defined as ''livestock'' at § 205.2. For example, this may include certification of honeybees for the production of organic honey and honey products. However, livestock as defined in § 205.2 does not include aquatic animals for the production of food, fiber, feed, or other agricultural-based consumer products.

The final rule revises § 205.239(a)(1) to remove the requirement that all ruminant livestock must be able to feed simultaneously. One method of feeding livestock, including ruminants, is the use of a self-feeder or a creep-feeder. With creep-feeding and self-feeding, feed is accessible to all livestock at all times though they may not feed at the exact same time. Allowing self-feeding and creep-feeding systems provides organic ruminant producers with more flexibility and options to manage their farm and livestock in farm-specific methods.

AMS is making no changes to the current § 205.239(a)(3), which requires the use of appropriate, clean, dry bedding. If roughages are used as bedding, they must be organically produced and handled by certified operations, with the exception of transitioning dairy producers, who may provide crops and forage from third-year transitioning land—that is, land included in the OSP of the dairy farm in its third year of organic management, during the 12-month period immediately prior to the sale of organic milk and milk products (7 CFR 205.236(a)(2)(iii)).

Section 205.239(a)(4) describes the requirements for livestock shelter. Shelter must have sufficient space for the animals to lie down, stand up, and fully stretch their limbs and allow livestock to express their normal patterns of behavior over a 24-hour period. Shelter for livestock must provide temperatures, ventilation, and air circulation that is appropriate to the species using the shelter. This means that shelter must be designed to protect animals from extreme weather conditions they may face, including extreme cold, heat, precipitation, wind, or other conditions that could endanger the physical safety or well-being of the animal. Shelter must also be designed and managed in a way that reduces the potential for livestock to be injured when using the shelter.

AMS recognizes that there are times when an animal's freedom of movement may need to be temporarily limited for handling or management purposes. For example, an operation may need to temporarily limit freedom of movement for short periods of time for milking, feeding, or to ensure the well-being of animals. Stalls for organic dairy cattle are often designed to limit the animals from turning to the sides. This stall design directs manure and urine into a collection system to prevent mastitis and maintain low somatic cell counts in the milk. Mammalian livestock may be housed for part of the day in stalls as described in the OSP as long as they have complete freedom of movement during significant parts of the day for grazing, loafing, and exhibiting natural social behavior. This allowance does not permit the use of gestation crates, farrowing crates, or other confinement systems in which swine are housed individually in stalls that do not allow for sufficient space and freedom to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior. If livestock are temporarily confined indoors as permitted in § 205.239(b), livestock must be able to move around (stand up and lie down) and stretch their limbs. Operations must fully describe in their OSP the use of any stalls, including their methods of stall management and how livestock will be able to express their normal patterns of behavior.

AMS adds § 205.239(a)(4)(iv) to set requirements for indoor bedding and resting areas. Bedding and resting areas must be sufficiently large and comfortable to keep livestock clean, dry, and free of lesions. This requirement does not apply to animals raised on pasture or range. AMS recognizes that while livestock must be provided with shelter (defined in § 205.2), sometimes livestock on pasture or range do not have access to traditional barns or bedded areas and therefore do not have access to indoor space. These types of operations may provide animals with natural forms of shelter (*e.g.,* trees) to serve the same purpose as indoor shelter. Operations must describe in their OSP how they provide shelter to their livestock in a manner suitable for the species, stage of production, and environment.

AMS adds new requirements in § 205.239(a)(7) concerning the individual housing of dairy young stock. Section 205.239(a)(7) allows for the individual housing of animals until the weaning process is complete, as long as the animals have sufficient room to turn around, lie down, stretch out while lying down, get up, rest, and groom themselves. In addition, individual pens for young stock must be designed so that animals can see, smell, and hear other animals.

Once weaning is complete, an operation may no longer confine dairy young stock for this reason. An operation may confine dairy young stock for other reasons permitted under § 205.239(c), if applicable. For example, § 205.239(c)(2) permits temporary confinement of young dairy cattle from pasture for up to six months (prior to development of the rumen). Certifying agents must review any confinement practices following completion of the weaning process to determine if the temporary confinement is justified and allowed, especially when animals continue to be housed individually.

AMS adds three new provisions in § 205.239(a)(8) to require the group housing of swine, with three listed exceptions: (1) § 205.239(a)(8)(i) allows for sows to be individually housed at farrowing and during the suckling period, except gestation and farrowing creates are prohibited; (2) § 205.239(a)(8)(ii) allows for boars to be individually housed to reduce the likelihood of fights and injuries; and (3) § 205.239(a)(8)(iii) allows for swine to be individually housed after multiple documented instances of aggression or to allow an individual pig to recover from a documented illness. Certified operations should not use individual housing as the only remedy to aggressive behavior. Operations should also attempt to mitigate aggressive behavior by modifying practices or living conditions that could reduce this behavior. If these fail to correct the behavior, animals may be individually housed.

AMS adds two new provisions in § 205.239(a)(9) and (10) concerning swine housing. Section 205.239(a)(9) prohibits the use of flat decks or piglet cages. This provision prohibits the stacking of piglets in flat decks in multiple layers. AMS is not aware of any organic producers currently using these methods for organic production but prohibits the practices to affirm that these systems do not and cannot meet the living conditions requirements of the organic regulations. In addition, § 205.239(a)(10) requires that rooting materials be provided at all times, except during the farrowing and suckling period. Rooting is a natural behavior that organic swine producers must accommodate. Rooting can be done in soil, deep packed straw, or other materials.

AMS adds a new provision in § 205.239(a)(11) to further clarify the use of barns or other structures with stalls. If indoor shelter is provided by a structure with stalls, this structure must have enough stalls to allow for the natural behaviors of the animals. A cage does not qualify as a stall. AMS is aware that some operations use systems that robotically feed animals that take turns entering an individual feeding stall. AMS does not intend to prohibit such systems since they could enhance the well-being of organic livestock. Therefore, § 205.239(a)(11) provides an exception for this type of system: more animals than feeding stalls may be allowed for group-housed swine as long as all animals are fed routinely every day.

AMS also adds specific allowances for a variety of cattle barns, including tie-stall barns and stanchion barns, as long as an operation uses them in a way that is compatible with organic production. That means that animals must be given space to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior over a 24-hour period (see the requirement at § 205.239(a)(4)(i)). Because tie-stall and stanchion barns do not allow an animal to turn around, an operation cannot leave an animal tied up in this type of indoor space for more than 24 hours. Operations must describe their practices in their OSP and demonstrate to an accredited certifying agent that their use of these structures complies with other applicable organic regulations.

AMS adds a new requirement for outdoor access in § 205.239(a)(12). Organic livestock must have unencumbered access to the outdoors year-round, unless temporary confinement is justified under a specific reason described at § 205.239(b)–(d) (*e.g.,* nighttime confinement for protection from predators). When the outdoor space includes soil, then vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production. Ruminants must have access to pasture during the grazing season. Swine are not required to have access to soil or vegetation; however, if a swine producer chooses to allow swine to have access to the soil as a rooting material, then the producer must maintain vegetative cover that is appropriate to the season, the local environmental conditions, and the natural rooting behavior of swine.

AMS revises § 205.239(b)(7) to clarify the exemption for temporary confinement for the purpose of breeding livestock. Livestock may only be confined for the time required for natural breeding or to perform artificial insemination. A group of livestock may be confined before the procedures and while individual animals are bred; afterward, the group must be returned to living spaces that allow outdoor access. Livestock must not be confined to observe estrus, or after breeding to confirm pregnancy.

AMS revises § 205.239(b)(8) to clarify the temporary confinement exception for youth livestock projects. Because many youth livestock projects include the sale of market animals, organic animals that were under continuous organic management may be sold as organic animals at youth fairs, even if the sales facility is not certified organic. Thus, the revision includes an exemption to the § 205.239(b)(6) requirement that a livestock sales facility be certified as an organic operation. As an example, if a youth exhibition and sale is held at a livestock sales facility that is not certified organic, the livestock may be temporarily confined indoors during the event. In this case, the youth may still sell the organic animal as an organic animal, provided all other requirements for the organic management of livestock are met. Otherwise, non-certified sales facilities, such as auction barns or fairgrounds, may not sell or represent livestock as organic. AMS includes this exception to encourage the next generation of organic farmers.

AMS revises § 205.239(d) to mirror a revision at § 205.239(a)(1). Specifically, the revisions remove a requirement that ruminant slaughter stock be able to feed simultaneously during the finishing period. The update does not require space for simultaneous feeding but simply requires that all animals be able to feed without crowding and without competition for feed.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule. Changes to the final rule are discussed below and are followed by specific topics and themes from public comment. For discussion of comments about the economic impacts of the rule, please see the Regulatory Impact Analysis (RIA) included in the docket.

- AMS revised the title of § 205.239 from ''Mammalian livestock living conditions'' to ''Mammalian and non-avian livestock living conditions'' to ensure that operations producing organic invertebrates (*e.g.,* honeybees) can continue to do so under the applicable standards of this rule.
- In § 205.239(a)(4)(iv), AMS added language to clarify that the indoor housing standards for ''clean and dry'' bedding and resting areas should be applied as appropriate to the species of livestock. This acknowledges that different species have different bedding and resting area requirements and gives operations greater flexibility when applying the requirement to different species.
- In response to public comment, AMS removed from § 205.239(a)(7) the six-month time limit for temporary confinement of dairy young stock during the weaning process, authorizing temporary confinement only until the weaning process is complete. This change was made because the weaning process is typically much shorter than six months.
- AMS added language in § 205.239(a)(8)(i) to explicitly prohibit the use of gestation and farrowing crates for sows at farrowing and during the suckling period. This change was made in response to public comments requesting the explicit prohibition of these methods of individual confinement.
- AMS revised language in § 205.239(a)(8)(iii) to limit individual confinement of swine to only animals who have shown *multiple* instances of aggression or for recovery from an illness.
- AMS removed the word ''maximal'' relating to vegetative cover in § 205.239(a)(12). AMS removed this term because comments stated that the proposed rule's use of ''maximal vegetative cover'' was unclear and would be difficult to implement consistently. AMS refers to ''vegetation'' because that is a defined term.
- In response to requests in public comment, AMS added language to § 205.239(b)(7) to clarify that animals cannot be confined after breeding to confirm pregnancy.

Responses to Public Comment

Naming of Section

(Comment) Several comments requested changes to the title of this section to include non-mammalian species of livestock (*e.g.,* invertebrates). Commenters indicated that many operations are currently certified to produce organic invertebrates, such as honeybees. Those operations have used the existing requirements at § 205.239, and comments noted that AMS's proposed revision to split § 205.239 into only mammalian and avian sections would leave out standards for non-avian and non-mammalian operations.

(Response) AMS revises the title of this section from ''Mammalian livestock living conditions'' to ''Mammalian and non-avian livestock living conditions'' to avoid unintentionally excluding non-mammalian and non-avian species of livestock (*e.g.,* invertebrates) from this rule. Adding ''non-avian'' clarifies that operations may use the applicable livestock standards at § 205.239 to produce organic livestock that is not avian or mammalian (*e.g.,* invertebrates). Adding this term ensures that operations producing organic invertebrates can continue to do so without interruption and allows future operations to enter the market and produce non-mammalian and non-avian livestock under the organic label.

Ammonia Monitoring

(*Comment*) Some comments requested that AMS set ammonia testing

requirements for mammals in addition to poultry.

(*Response*) AMS acknowledges that ammonia is an air contaminant that can impact all livestock. This rule sets limits on ammonia in poultry houses and requires regular monitoring. Compared to other livestock, poultry are more susceptible to ammonia accumulation due to the physical layout of poultry housing and the decomposition of uric acid from poultry droppings. Additionally, the NOSB has not recommended monitoring or limiting ammonia levels in mammalian livestock production, and AMS did not propose to do so in the proposed rule. Therefore, AMS has elected not to set ammonia requirements for mammals in the final rule.

Bedding

(*Comment*) Some comments requested clarification on the use of ''clean and dry'' in relation to the requirement for bedding and resting areas in indoor housing. Commenters explained that the interpretation of ''clean'' is both subjective and species dependent.

(*Response*) AMS acknowledges that what is considered ''clean and dry'' depends on the species of livestock. AMS revises the language in the final rule to clarify that operations must use clean and dry bedding ''as appropriate for the species.'' This change gives operations the flexibility to manage bedding in a way that fits the specific type of livestock they are raising.

Swine Standards

(*Comment*) Several commenters requested more specific standards for swine, including minimum stocking density requirements and a requirement for access to soil and vegetative cover.

(*Response*) This final rule includes swine-specific standards at § 205.239(a)(8)—(11). The rule requires that swine must be housed in a group, limits when swine can be housed individually, requires rooting materials, prohibits the use of flat decks and piglet cages, and describes allowable types of feeding techniques. This rule also includes many other requirements that apply to all livestock, including swine. At this time, AMS believes these requirements are adequate to ensure the welfare of organically raised swine, and AMS has not included the additional swine-specific criteria in the final rule.

(*Comment*) Several commenters asked that the final rule's regulatory text allow swine to be housed individually only after *multiple* instances of aggression, as stated in the preamble.

(*Response*) AMS revises the final rule's regulatory text to specify that swine may be individually housed only after *multiple* documented instances of aggression to clarify AMS's intent. Certified operations should not use individual housing as the only remedy to aggressive behavior. Operations should also attempt to mitigate aggressive behavior by modifying practices or living conditions that could reduce this behavior. If these fail to correct the behavior, animals may be individually housed.

(*Comment*) Several commenters requested that AMS specifically prohibit gestation and farrowing crates, citing that these crates can cause pain, reduce the weaning rate of piglets, and increase the rate of stillbirths.

(*Response*) AMS revises the final rule to clarify that gestation and farrowing crates are prohibited in organic production. AMS did not use these terms in the proposed rule, but AMS recognizes that *gestation* and *farrowing crates* are commonly used terms so is including them in the final rule. Sows may be housed individually for farrowing and during the suckling period, as proposed, and the final rule clarifies that sows may not be confined to gestation or farrowing crates during these time periods.

(*Comment*) Many commenters noted that rooting materials are not explained, nor specific materials defined in the proposed rule. The commenters requested additional clarification on the standard for rooting materials. Advocacy organizations and some certifiers also asked for clarification on whether rooting materials must be provided both indoors and outdoors, including during temporary confinement.

(*Response*) AMS discusses the use of rooting materials and § 205.239(a)(10) in the ''Description of final policy'' section above. Operations must provide rooting materials to allow swine to express their natural behavior, which includes rooting (see § 205.239(a)(1) and (4)). The final rule does not specify the allowed types of rooting materials or where, exactly, rooting materials must be available. For a producer to comply with general requirements to accommodate natural behaviors at § 205.239, AMS expects producers will provide rooting opportunities in all locations, as well as during periods of temporary confinement, when feasible. However, the rule provides operations flexibility to choose materials and management techniques that best accommodate natural swine rooting behavior and that best fit site-specific conditions.

Temporary Confinement of Cattle

(*Comment*) Several comments asked if tie-stall and stanchion barns are allowed in organic production. These comments noted that tie-stall and stanchion barns do not allow animals to turn around, and that this may conflict with the rule's requirement that animals must be able to turn around within a 24-hour period.

(*Response*) Tie-stall barns and stanchion barns are permitted in organic certification systems if an operation uses them in a way that is compatible with organic production. That means that animals must be given space to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior over a 24-hour period (see the requirement in § 205.239(a)(4)(i)). Because tie-stall and stanchion barns do not allow an animal to turn around, an operation cannot leave an animal tied up in this type of indoor space for more than 24 hours. However, during periods of temporary confinement, animals may remain in stalls. In this case, AMS recognizes that animals may not be able to turn around.

(*Comment*) Commenters requested that some specific references to cattle in the proposed rule be broadened so the requirements would apply to any species. Specifically, comments requested that AMS revise requirements related to individual housing for young dairy animals at § 205.239(a)(7) and § 205.239(c)(2).

(*Response*) AMS agrees that animals of all species should have sufficient space and freedom of movement. However, § 205.239(a)(7) and § 205.239(c)(2) address production practices specific to dairy animals and to dairy cattle, respectively. The more general requirement that all organically managed animals should have ''sufficient space and freedom to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior'' is set in § 205.239(a)(4)(i).

Temporary Confinement To Confirm Breeding

(*Comment*) Several comments requested that AMS clarify animals may not be confined after breeding to confirm pregnancy, as this could allow producers to confine animals for long periods of time without any corresponding benefit to animal health or welfare.

(*Response*) AMS agrees that this change would benefit the welfare of the livestock and has added language to § 205.239(b)(7) to clarify that animals may not be confined after breeding to confirm pregnancy.

Individual Housing of Calves

(*Comment*) Several commenters disliked that the proposed rule allowed an operation to individually house dairy young stock for up to six months, citing that this practice does not align with consumer expectations or third-party welfare standards. One commenter requested a shorter time limit for individual housing of calves, referencing an eight-week limit in both European Union organic standards and Certified Humane standards. Other comments requested that AMS clarify how long an operation can confine for weaning (§ 205.239(a)).

(*Response*) AMS removed the phrase ''but no later than six months of age'' in the requirements related to housing for weaning at § 205.239(a)(7). This section of the rule now specifies that dairy young stock (of any species) may be housed individually only until completion of the weaning process. Once weaning is complete, an operation may no longer confine dairy young stock for this reason. An operation may confine dairy young stock for other reasons permitted under § 205.239(c), if applicable. For example, § 205.239(c)(2) permits temporary confinement of young dairy cattle from pasture for up to six months (prior to development of the rumen). AMS is not revising the maximum time requirement for confinement from pasture at § 205.239(c)(2) in the final rule. Certifying agents must review any confinement practices following completion of the weaning process to determine if the temporary confinement is justified and allowed, especially when animals continue to be housed individually.

(*Comment*) One commenter requested the removal of the requirement for calves to see other calves, as this may not be feasible in some cases where an operation has very few calves.

(*Response*) AMS has elected to revise this language. During temporary confinement in individual pens, it is important for young dairy animals to be able to see, smell, and hear other calves, or other animals in cases where this is not feasible, such as an operation with a single offspring.

Outdoor Space

(*Comment*) One commenter requested AMS set a minimum amount of outdoor space for mammalian livestock. The commenter also asked AMS to specify what this outdoor space should be composed of (*i.e.,* specify what percentage of outdoor space be soil and vegetation).

(*Response*) AMS had not proposed minimum outdoor space requirements for mammalian livestock, and the NOSB has never provided minimum space recommendations for mammals. Similarly, the final rule does not include minimum space requirements for mammals. However, the USDA organic regulations have included and will continue to include many provisions related to outdoor space requirements for mammalian livestock. Section § 205.239(a) specifies that operations must provide living conditions that accommodate the well-being and natural behavior of mammalian livestock. This includes year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight, suitable to the species, stage of life, climate, and environment. Additionally, ruminant livestock must be provided with daily grazing throughout the grazing season to meet feed intake requirements (§§ 205.237 and 205.239), and yards, feeding pads, and feedlots must be large enough to allow all ruminant livestock to feed without competition for food (§ 205.239). Finally, this rule adds a requirement that operations maintain vegetation on outdoor space that includes soil, and that vegetation must be appropriate for the season, climate, geography, species of livestock, and stage of production (§ 205.239(a)(12)). Together these requirements for outdoor conditions support the welfare of organic mammalian species.

D. Avian Living Conditions (§ 205.241)

Description of Final Policy

The final rule adds new § 205.241, ''Avian living conditions,'' to the organic regulations. This section includes requirements for all organic avian species, including but not limited to chickens, turkeys, geese, quail, pheasants, and any other bird species that are raised for organic eggs, organic meat, or other organic agricultural products.

Section 205.241(a) establishes general requirements for organic poultry production and more detailed requirements in paragraphs (b), (c), and (d). Section 205.241(a) requires organic poultry operations to establish and maintain living conditions that accommodate the well-being and natural behaviors of birds. These living conditions include year-round access to the outdoors, soil, shade, shelter, exercise areas, fresh air, direct sunlight, clean water for drinking, materials for dust bathing, and adequate space to escape aggressive behaviors. Continuous total confinement of animals is prohibited. The living conditions provided should be appropriate to the species, its stage of life, the climate, and the environment. These requirements, based upon a 2009 NOSB recommendation,[69] are largely identical to previously established livestock requirements at § 205.239(a)(1), although they now require materials for dust bathing and adequate outdoor space to escape aggressive behaviors.

Section 205.241(b) requires that indoor space be sufficiently spacious to allow all birds to move freely, stretch both wings simultaneously, stand normally, and engage in natural behaviors. Cages or environments that limit free movement within the indoor space are prohibited. In addition, the indoor space must allow birds to engage in natural behaviors such as dust bathing, scratching, and perching. The requirements are adopted from a 2009 NOSB recommendation and modify previously established requirements for organic livestock at § 205.239(a)(4) that required ''shelter designed to allow for . . . natural maintenance, comfort behaviors, and opportunity to exercise.''

Section 205.241(b)(2) requires producers to monitor ammonia levels in poultry houses and implement practices to maintain ammonia levels below 20 ppm. When ammonia levels exceed 20 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 20 ppm. Ammonia levels must not exceed 25 ppm. Ammonia is a natural breakdown product of manure from livestock and is harmful to birds when inhaled, especially at concentrations above 25 ppm.[70] Inhalation of high levels of ammonia has a negative impact on poultry welfare, causing irritation and inflammation, as well as contributing to negative production outcomes like reduced growth. In most cases, high levels of ammonia indicate that litter is damp, or litter management practices require modification. For producers with more than one poultry house, the producer should monitor ammonia levels in each house.

Section 205.241(b)(3) clarifies the indoor lighting requirements for organic layers and fully feathered birds. Organic producers may provide artificial light for up to 16 continuous hours per day (24-hour period). Operations must provide at least eight hours of

[69] *https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Sunset%20Rec%20Animal%20Welfare.pdf.*

[70] ''Ammonia production in the poultry houses and its harmful effects'' IU Sheikh, SS Nissa, Bushra Zaffer, KH Bulbul, AH Akand, HA Ahmed, Dilruba Hasin, Isfaqul Hussain and SA Hussain, International Journal of Veterinary Sciences and Animal Husbandry, 3(4): 30–33, 2018.

continuous darkness per day, unless an operation's geographic location does not allow for eight hours of darkness (for example, an operation in Alaska during summer months). In that case, an operation should provide as many dark hours as feasible for the season. The 16-hour period must be calculated as a single continuous time period rather than as intermittent periods. Artificial light should be lowered gradually to encourage hens to move to perches or otherwise settle for the night. Operations must not manipulate the light spectrum to increase feed intake or growth rates.

Section 205.241(b)(4) describes requirements for exit areas, or doors, on shelters so all birds can easily access both indoor and outdoor areas. Access and utilization of outdoor areas is a core principle of organic production systems. The organic regulations have required ''Year-round access for all animals to the outdoors'' since the organic regulations were established in 2001 (see 7 CFR 205.239(a)(1)). Organic avian systems must be designed so birds have ready access to outdoor areas and are able to return indoors to roost in the evening. Producers must provide exit doors of sufficient number and size to enable all birds to access outdoor and indoor areas. The standard for exit doors is set at one (1) linear foot of exit area space for every 360 birds.

If an operation does not provide at least one linear foot of exit area per 360 birds ratio, the operation may comply with the requirement if it: (1) describes (in their OSP) their exit areas and how they enable all birds to access outdoor areas; and (2) demonstrates how ready access to the outdoors is provided for all birds. In that case, the certifier must review the description in the OSP and verify that exit areas meet the standard for outdoor access to determine an operation complies with the exit area requirement. A certifier could, for example, review time lapse videos, pictures (with time stamp data), and/or conduct on-site inspections to verify that exit areas ensure all birds have ready access to the outdoors.

In any case, a certifier will determine if doors are appropriately distributed and sized, as required, by assessing if all birds have ready access to the outdoors. This section also notes that shell egg producers may be subject to FDA requirements in 21 CFR part 118 intended to prevent Salmonella Enteritidis (SE). Specifically, these FDA regulations require producers to maintain biosecurity measures that prevent stray poultry, wild birds, cats, rodents, and other animals from entering poultry houses. AMS directs producers to consult with the FDA's August 2022 final guidance on this subject for more information on how to comply with the requirements while providing access to areas outside the poultry house.[71]

Section 205.241(b)(5) requires perches for chicken layers at a rate of six inches per bird for all housing. Perch space may include the alighting rail in front of nest boxes, but it may not include floors in houses with slatted floors. Perches are not required for broilers, meat birds, or layers of species other than *Gallus gallus.* All layers must be able to perch at the same time, except in aviary housing (see the definition of indoor space in § 205.2). Aviary housing is permitted to have less perch space because birds in aviary housing are also able to escape aggressive behavior by moving between tiers in the house. Aviary housing must provide six inches of perch space for 55 percent of the flock (*i.e.,* 3.3 inches of perch for each bird in the flock). These requirements are adopted from 2009 and 2011 NOSB recommendations.

Section 205.241(b)(6) specifies indoor requirements to allow for certain natural behaviors. Except for mobile housing (defined at § 205.2), indoor space must include areas that allow for scratching and dust bathing. For mobile housing, producers may meet this requirement by providing scratch areas and dust bathing areas outside of the mobile housing. In that case, a mobile house may include 100% slatted or mesh flooring (which do not allow for scratching and dust bathing). For other types of indoor housing, litter or bedding such as wood shavings or straw must be provided indoors. If litter or bedding will be consumed by animals, it must be organic. Manure excreted by birds in a poultry house alone, without additional litter material, would not be sufficient to meet this requirement. This section also requires that litter be maintained in a dry condition, because wet litter can lead to a variety of problems for birds, including excess ammonia, lameness, and pest problems.[72] High moisture content in poultry litter can cause negative health and welfare outcomes, including foot pad dermatitis[73] and increased populations of house fly leading to disease in the birds.[74] Wet litter also promotes bacterial growth, which can further lead to disease and negative health outcomes in birds.[75] Litter may be topped off when needed to maintain sufficient dryness. These requirements are adopted from 2009 and 2011 NOSB recommendations.

Section 205.241(b)(7) includes specific flooring requirements for non-mobile indoor avian housing with slatted/mesh floors. These houses must provide at least 15 percent solid flooring to allow birds indoors to engage in natural behaviors, including scratching and dust bathing, without crowding. This requirement does not apply to mobile houses which, by definition (see § 205.2), allow continuous access to areas outside the structure where birds may scratch and dust bathe. The requirement is adopted from a 2009 NOSB recommendation.

Sections 205.241(b)(8), (9), and (10) list the required minimum indoor space for chickens (*Gallus gallus*) in different types of housing. These are minimum standards, and organic producers may choose to provide more indoor space than required. Sections 205.241(b)(8), (9), and (10) list requirements for layers, pullets, and broilers, respectively. Indoor space requirements for layers vary by the type of housing provided. Section 205.2 further defines the types of housing, including mobile housing, aviary housing, slatted/mesh floor housing, and floor litter housing. For housing that does not fit into any of these defined types, producers must comply with standards for ''other housing'' at § 205.241(b)(8)(v). Pasture pens that are moved regularly and provide direct access to soil and vegetation are not considered indoors (see definition of ''outdoors'' in § 205.2). AMS has adapted these requirements from 2009 and 2011 NOSB recommendations and in consideration of third-party animal welfare standards.

The rule requires less indoor space per bird in houses that provide more access to vertical space (*e.g.,* aviary and slatted/mesh floor housing), as birds have more room to move around in those types of housing. Housing where birds have more limited access to vertical space (*e.g.,* floor litter housing)

[71] Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-questions-and-answers-regarding-final-rule-prevention-salmonella-enteritidis-shell-0.*

[72] ''Broiler Litter: Odor and Moisture Concerns'', Tom Tabler, Yi Liang, Jonathan Moon, and Jessica Wells. Mississippi State University Extension, Publication: P3515, 2020.

[73] ''Wet litter not only induces footpad dermatitis but also reduces overall welfare, technical performance, and carcass yield in broiler chickens'', Ingrid C. de Jong, H. Gunnink and J.van Harn, Journal of Applied Poultry Research, 23(1): 51–58, 2014.

[74] ''Pests in Poultry, Poultry Product-Borne Infection and Future Precautions'', Hongshun Yang, Shuvra K. Dey, Robert Buchanan, and Debabrata, Biswas Practical Food Safety: Contemporary Issues and Future Directions, 1, 2014.

[75] ''Broiler Litter: Odor and Moisture Concerns'', Tom Tabler, Yi Liang, Jonathan Moon, and Jessica Wells, Mississippi State University Extension, Publication: P352020.

must include more indoor space per bird. AMS allows for higher stocking densities in mobile housing, as birds managed in these systems spend more time outdoors, and mobile housing must be relatively small and light, as it is moved frequently.

The final rule expresses the space requirements for birds in two different ways, and producers may use either metric to demonstrate compliance with the requirements. In the first metric, producers may demonstrate compliance with the requirements by using the known weight of birds in a flock. This metric is expressed as the maximum *pounds of bird allowed per square foot* of indoor space. The minimum space required under this alternative metric depends on the average weight of birds at that time. All weight references in §§ 205.241(b) refer to the weight of live birds and not the weight of processed birds. This metric accommodates for differences between different breeds and also adapts for birds as they age and become heavier. Under this metric, larger breeds (*i.e.,* heavier individual birds) must be provided with more indoor space than smaller breeds, on a per bird basis. For example, Rhode Island Red birds are heavier than White Leghorns or ISA Browns, and thus cannot be stocked as densely, in terms of number of birds per unit area.

The second metric is an alternative that establishes the minimum space that must be provided per animal in *square feet per bird.* In some cases, AMS expects this will be a simpler method to calculate the required space, particularly when individual bird weights differ within a flock (*e.g.,* because of a mixture of breeds or ages within a flock). For this method, producers simply multiply the number of birds in a flock by the space required per bird to obtain the minimum total space required for the flock. Equivalently, producers can divide the available area by the required space per bird to arrive at the maximum number of birds allowed in that area.

To provide additional context, consider the following example of layers in a floor litter housing system. At 32 weeks of age, these layers weigh 4.3 pounds each and must be provided with 1.4 square feet per bird (or 3.0 pounds of bird for each one square foot, as required at § 205.241(b)(8)(iv)). At 80 weeks of age, each layer weighs 4.5 pounds and the flock would require 1.5 square feet per bird (or 3.0 pounds of bird per square foot). If a producer has 10,000 square feet available to raise these birds, this producer could stock 6,993 birds at 32 weeks of age (bird weight of 4.3 pounds) but only 6,667 birds at 80 weeks of age (bird weight of 4.5 pounds). In comparison, a producer that uses the alternative metric of 2.2 square feet per bird could stock no more than 4,545 birds in the same 10,000 square foot floor litter house. A producer with a small number of birds may prefer to use the alternative metric (square feet per bird), especially when the space provided easily exceeds the requirements. This eliminates the need to weigh birds and estimate the average weight per square foot.

When calculating the weight of birds to assess pounds per square foot, an average weight may be established for the flock by taking weights of a representative sample of the flock. The space requirement is not specific to each individual bird in a flock. AMS understands that many producers already monitor and track bird weight closely during the production cycle to monitor bird development and health and calculate feed requirements. However, if weight is not monitored by a producer, the producer will either need to establish the weight of birds or comply with the alternative metric (expressed as square feet per bird).

The weight metric (pounds per square foot) requires the producer to know the total weight of birds. The simpler alternative method (square feet per bird) requires the producer to know only the number of birds in a flock. This simpler alternative method will, in almost all cases, require more space per bird than the weight metric of pounds per square foot. Producers may demonstrate compliance by using either metric. A certifying agent does not need to compare a producer's compliance with both metrics if compliance with either one can be demonstrated.

Section 205.241(b)(11) specifies how to calculate the area of the indoor space. Producers must calculate indoor space accurately to ensure that their housing systems meet the requirements in §§ 205.241(b)(8) through (10). The total area of the indoor space is calculated by including the square footage of all flat areas in a house, excluding nest boxes (areas provided to layers for laying eggs). Elevated round perches, for example, are not flat areas and could not be included as indoor space. Nesting areas are excluded from the calculation, as they are distinct from useable floor areas of the house where birds can move around freely. This method of calculation aligns with the 2009 and 2011 NOSB recommendations.

Section 205.241(b)(12) clarifies that indoor space may include enclosed porches and lean-to type structures (*e.g.,* screened in, roofed) provided that the birds always have access to the space, including during temporary confinement events. If the birds do not have continuous access to a porch or enclosed structure, including during temporary confinement events, that space may not be considered indoor space and may not be included in an operation's indoor space calculation.

Section 205.241(c) establishes the outdoor space requirements for organic avian species, including the amount of outdoor space that operations must provide for the birds. The requirements of § 205.241(c) are adopted or adapted from 2009 and 2011 NOSB recommendations, third-party animal welfare standards, and existing organic regulations previously in § 205.239. Section 205.241(c)(1) requires that operations use outdoor space designed to promote and encourage daily outdoor access for all birds. Producers must provide access to the outdoors at an early age. Exit areas are described previously in § 205.241(b)(4), but this section requires that door spacing promote and encourage outdoor access and requires that operations provide outdoor access daily. Outdoor access may only be temporarily restricted in accordance with § 205.241(d).

Section 205.241(c)(2) requires that outdoor areas for poultry have a minimum of 75 percent soil and that the soil portion of the outdoor area must include vegetative cover. Vegetative cover must be maintained in a manner that does not provide harborage for rodents and other pests. For example, a producer may mow vegetation to ensure that tall vegetation does not provide harborage for pests. A maximum of 25 percent of the outdoor area may be gravel, concrete, or surfaces other than soil. Vegetation is required, as vegetation protects soil and water quality and allows birds to engage in natural behaviors, including foraging, pecking, and scratching. The amount of vegetation present will depend on the season, climate, geography, species, and the stage of production.

Section 205.241(c)(3) clarifies how producers may provide shade to meet the general requirements of § 205.241(a). Shade may be provided in outdoor areas by trees, shade structures, or other appropriate objects. This section is specific to shade in outdoor areas; it does not permit structures that do not meet the definition of ''outdoors'' (§ 205.2) to be included in calculations of outdoor space.

Sections 205.241(c)(4) through (6) specify minimum outdoor space requirements for chickens (*Gallus gallus*). As described above for the indoor space requirements (§ 205.241(b)), the final rule includes

two methods for determining compliance with space requirements. One method relies on bird weights to establish the maximum stocking density (expressed as maximum *pounds of bird per square foot*). The other method requires only knowing the number of birds and the area of the space to establish the maximum stocking density (expressed as minimum *square feet per bird*). Either method is acceptable to demonstrate and evaluate compliance with the outdoor spacing requirements.

Organic layer producers must provide at least one square foot of outdoor space for every 2.25 pounds of bird in the flock. For example, if birds average 4.5 pounds, a producer must provide 2.0 square feet of outdoor space for each bird in the flock. Alternatively, if bird weights are not known, a producer may provide at least 3.0 square feet of outdoor space per layer. Organic pullet producers must provide at least one square foot of outdoor space for every 3.0 pounds of bird in the flock. Alternatively, a producer may provide at least 1.7 square feet of outdoor space per pullet. Organic broiler producers must provide at least one square foot of outdoor space for every 5.0 pounds of bird in the flock. Alternatively, a producer may provide at least 2.0 square feet of outdoor space per broiler.

All weight references in §§ 205.241(c) refer to the weight of live birds and not the weight of processed birds. The total outdoor space that an operation must provide must be calculated based on the total number of birds in a flock, not the number of birds in outdoor space at a given moment. Related discussion on this topic can be found above in the discussion on the indoor space requirements at §§ 205.241(b)(8)–(10), such as the calculation of bird weight and the usefulness of this method to accommodate for differences over the flock lifespan as birds become heavier.

Section 205.241(c)(7) clarifies that unenclosed roofed areas (*i.e.,* having a roof but no walls to contain birds) can be counted as outdoor space when these areas allow birds to freely move between the roofed area(s) and other outdoor space. This ensures that enclosed porches are not counted as outdoor space. If a producer were to modify an enclosed porch to permanently remove the walls and provide birds with free access to other outdoor spaces, the area would be considered outdoor space.

One of the key considerations for distinguishing indoor space from outdoor space is how the livestock are managed in that space, which may determine whether the space should be defined as indoors, outdoors, or neither indoors nor outdoors. As an example, a screened-in and roofed porch to which the (enclosed) birds always have access, including during temporary confinement events, would be considered indoor space. That same porch would be considered neither indoors nor outdoors if the birds do not have continuous access to the space during temporary confinement events.

Section 205.241(d) describes the conditions under which organic avian livestock producers may temporarily confine birds indoors (''temporary'' and ''temporarily'' are defined at § 205.2). Producers must document confinement in a manner that demonstrates compliance with the recordkeeping requirements in § 205.103. Records should include the reason for the confinement, the duration of the confinement, and the flocks that were confined. Records should be sufficient for a certifier to determine if birds were confined in compliance with this section. The requirements of § 205.241(d) are adopted or adapted from previously established requirements for organic livestock at § 205.239(b), and from 2009 and 2011 NOSB recommendations and third-party animal welfare organization standards.

Section 205.241(d)(1) provides an allowance for temporary confinement in response to inclement weather, which is defined at § 205.2 as weather that is violent or characterized by temperatures (high or low) or excessive precipitation that can cause physical harm to livestock. Inclement weather does not include weather that is sub-optimal for production, such as weather that may reduce growth rates or reduce production yields. In addition to specifying ''inclement weather,'' as defined at § 205.2, the final rule also establishes a lower (32 degrees Fahrenheit) and upper temperature threshold (90 degrees Fahrenheit) for temporary confinement. Producers may temporarily confine animals and maintain their organic certification when animals are temporarily confined for inclement weather. The term ''inclement weather'' is defined at § 205.2 as, ''Weather that is violent, or characterized by temperatures (high or low), or characterized by excessive precipitation that can cause physical harm to a given species of livestock. Production yields or growth rates of livestock lower than the maximum achievable do not qualify as physical harm.'' AMS recognizes that a narrower range of temperatures may define the optimal temperature conditions for birds (of different ages and species), but § 205.241(d)(1) may not be used as justification for confinement of birds to the narrow range to maximize growth or production.

AMS recognizes that some weather may qualify as inclement weather when temperatures are within the 32- to 90-degree range. For example, many types of violent weather that may cause physical harm to animals will occur within this range (*e.g.,* extreme wind, violent precipitation, etc.). Temporary confinement of animals for these events is appropriate under this section of the rule. Finally, the rule does not require that birds be confined when temperatures are below 32 degrees or above 90 degrees Fahrenheit to be in compliance with the requirement. For example, a sunny 30-degree Fahrenheit day may allow birds to go outdoors without any harmful effects, and outdoor access would be acceptable and encouraged. Certifiers will need to evaluate an operation's practices and temporary confinement records to determine if an operation complies with the allowance to temporarily confine animals for inclement weather.

Section 205.241(d)(2) provides an allowance for temporary confinement indoors due to a bird's stage of life. In this section, AMS has established specific requirements for confining chicken broilers and pullets due to their stage of life (''stage of life'' defined at § 205.2). Additionally, the section includes a general provision for confining other avian species until fully feathered. Chicken broilers may be confined through 4 weeks of age and chicken pullets may be temporarily confined indoors through 16 weeks of age. The NOSB recommended 16 weeks of age as the age after which outdoor access is required to provide adequate time for pullets to complete their vaccination program before exposure to pathogens outdoors. Any confinement beyond the time when birds are fully feathered must be in accordance with § 205.241(d).

Section 205.241(d)(3) provides an allowance for temporary indoor confinement for conditions under which the health, safety, or well-being of the birds could be jeopardized. Temporary confinement under this provision must be recorded; records must clearly state the reason(s) for confinement (per § 205.241(d)(3)), with a detailed and robust justification demonstrating how the birds' health, safety, or well-being could be jeopardized. To confine birds under this provision, a producer must have sufficient justification to demonstrate that an animal's health, safety, or well-being could be jeopardized by access to the outdoors. A producer's practices and justification must be included in their OSP

(§ 205.201), and records must be sufficient to demonstrate compliance (§ 205.103). Certifiers will verify compliance with this requirement. Producers and certifiers should consult with animal health officials, as appropriate, to determine when confinement of birds is warranted to protect the health, safety, or well-being of the birds. Animal health officials are also encouraged to reach out to certifiers and to AMS to discuss specific health concerns. AMS will continue to engage animal health officials, including the USDA's Animal and Plant Health Inspection Service (APHIS), State Departments of Agriculture and State Veterinarians, about risks to bird health and provide appropriate directions to certifiers or producers, as necessary.

AMS recognizes that this section allows operations to temporarily confine animals for a variety of reasons, but operations may not justify ongoing or long-term confinement for reasons that do not pose significant and specific risks to animal health, safety, or well-being. This section provides an allowance for organic operations to temporarily confine animals. AMS directs producers and certifiers to reference § 205.2 (Terms defined) when evaluating confinement under § 205.241(d)(3), which defines ''temporary and temporarily'' as, ''Occurring for a limited time only (*e.g.,* overnight, throughout a storm, during a period of illness, the period of time specified by the Administrator when granting a temporary variance), not permanent or lasting.'' For example, an operation may not confine birds in an attempt to avoid any and all predation and bird mortality that may result from time outdoors. Additionally, an operation may not confine animals indoors to simply maximize growth and/or production. Access to the outdoors is a key principle of the organic livestock standards (see § 205.241(a)). Therefore, AMS expects producers to maximize access to outdoors to the greatest degree possible to support the health and natural behavior of poultry and the requirement at § 205.241(a).

Section 205.241(d)(4) provides an allowance for temporary indoor confinement in the case of risk to soil or water quality. This provision mirrors an existing allowance at § 205.239 and allows producers to avoid damage to soil or water quality. This means that an operation may temporarily confine poultry to prevent damage to soil or water quality. For example, an operation may choose to temporarily confine animals after a very heavy rainfall to help minimize soil erosion and runoff. However, confinement for this reason must be temporary (see the definition of *temporary* in § 205.2) and must be documented so that the certifying agent can assess if the operation's use of confinement complies with the organic regulations. Frequent or prolonged confinement to prevent damage to soil or water quality is not permitted because it is not temporary. The need to frequently confine animals for long periods to avoid damage to soil and water quality may also indicate that an operation's outdoor access practices fail to meet the general requirements to maintain or improve the natural resources of the operation, including soil and water quality (§ 205.200). This provision is not intended to allow producers to avoid those requirements and is only allowed to justify temporary (*i.e.,* not permanent or lasting) confinement.

Section 205.241(d)(5) provides an allowance for indoor confinement for preventive health care procedures and for the treatment of illness or injury. Neither life stages nor egg laying are considered an illness for confinement purposes. For example, this provision allows producers to briefly confine a flock to administer a vaccine or to confine an individual animal that requires medical treatment.

Section 205.241(d)(6) provides an allowance for indoor confinement for sorting, shipping, and poultry sales. Birds must be managed organically during the entire time of confinement. For example, any feed provided during confinement must be organic. Confinement must be no longer than necessary to sort or catch the birds, place them in shipping containers, and conduct the sale.

Section 205.241(d)(7) provides an allowance for indoor confinement to train pullets to lay eggs in nest boxes, with a maximum period of five weeks over the life of the bird allowed for such confinement. The training period must not be any longer than required to establish the proper behavior. As soon as the behavior is established, birds must be provided with access to the outdoors, except when confined in accordance with other provisions under § 205.241(d).

Section 205.241(d)(8) provides an allowance for indoor confinement with specified time frames for youth exhibitions, such as with 4–H or the National FFA Organization. This provision also includes an exemption to the requirement that a livestock sales facility be certified as an organic operation. As an example, if a youth exhibition and sale is held at a livestock sales facility that is not certified organic, a youth may sell birds there as organic, provided all other requirements for organic management are met. During the youth event, the livestock may be temporarily confined indoors. Otherwise, non-certified sales facilities, such as auction barns, may not sell or represent livestock as organic. AMS is adding these provisions at § 205.241(d)(8) to encourage the next generation of organic producers.

Section 205.241(e) requires organic poultry producers to manage manure in a manner that does not contribute to contamination of crops, soil, or water quality by plant nutrients, heavy metals, or pathogenic organisms. Organic poultry producers must manage the outdoor space in a manner that does not put soil or water quality at risk. In addition, organic poultry producers must comply with all other governmental agency requirements for environmental quality. The requirements of this section are adapted from previously established requirements for organic livestock at section 205.239(e).

Changes From Proposed Rule to Final Rule

AMS has made several revisions to the proposed requirements at § 205.241 in response to comments and to clarify the requirements. A brief description of the changes follows; additional discussion can be found in AMS's responses to comments.

- AMS included a prohibition on continuous total confinement. This requirement has existed in the regulations at § 205.239 but was not included in the proposed rule. It is carried into the final rule at § 205.241(a).
- AMS added a clarification to the final rule that a bird should be able to stretch both wings simultaneously when indoors (§ 205.241(b)(1)). This change elaborates on the proposed requirement that birds be able to ''stretch wings'' indoors.
- AMS revised requirements related to monitoring of ammonia to increase the frequency of monitoring and raise the action limit from 10 ppm to 20 ppm ammonia, with the maximum level remaining at 25 ppm, as proposed (§ 205.241(b)(2)). The final rule also specifies that monitoring is to be done at bird head height.
- AMS revised the proposed lighting requirements to clarify that manipulation of artificial light to increase growth is not permitted and to clarify the length of time that artificial light may be provided over a 24-hour period (§ 205.241(b)(3)).

• In response to public comment, AMS offered greater specificity on the requirements related to exit doors. The final rule requires that producers provide one linear foot of exit door space per 360 birds with some flexibility for compliance if an alternative configuration provides ready access to the outdoors for all birds (§ 205.241(b)(4)).

• AMS included additional detail on what may be counted as perch space. The final rule specifically prohibits counting floor space as perch space (§ 205.241(b)(5)).

• AMS reduced the amount of solid flooring required in the final rule from 30 percent to 15 percent and clarifies that mobile housing is exempt from this requirement (§ 205.241(b)(7)).

• AMS added a second method for calculating space requirements that does not rely on the weight of birds (§§ 205.241(b)(7)—(10) and (c)(4)—(c)(6)).

• AMS reduced the amount of non-soil ground that may be in outdoor areas from 50 percent to 25 percent (*i.e.,* 75 percent must be soil in the final rule), at § 205.241(c)(2).

• AMS revised the temperature range included in the proposed rule related to inclement weather (§ 205.241(d)(1)). AMS clarified that inclement weather for avian species may include temperatures below 32 degrees (rather than 40 degrees as proposed) and above 90 degrees (unchanged from the proposed rule).

• Finally, AMS removed the proposed allowance to temporarily confine birds to reseed outdoor areas. The final rule allows for confinement due to risk to soil or water quality (§ 205.241(d)(4)).

Responses to Public Comment

General Conditions (Avian)

(*Comment*) Some comments noted that the proposed rule's section on avian living conditions did not include the specific phrase, ''Continuous total confinement of any animal indoors is prohibited.'' The commenters noted that the prohibition was included in the section on mammalian living conditions at § 205.239(a) and requested that it also be included in the final rule's section on avian living conditions at § 205.241(a).

(*Response*) AMS agrees with these comments and has added the phrase, ''Continuous total confinement of any animal indoors is prohibited'' to the avian living condition requirements at § 205.241(a). Prior to this final rule, the USDA organic regulations prohibited continuous total confinement for all organic livestock, and AMS agrees it should continue to apply to all organic livestock in the final rule.

(*Comment*) A comment requested that AMS modify the proposed requirement that birds be able to ''stretch their wings'' indoors to instead require space that allows birds to ''fully stretch both wings simultaneously.''

(*Response*) AMS agrees that this modification better describes the intent and meaning of the requirement. The final rule, at § 205.241(a)(1), requires that poultry housing be sufficiently spacious to allow all birds to, ''stretch both wings simultaneously.''

Ammonia

(*Comment*) AMS received numerous comments on the proposed requirements related to monitoring ammonia in poultry houses and ammonia compliance thresholds included in the proposed rule. Comments argued that monthly ammonia monitoring, as proposed, would not be sufficient to identify problems and could result in longer-term exposure to elevated ammonia levels and have harmful effects. Many of these comments requested weekly (rather than monthly) testing, and that ammonia monitoring must be done at the height of the birds' heads, to ensure that testing reflects the birds' actual exposure to ammonia. In terms of the ammonia thresholds proposed by AMS, many comments requested that AMS increase the action limit from 10 ppm to 20 ppm or 25 ppm. Comments noted that these higher levels would align with third-party standards and still support bird health.

(*Response*) In response to comments, the final rule increases the frequency of required testing from monthly to weekly and requires that testing be done at bird head height. AMS expects these revisions to § 205.241(b)(2) will result in better outcomes for bird health. AMS has also increased the action limit in the proposed rule of 10 ppm to 20 ppm in the final rule. If ammonia levels exceed 20 ppm, producers must implement additional practices to reduce ammonia levels below 20 ppm and perform more frequent monitoring. Ammonia levels must not exceed 25 ppm.

Lighting

(*Comment*) Several commenters requested that poultry have access to sufficient natural light indoors, citing animal health and welfare. Commenters requested natural light be provided during daylight hours for mature avian species; in cases where this would be difficult to achieve, commenters requested that lighting must be full spectrum to mimic a natural system.

(*Response*) As a general requirement at § 205.241(a), the final rule requires that birds have year-round access to outdoors and direct sunlight. AMS finds that these provisions address commenters' concern for sufficient access to natural light and the expression of natural behaviors.

(*Comment*) Commenters asked AMS to require a minimum of eight hours of continuous light (daylight or artificial) over a 24-hour period.

(*Response*) AMS finds that artificial light sources can be permitted to help meet the minimum light intensity during cloudy weather or darker seasonal conditions but should not prolong daylight more than 16 continuous hours. AMS finds that continuous low level or no light does not mimic a natural system, nor does it allow birds to express their natural instincts and thus is not appropriate for organic management. AMS has decided not to specify a particular amount of required light to provide operations flexibility for their site-specific conditions. Further, AMS recognizes that not all organic operations have lighting systems that allow for gradual lowering of light intensity. Therefore, AMS clarified that artificial light intensity *should* (rather than *must*) be lowered gradually to encourage hens to move to perches or settle for the night.

(*Comment*) Several comments noted that artificial light should be used only to mimic daylight and encourage natural behaviors, and not to manipulate weight gain or laying habits.

(*Response*) AMS agrees that artificial light should be used only to mimic daylight and encourage natural behaviors. AMS added the statement at § 205.241(b)(3) that ''Artificial light spectrum may not be manipulated to increase feed intake and growth rate.''

(*Comment*) Commenters asked AMS to require a minimum of eight hours of continuous darkness over a 24-hour period.

(*Response*) The final rule adds the statement at § 205.241(b)(3) that operations must provide a minimum of eight hours of continuous darkness per 24-hour period.

(*Comment*) Several comments noted that the proposed rule did not establish a minimum requirement for indoor light intensity. Some commenters requested a requirement that an inspector be able to read and write with lights turned off on a sunny day to create a standard of measurement. Some commenters stated that third-party certifications require at least one foot candle of light throughout the building.

(*Response*) AMS determined that it would not be feasible for inspectors to

verify a producer's compliance with this requested requirement and has not included such a requirement in the final rule.

(*Comment*) Commenters asked AMS to confirm that the proposed artificial lighting standards at § 205.241(b)(3) covered all types of fully feathered birds, not just layer chickens.

(*Response*) The artificial lighting standards at § 205.241(b)(3) are applicable to the production of all types of fully feathered birds. AMS updated the regulatory text to clarify this standard applies to all fully feathered birds.

Exit Areas

(*Comment*) Stakeholders requested more specificity for exit areas, arguing the proposed rule does not provide clarity for implementation to ensure sufficient outdoor access. Comments focused on minimum size, spacing, and quantity of exit doors. Many comments requested a requirement that exit areas must be designed so that more than one bird at a time can pass through each opening. Many comments also suggested specific sizing and dimensions for exit areas, with most suggesting a combined exit area length be at least 12 feet per 1,000 square feet of the house available to the birds. This standard would align with European Union organic standards (4 m per 100 m^2). Others suggested a requirement for at least one exit for every 50 feet (15 meters) along the two longest sides of the house, while others recommended that exit doors be placed so any bird could be no farther than 50 feet from an exit door. This standard would align with Canadian organic standards and some third-party welfare standards. Other comments also requested more specificity for how to encourage birds to go outside and to include a requirement that operations demonstrate that birds access the outdoors (*e.g.,* demonstrate all birds exit the house within an hour of opening doors).

(*Response*) AMS recognizes that exit areas have been unregulated and that ready access to the outdoors—a primary intent of this rule—has not always been provided to all certified flocks. AMS also recognizes the need for a consistent understanding throughout the industry to support a competitive playing field. The final rule confirms and clarifies that poultry houses must have sufficient exit areas to allow birds to access the outdoors. AMS is also making two modifications to the proposed requirements based on comments. First, AMS is requiring that exit areas be ''appropriately distributed and sized'' rather than ''appropriately distributed'' in response to comments that the size of doors (in addition to the distribution of doors) is important for providing access to the outdoors. For example, a very narrow door might restrict passage of birds and restrict access to the outdoors.

Second, AMS is referencing a quantitative standard for exit areas in the final rule, as requested by numerous comments. The final rule requires producers to provide at least 1 linear foot of exit area per 360 birds, and no less than 1 linear foot for flocks that have fewer than 360 birds. Theoretically, this quantity of exit area allows all birds in a house to exit (or enter) a house within one hour (60 minutes), assuming one bird passes through a door every 10 seconds (360 birds × 10 seconds/bird = 3,600 seconds or 60 minutes). This requirement is comparable to a third-party animal welfare standard that requires five inches of doorway per 100 hens.[76]

While AMS is providing a quantitative requirement in the final rule, the rule also provides flexibility for operations to provide less exit space, so long as they and their certifier ensure that exit areas allow all birds to have ready access to outdoor space. AMS is providing this flexibility because we understand there might be houses that do not meet the ratio but can demonstrate all birds have ready access to the outdoors. Because of the wide variety of housing provided by poultry producers and possible differences in bird behavior between farms, AMS believes that compliance is best determined by organic certifying agents during their annual on-site inspections and reviews of operations. A specific standard will, however, provide a common reference point for certifying agents to assess compliance with the outdoor access requirement.

AMS evaluated the standard proposed by commenters for 12 linear feet of door per 1,000 square feet of poultry house, but AMS determined this would not be an appropriate metric. Specifically, this requirement did not scale appropriately for houses of all sizes (due to a non-linear relationship between the perimeter of an object and the area of the object). In other words, a large house would have been required to have more doors than is practical or feasible. Instead, AMS is adopting a standard for the final rule that relies only on the number of birds to calculate the necessary door number.

AMS also considered comments that recommended birds not be farther than 50 feet from an exit door. AMS chose not to adopt this recommendation because some poultry houses may only provide doors along one side of the house, and houses can be 50 feet wide or more.[77] Ultimately, AMS determined that a standard based on the number of birds in the house would be the most scale-neutral option across the various housing types using for organic production. The final rule establishes a standard of one linear foot of exit area per 360 birds. Together with the requirement in this section (§ 205.241(b)(4)) that exit areas be appropriately distributed and sized, AMS believes this standard is an appropriate baseline. In the case a producer can demonstrate an alternative ratio meets the requirement for ready access to the outdoors, a producer would be in compliance if the certifier accepts the deviation.

Flooring and Dust Bathing

(*Comment*) Many comments requested that AMS revise the amount of solid floor area required in indoor housing with slatted or mesh floors. Comments asked AMS to lower the minimum required solid floor area to 15 percent of total floor space (the proposed rule would have required 30 percent). Comments acknowledged that the proposed 30 percent minimum was an NOSB recommendation but noted that a 15 percent minimum would be more consistent with current practice in the organic industry and more consistent with third-party animal welfare standards.

(*Response*) Solid floor areas provide birds with a space to dust bathe and scratch. AMS has reduced the minimum amount of solid floor space from 30 percent to 15 percent in § 205.241(b)(7). AMS agrees with comments that 15 percent solid floor area will support animal welfare and the natural behaviors of scratching and dust bathing. The final rule not only requires that birds will have access to areas indoors for these activities but also requires that birds have access to outdoor areas. These outdoor areas will also be available for birds to express these natural behaviors and to maintain animal health (by allowing for dust bathing).

(*Comment*) One commenter requested a higher indoor stocking density limit

[76] Global Animal Partnership standards for laying hens require 8 inches for every 100 hens when doors are only open on one side of the house. When doors are open on both sides of the house, the standards require 5 inches for every 100 hens. Available at: *https://globalanimalpartnership.org/standards/laying-hen/.*

[77] Available at: *https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Ag_Resource_Management/ARMS_Broiler_Factsheet/Poultry%20Results%20-%20Fact%20Sheet.pdf.*

for mobile housing that provides year-round access to large amounts of pasture. This commenter also stated that these types of mobile housing should not be required to provide indoor areas for dust bathing and scratching, as the outdoor space provides these areas.

(*Response*) AMS agrees that outdoor areas can provide sufficient space for birds to engage in natural behaviors such as dust bathing and scratching. The final rule in § 205.241(b)(6) exempts mobile housing from the scratching and dust bathing requirements inside of the house if there is sufficient outdoor space that can provide area for these behaviors. AMS elects not to change the stocking density requirements for mobile housing. The final rule permits a higher indoor stocking density for mobile housing than it does for other housing systems, except for aviary housing (which provides access to the vertical space in a house). The maximum stocking density for mobile housing already considers that birds have greater access to outdoor space in these systems, so further reduction of space per bird is not warranted.

Space Requirements

(*Comment*) Some comments requested that AMS express space requirements in terms of square feet per bird rather than maximum pounds of bird per square foot, as AMS proposed. Comments argued this method for space calculations aligns better with third-party standards and that calculations would be simpler under this method. Comments noted that the proposed method (which relies on bird weight) is more burdensome, as bird weights constantly change, especially when birds are young, and some producers do not track the weight of their birds. Comments also stated that requirements based on the weight of birds could result in an excessive recordkeeping burden and require additional time to verify at inspections.

(*Response*) AMS recognizes that verification of compliance could be simpler in some cases by expressing the space requirements in terms of square feet required per bird. This may be especially true in cases where bird weights are not known, or a producer has variously sized breeds within the flock. Therefore, the final rule offers an alternative method for calculating space requirements in terms of minimum required *square feet per bird.* These calculations will require producers and certifying agents to know only the number of birds and the area of the space (indoor or outdoor).

AMS has established the alternative to be equivalent to the space required for a heavy bird for the type (layer, broiler, or pullet). For layer standards, AMS assumed a 6.7 lb. bird; for broilers, a 10.0 lb. bird; and for pullets, a 5.0 lb. bird.[78] For example, the alternative of 1.5 square feet per bird (aviary housing) is equivalent to the requirements for a 6.7 lb. layer at 4.5 lbs. per square foot. Many producers will comply with the space requirements expressed in these terms, even though a higher stocking density would likely be allowed by calculating the weight of birds per square foot. However, the alternative will simplify the calculations for some producers, especially smaller producers, and the addition responds to the many comments that requested a standard expressed as square feet required per bird.

The final rule also retains the proposed rule's space requirements that are expressed in terms of maximum *pounds of bird per square foot.* Producers and certifiers may use either method to demonstrate compliance; they need not demonstrate compliance with both methods. AMS provides more extensive discussion of this topic in the above subsection titled ''Description of Final Policy.''

(*Comment*) Some commenters believed that AMS should require more indoor space per bird to reduce crowding. On the other hand, other commenters believed that less space should be required indoors, especially for broilers. Many comments on broiler indoor space requested that AMS raise the stocking density to a maximum of six pounds per square foot for broilers, rather than the five pounds per square foot limit set by the proposed rule. Some of these comments also requested that if the final rule did adopt a standard of five pounds per square foot, AMS provide a five-year implementation period instead of the three-year period discussed in the proposed rule. These comments stated that five years would be necessary to construct new houses and avoid supply disruption.

(*Response*) AMS is maintaining the indoor space requirements for the various housing types, as proposed. For pullets and layers, the indoor space requirements largely reflect the current industry standard for organic producers and various third-party humane and animal care standards. For broilers, AMS anticipated in the proposed rule that broilers would need to be provided with more space, and the costs associated with those changes are described in the Regulatory Impact Analysis for this rule. In acknowledgement of comments that construction of new poultry houses will require time, AMS is allowing five years for compliance with the broiler indoor and outdoor space requirements in the final rule. AMS believes that the stocking densities established by this rule balance NOSB recommendations, public input, and industry best practices to establish a reasonable national standard for organic production and to assure consumers that organically produced eggs and broilers meet a consistent standard, as required by OFPA (7 U.S.C. 6501).

(*Comment*) Some commenters believed that AMS should require more outdoor space per bird than proposed, while other commenters believed that less outdoor space could be required. Comments supporting more outdoor space noted that international organic standards and third-party certifications require more space per bird, and they asserted that more space would be necessary to provide animals with vegetation in outdoor areas. Comments in favor of less outdoor space noted that all birds do not go outdoors at once, even if large outdoor areas are provided.

(*Response*) The final rule maintains the outdoor stocking densities, as proposed, and added an alternative method for measuring compliance based on square feet per bird, which avoids the need to weigh birds. The stocking densities established by this rule balance NOSB recommendations, public input, and industry best practices to establish a reasonable baseline for organic production and, in turn, support the purposes set forth in OFPA, *i.e.,* to assure consumers that organic products are produced according to a consistent standard (7 U.S.C. 6501). The new standard represents an upward harmonization of outdoor space requirements under the organic rule while still providing for a robust organic poultry market.

(*Comment*) Some comments requested a revision to AMS's discussion on how to calculate and verify compliance with indoor and outdoor space requirements. In the proposed rule, AMS described that a producer could stock a poultry house to exceed minimum space requirements in anticipation of mortalities that would reduce the number of birds and eventually increase the space available per bird. Commenters were concerned that adopting this approach would lead to houses with higher stocking densities

[78] AMS established the alternative space requirements (expressed as square feet per bird) by considering the average weight of breeds, weight of birds at time of sale, relative use of breeds in the industry, and the standard deviation of weights by breed.

and reduce a certifier's ability to enforce the requirements.

(*Response*) AMS has reconsidered its position and is adopting the position that a producer must always comply with the minimum standards established by the final rule. The final rule establishes minimum space requirements for chickens based on bird type, age, and housing system, and producers must meet these standards to comply with the rule.

(*Comment*) Some comments requested that AMS expand the rule to include minimum requirements for species other than chickens (*Gallus gallus*), including turkeys, ducks, and other animals.

(*Response*) AMS has not added specific minimum space requirements for species other than chickens in this final rule. The NOSB did not finalize recommendations for other avian species and AMS did not propose any such requirements, so AMS is not including minimum space requirements for other species in the final rule. However, the final rule includes many requirements that do apply to all avian species in §§ 205.238, 205.241, and 205.242. Similarly, the final rule includes many requirements that apply to all mammalian and non-avian species at §§ 205.238, 205.239, and 205.242.

Indoor Conditions (Other)

(*Comment*) Comments asked AMS to clarify that flooring in slatted/mesh floor poultry houses cannot be included as perch space for layers.

(*Response*) The slatted floors of some houses are physically similar to perches, but floor space may not be counted as perch space. In response to comments, AMS specifies in the final rule at § 205.241(b)(5) that floors in slatted/mesh floor housing cannot be counted as perch space. Additionally, the definition of perch at § 205.2 describes that a perch is above the floor or ground to clarify that flooring is not a perch for the purposes of this rule.

(*Comment*) Some comments objected to AMS's proposed requirements at § 205.241(b)(12) and § 205.241(c)(7) that describe what may be considered indoor space and outdoor space. The proposed rule described that a porch could be included in the calculation of space available. Some comments argued that AMS should not allow porches to ever count as outdoor space and that a prohibition of porches as outdoor space would better fit with the objective of the rule. Another suggested that these sections brought more confusion than clarity about what should count as indoor or outdoor space. Others expressed concern that the proposed rule might allow a producer to reduce both the indoor and outdoor space provided to birds by claiming porches as both indoor and outdoor space. Finally, some comments noted the description could cause interpretation issues for the organic mammalian standards, as some common mammalian housing structures are roofed with open sides (such as a freestall barns for dairy cattle) but are considered indoors.

(*Response*) AMS has revised § 205.241(c)(7) to further clarify acceptable types of outdoor space. AMS removed the words ''porches and lean to type [structures]'' from the paragraph to avoid confusion. The term ''porch'' is not defined by these regulations, and AMS wants to avoid inconsistent interpretation of the term. The revised language focuses on what qualifies a structure as outdoor space: (1) the structure must be unenclosed; and (2) birds must be able to move freely from the structure to other outdoor areas. A certifier must assess if an unenclosed roofed structure may be considered outdoor space. AMS believes this decision is best left to certifiers working in conjunction with producers and in evaluation of an operation's practices related to use of these areas. AMS chose to leave the words ''enclosed porches'' at § 205.241(a)(12) because we believe this is helpful guidance for the industry: in some cases, an area previously used as a porch might qualify as indoor space. Finally, AMS has updated the definition of ''outdoors'' in § 205.2 to clarify that enclosed structures with open sides, such as the freestall barns and hoop barns commonly used in non-avian production, do not qualify as outdoors.

Outdoor Conditions (Other)

(*Comment*) Several comments requested an increase in the percentage of soil required in outdoor space from 50 to 75 percent, stating that a higher amount of soil is needed to encourage birds to utilize outdoor space. Commenters also noted that birds may not use the outdoor space if much of it is concrete, as it may burn their feet in higher temperature climates. Other commenters suggested that soil be required within a certain distance from housing exit areas to encourage the use of outdoor space by birds. Comments ranged from general guidelines to more specific requests, such as requiring that vegetated and soil areas should be no farther than 30 feet away from exit doors.

(*Response*) AMS has revised the outdoor space soil requirement in § 205.241(c)(2) to better align with commenter and consumer expectations. The final rule requires that 75 percent of outdoor space must be soil. AMS elects not to establish specific regulations for how far away soil and vegetation should be from exit doors. The increase in percentage of soil cover will encourage the use of outdoor space by birds without the need for prescriptive distance requirement. The final rule continues to allow some outdoor areas to not be soil. AMS believes this allowance is necessary, as some houses may have adjacent non-soil areas for drainage or to prevent rodents from entering houses. The allowance for 25 percent non-soil outdoor area also supports producer efforts and FDA recommendations for preventing rodents in outdoor areas, such as a 6-foot strip along the periphery of an outdoor area that is filled with gravel or another non-soil substance.[79]

(*Comment*) Many commenters requested that AMS add a requirement in § 205.241 that producers include ''suitable enrichments'' in outdoor areas to encourage birds to utilize outdoor space.

(*Response*) AMS has not added language requiring ''suitable enrichments'' to encourage the use of outdoor space. Instead, AMS increased the required amount of soil in outdoor areas to 75 percent. This change is meant to encourage greater use of outdoor space. AMS encourages producers to adopt practices that encourage birds to go outdoors—see § 205.241(c)(1), which require producers to provide outdoor access at a young age. AMS determined that a requirement for ''suitable enrichment'' in this rule would be difficult to measure or enforce and could vary greatly from one operation to another.

(*Comment*) Several comments requested that the definition of outdoor space be clarified. Specifically, commenters requested a clear definition of ''maximal vegetative cover,'' arguing that the term ''maximal'' is subjective and that operations located in drought-prone or water restricted areas have limited ability to ensure maximal vegetative cover.

(*Response*) AMS clarifies the requirements for outdoor space by removing the term ''maximal vegetative cover'' from the vegetation requirement at 205.241(c)(2). AMS recognizes that ''maximal'' vegetative cover is not

[79] ''Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation (Layers with Access to Areas Outside the Poultry House): Questions and Answers Regarding the Final Rule: Guidance for Industry,'' FDA, Center for Food Safety and Applied Nutrition, August 2022, *https://www.fda.gov/media/86276/download*.

defined by the rule and varies based on season, climate, geography, stage of production, etc. The change allows operations flexibility to meet the vegetation requirement across various conditions and provides additional clarity of composition of outdoor space.

(*Comment*) Many commenters requested that the definition of ''pasture pens'' be revised to clarify that floored (*e.g.,* wire mesh) structures are prohibited, and that animals should be able to move around and express natural behaviors when inside of pasture pens.

(*Response*) The definition of ''pasture pens (avian)'' describes that pasture pens are floorless pens. In response to public comment, AMS revises the definition of ''pasture pens'' to note that they allow birds to express natural behaviors. Birds in pasture pens must have direct access to the ground without intervening floor, including wire or mesh, so they can scratch, dust bathe, roost (for pullets and layers), etc. AMS also clarifies that the definition of pasture pens applies to avian species, as ruminant producers may also use the term but with a different meaning.

Confinement

(*Comment*) AMS received many comments related to temporary confinement of birds due to outdoor temperatures. The proposed rule would have allowed producers to confine birds for inclement weather, including when outdoor temperatures are below 40 degrees Fahrenheit or above 90 degrees Fahrenheit. Many comments requested that AMS reduce the lower threshold for confinement from 40 degrees to 32 degrees, arguing that birds would not be harmed by outdoor temperatures in that range. Other comments requested AMS narrow the temperature for outdoor access, so outdoor access would only be required for outdoor temperatures between 60 degrees and 80 degrees, for example. Comments in favor of a narrower range for outdoor access noted that opening exit doors on poultry houses would strain ventilation systems, waste fuel and electricity, increase the litter moisture content (and thereby increase ammonia levels), and increase deaths due to severe stress.

(*Response*) AMS has revised the final rule to reduce the low temperature threshold from 40 degrees to 32 degrees (F) in § 205.241(d)(1). The lower threshold better describes the conditions that may qualify as ''inclement weather,'' a term that was added to the organic regulations by a February 2010 final rule (''Access to Pasture (Livestock),'' 75 FR 7153). The existing term is defined as weather ''characterized by temperatures (high or low) . . . that can cause physical harm to livestock,'' but it does not specify thresholds for high or low temperatures that might cause harm. This final rule provides temperature ranges for avian (not mammalian or non-avian) livestock to clarify when temporary confinement of birds for heat or cold is appropriate. For additional discussion on this requirement please see the Overview of Policy (§ 205.241) section above.

AMS is not adopting recommendations from comments to allow producers to confine animals if temperatures are outside of a narrower range (*e.g.,* 60–80 degrees). While AMS recognizes that growth or production may increase when birds are maintained within a narrower temperature range, existing regulations (see § 205.239(b)(1) and the definition of ''inclement weather'' at § 205.2) do not permit confinement for this reason. The final rule seeks to clarify the bounds of the term to allow producers to confine animals for dangerous weather, but not misuse that allowance to confine animals for weather that is less than ideal for production or growth. Neither existing requirements nor this final rule permit temporary confinement within a narrow range of temperatures to maximize production yields or growth rates. The final rule aligns with AMS's intent when AMS added the term ''inclement weather'' to the organic regulations (75 FR 7159). AMS does not believe that an allowance to confine animals outside a narrow range would satisfy consumer expectations.

(*Comment*) Many comments requested that AMS remove language in § 205.241(d)(4) that would have allowed operations to temporarily confine birds during reseeding of outdoor areas. Comments expressed concern that this language may enable prolonged confinement, potentially for the entire life of the animal. One comment stated that the certifying agent should have the authority to determine if reseeding is the appropriate course of action for mitigating soil or water quality issues.

(*Response*) AMS has removed the phrase ''including to establish vegetation by reseeding outdoor space'' from § 205.241(d)(4). This means that operations may not confine birds solely to reseed and reestablish vegetation in outdoor access areas. Additionally, this rule prohibits continuous total confinement of poultry indoors (see the general requirements for avian living conditions at § 205.241(a)). The rule does permit operations to temporarily confine birds when there is a risk to soil and water quality. However, this confinement must be temporary, must be done only to correct a risk to soil and water quality, cannot be continuous throughout the life of the birds, and is subject to the certifying agent's review of the operation's management of outdoor space.

Additional Animal Welfare Requirements

(*Comment*) Some comments requested that AMS impose additional animal welfare requirements for broiler production, such as maximum growth rates and breed requirements (for use of slower growing breeds).

(*Response*) AMS has not received recommendations from the NOSB related to this topic and did not include such restrictions in the proposed rule; therefore, the final rule adopts no additional requirements on this subject. However, AMS notes that § 205.238(a)(1) requires selection of species and types of livestock that are suitable for site-specific conditions and resistant to prevalent diseases and parasites.

Biosecurity and Food Safety

(*Comment*) Most commenters who discussed poultry biosecurity stated that increased outdoor access will have negative health outcomes for birds. Some commenters argued the rule would contradict the U.S. Food and Drug Administration's protocols requiring producers to prevent contact with Salmonella enteritidis. In support of the use of porches, commenters stated that producers use outdoor porches to both provide outdoor access under the existing standard and help safeguard flocks from vermin and indigenous birds that can be vectors for diseases. Comments cited research suggesting outdoor access can subject poultry to disease. Additionally, some comments suggested that outdoor access would jeopardize the organic industry's ability to provide safe food. A few comments asserted that under-utilized or barren outdoor areas could have a negative impact on pathogen and disease control. They noted that bare soil can result in dust containing dried fecal matter, which could be blown into nearby crops and present food safety concerns.

On the other hand, some commenters found that the proposed rule would support biosecurity and food safety measures, including organic producers' ability to mitigate biosecurity risks and prevent disease outbreaks in their organic flocks. These comments argued the rule aligns with FDA guidance on the Egg Safety Rule,[80] and referenced

[80] ''FDA Issues Final Guidance for Shell Egg Producers who Provide Laying Hens with Access to Areas Outside the Poultry House,'' U.S. Food &

research indicating that outdoor access can improve bird and flock health. They argued that outdoor access is not the determining factor in disease outbreaks and deaths and found the research and scientific data on the topic to be inconclusive. One commenter noted that operations are already successfully managing compliance with biosecurity, food safety, and egg safety requirements. Another noted that physical alterations provide one way for organic producers to maintain proper biosecurity for their flocks.[80] These comments concluded that outdoor access is still consistent with the Egg Safety rule.

(*Response*) AMS recognizes the importance of protective measures to avoid disease outbreaks and contact with Salmonella enteritidis. The rule includes provisions for strengthening biosecurity and food safety measures to ensure that organic poultry operations do not put their flocks at greater risk for exposure or infection. These include allowing temporary confinement for conditions under which the ''health, safety, or well-being of the animal could be jeopardized,'' including for specific disease outbreaks. The rule also requires producers to manage vegetative areas to mitigate harborage for rodents and other pests as well as prevent stray poultry, wild birds, cats, and other animals from entering poultry houses. It allows fencing, netting, or other materials over all or part of the outdoor areas (provided the areas are not ''inside of an enclosed building or housing structure,'' which is the definition in § 205.2 of ''indoor space'') to prevent predators and other wild birds from entering. AMS understands that biosecurity response is a comprehensive action.

At this time, AMS finds the research is inconclusive regarding the correlation between outdoor access and decreased food and animal safety. AMS receives regular updates from APHIS regarding Highly Pathogenic Avian Influenza (HPAI) and other potential outbreaks. The USDA website remains a resource for certifying agents seeking information on HPAI detection. Additionally, AMS may provide future guidance to clarify the Agency's expectations in the event of diseases or threats. Ultimately, AMS recognizes that meaningful outdoor access is fundamental to the organic regulations and is expected by the market. This rule allows organically raised birds room to express natural behaviors and advances OFPA's purpose of creating consistent organic standards.

E. Transport and Slaughter (§ 205.242)

Description of Final Policy

AMS has added a new section to the organic regulations at § 205.242 titled ''Transport and slaughter'' to address the care of organic animals during transport and throughout the slaughter process, including care prior to slaughter and methods of slaughter. Section 205.242 is divided into three subsections: transportation, mammalian slaughter, and avian slaughter.

The changes are made in response to a December 2011 NOSB recommendation [81] and public comments received in response to the August 2022 OLPS proposed rule, under AMS's authority to promulgate standards ''for the care of livestock'' (7 U.S.C. 6509(d)(2)). AMS understands that ''care of livestock'' is relevant up to the time of slaughter and that some practices during transport and/or slaughter should affect an animal's organic certification. Once an animal is killed, existing organic regulations for handling organic products become relevant for the processing, packaging, and sale of organic animal products. The requirements of this rule apply to the care of live animals.

Transport Requirements (§ 205.242(a))

The December 2011 NOSB recommendation noted that additional regulations for the transport and slaughter of organic animals were appropriate to assure consumers that animal products sold as organic are produced with ''a high level of animal welfare'' and organic operations ''avoid animal mistreatment on the farm, during transport to, or at the slaughter plant.'' [82] The NOSB noted that their recommended regulatory language reflects third-party animal welfare certification standards and common practices within the industry. The NOSB also specifically recommended that AMS adopt the ''necessary'' requirements from their recommendation to avoid increasing paperwork burden or certification costs and to encourage small slaughter plants to seek or maintain organic certification.

AMS agrees that additional requirements are appropriate to cover the time period(s) during which organic livestock are transported and slaughtered. As noted above, products sold as organic must be managed and processed in accordance with detailed organic regulations. AMS believes that it is appropriate to clarify the requirements for transport and slaughter in the organic regulations. This final rule seeks to minimize paperwork burden and increases in certification costs, when possible, by referring to existing regulations and laws that apply to transport and slaughter. However, some specific requirements that were recommended by the NOSB and not already detailed in existing regulations and laws are also included.

Section 205.242(a)(1) requires that organic animals are clearly identified during transport but provides flexibility on how the identity is maintained during transport. Section 205.242(a)(2) sets minimum fitness requirements for livestock to be transported to buyers, auction facilities, or slaughter facilities. Limiting the scope of the requirements to these destinations means the regulation does not limit transport on the farm where the animal is managed. Section 205.242(a)(2)(i) requires that calves have a dry navel cord and the ability to stand and walk without assistance before they are transported to buyers, auction facilities, or slaughter facilities.

Section 205.242(a)(2)(ii) prohibits transport of seriously crippled and non-ambulatory animals to buyers, auction facilities, or slaughter facilities. These animals must be treated until their health condition improves and they can walk (*i.e.,* they are ambulatory), or if an animal's recovery is not possible, it may be euthanized (see also § 205.238(c)(7) and (8), and § 205.238(e)).

Sections 205.242(a)(3) and (4) set minimum standards for the trailer, truck, shipping container, or other mode used for transporting organic livestock. The mode of transportation must provide seasonally appropriate ventilation to protect livestock against cold or heat stress. This provision requires that air flow be adjusted depending on the season and temperature. In addition, bedding is required to be provided on trailer floors and in holding pens as needed to keep livestock clean, dry, and comfortable. AMS recognizes that in some cases keeping clean and dry bedding is impossible or even unsafe; therefore, use of bedding must be appropriate to the species and type of transport. If

Drug Administration, August 2022, *https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-final-guidance-shell-egg-producers-who-provide-laying-hens-access-areas-outside-poultry.*

[81] *https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Handling%20and%20Transport%20to%20Slaughter.pdf.*

[82] Formal Recommendation by the National Organic Standards Board (NOSB) to the National Organic Program. December 2, 2011. *https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Handling%20and%20Transport%20to%20Slaughter.pdf.*

roughage is used as bedding, the bedding needs to be organically produced and handled. Bedding is not required for poultry crates.

Section 205.242(a)(5) requires an operation to describe how organic management and animal welfare will be maintained for transport that exceeds eight hours, measured from the time all animals are loaded onto a vehicle until the vehicle arrives at its final destination. This may include arrangement for water and organic feed. AMS also finds that an eight-hour transportation threshold better aligns with transportation time limits established by third-party animal welfare standards.

Section 205.242(a)(6) requires that operations transporting livestock to sale or slaughter have emergency plans in place that adequately address problems reasonably possible during transport. Such emergency plans could include how animal welfare would be maintained, what to do if livestock escape during transport, or how to euthanize an animal injured during transport. Shipping and/or receiving operations are also required to include these plans in their OSPs.

Slaughter and the Handling of Livestock in Connection With Slaughter (§ 205.242(b))

The requirements regarding slaughter and the handling of livestock in connection with slaughter are governed by separate authority applicable to both certified organic and non-organic livestock products. This final rule reiterates that compliance with these regulations, as determined by FSIS, is required for certified organic livestock operations. The requirements defer, in large part, to existing regulations and law while also aiming to ensure that USDA-accredited certifying agents have access to relevant records. The rule seeks to avoid undue burden on certified organic slaughter facilities, as undue burden could have the effect of reducing the availability of certified organic slaughter facilities. Section 205.242(b) regarding mammalian slaughter clarifies the authority of AMS, certifying agents, and State organic programs to review records related to humane handling and slaughter issued by the controlling national, federal, or state authority, and records of any required corrective actions if certified operations are found to have violated FSIS regulations governing the humane handling of mammalian livestock in connection with slaughter. (Note that AMS has separated mammalian from avian slaughter requirements due to the differences in how they are handled and slaughtered). This new subsection (§ 205.242(b)), titled ''Mammalian slaughter,'' governs mammals defined as ''livestock'' or ''exotic animals'' under the FSIS regulations. Under the FSIS regulations, ''livestock'' are cattle, sheep, swine, goat, horse, mule, or other equines. ''Exotic animals'' include antelope, bison, buffalo, cattalo, deer, elk, reindeer, and water buffalo. These regulations govern the handling and slaughter of most mammalian animals used for food in the United States and apply to all operations that slaughter these animals.

Section 205.242(b)(1) requires certified organic slaughter facilities to be in full compliance, as determined by FSIS, with the Humane Methods of Slaughter Act (HMSA) of 1978 (7 U.S.C. 1901 *et seq.*) and FSIS's implementing regulations. The HMSA requires that humane methods be used for handling and slaughtering livestock and defines humane methods of slaughter. In the HMSA, Congress found ''that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce'' (7 U.S.C. 1901). The HMSA is referenced in the Federal Meat Inspection Act (FMIA) at 21 U.S.C. 603 and 21 U.S.C. 610(b), and is implemented by FSIS humane handling and slaughter regulations found at 9 CFR parts 309 and 313. The FMIA provides that, for the purposes of preventing inhumane slaughter of livestock, the Secretary of Agriculture will assign inspectors to examine and inspect the methods by which livestock are slaughtered and handled in connection with slaughter in slaughtering establishments subject to inspection (21 U.S.C. 603(b)).

All establishments that slaughter livestock, which include any certified organic operations that slaughter livestock, must meet the humane handling and slaughter requirements the entire time they hold livestock in connection with slaughter. FSIS provides for continuous inspection in livestock slaughter establishments, and inspection program personnel verify compliance with the humane handling regulations during each shift that animals are slaughtered, or when animals are on site, even during a processing-only shift. The regulations at 9 CFR part 313 govern the maintenance of pens, driveways, and ramps; the handling of livestock, focusing on their movement from pens to slaughter; and the use of different stunning and slaughter methods. Notably, FSIS inspection program personnel verify compliance with the regulations at 9 CFR part 313 through the monitoring of many of the same parameters proposed by the NOSB in 2011, including prod use, slips and falls, stunning effectiveness, and incidents of egregious inhumane handling.[83] The regulations at 9 CFR part 309 govern ante-mortem inspection and ensure that only healthy ambulatory animals are slaughtered, and that non-ambulatory animals are euthanized and disposed of promptly. FSIS has a range of enforcement actions available regarding violations of the humane slaughter requirements for livestock, including noncompliance records, regulatory control actions, and suspensions of inspection.

Further, FSIS encourages livestock slaughter establishments to use a systematic approach to humane handling and slaughter to best ensure that they meet the requirements of the HMSA, FMIA, and implementing regulations.[84] With a systematic approach, establishments focus on treating livestock in such a manner as to minimize excitement, discomfort, and accidental injury the entire time they hold livestock in connection with slaughter. Establishments may develop written animal handling plans and share them with FSIS inspection program personnel.

AMS added a new section (§ 205.242(b)(2)) for those certified organic facilities that slaughter exotic animals and voluntarily request FSIS inspection. FSIS also provides, upon request, voluntary inspection of certain exotic animal species on a fee-for-service basis under the authority of the Agricultural Marketing Act of 1946. FSIS regulates the humane handling of the slaughter of exotic animals under the regulations at 9 CFR 352.10, which require that exotic animals be slaughtered and handled in connection with slaughter in accordance with the requirements for livestock at 9 CFR part 309 and 9 CFR part 313. Violation of these regulations can result in a denial of service by FSIS.

Section 205.242(b)(3) requires that all certified organic slaughter facilities provide any FSIS noncompliance

[83] FSIS Directive 6900.2, Revision 2, *Humane Handling and the Slaughter of Livestock,* August 15, 2011.

[84] *Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements,* FSIS, 69 FR 54625, September 9, 2004.

records or corrective action records relating to humane handling and slaughter to certifying agents during inspections or upon request. Not all violations of FSIS regulations result in a suspension of FSIS inspection services. In some cases, FSIS will issue a noncompliance record, and the slaughter facility must perform corrective actions to bring the slaughter facility back into compliance. Operations must provide these records to certifying agents during inspection or upon request so that the certifying agent may verify that the slaughter facility is in compliance and has taken all corrective actions. If records reveal that an organic operation had not taken corrective actions required by FSIS within the time period allowed by FSIS, the certifying agent may initiate actions to suspend the facility's organic certification. While this action would be separate from any FSIS actions, it would impact the facility's capacity to handle organic animals.

In addition, AMS recognizes that in the United States, some slaughter facilities are regulated by the State for intra-state meat sales. In foreign countries, foreign governments may be the appropriate regulatory authority for humane slaughter inspections. In all cases, operations must provide the relevant humane slaughter noncompliance records and corrective action records to certifying agents during the inspections or upon request.

Slaughter and the Handling of Poultry in Connection With Slaughter (§ 205.242(c))

The final rule addresses avian slaughter facilities at § 205.242(c). Section 205.242(c)(1) clarifies the authority of AMS, certifying agents, and State organic programs to review noncompliance records related to the use of good commercial practices in connection with slaughter issued by the controlling national, federal, or state authority, and records of subsequent corrective action if certified operations are found to have violated the Poultry Products Inspection Act (PPIA) requirements regarding poultry slaughter, violated the FSIS regulations regarding the slaughter of poultry, or failed to use good commercial practices in the slaughter of poultry, as determined by FSIS. Under the PPIA and the FSIS regulations, poultry are defined as chickens, turkeys, ducks, geese, guineas, ratites, and squabs. These species constitute most avian species slaughtered for human food in the United States. However, the organic standards for avian slaughter apply to all species biologically considered avian or birds. The NOSB did not directly address avian slaughter requirements. However, AMS added avian slaughter requirements for consistency with the new mammalian slaughter requirements and to provide consistent slaughter requirements for certified organic operations.

While the HMSA does not apply to poultry, under the PPIA at 21 U.S.C. 453(g)(5), a poultry product is considered adulterated if it is in whole, or in part, the product of any poultry that has died by means other than slaughter. FSIS regulations, in turn, require that poultry be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the poultry carcass and will ensure that breathing has stopped before scalding (9 CFR 381.65(b)). Compliance with applicable FSIS Directives, as determined by FSIS, are required under the rule.

In a 2005 **Federal Register** Notice, FSIS reminded all poultry slaughter establishments that live poultry, . . . must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely. Although there is no specific federal humane handling and slaughter statute for poultry, under the PPIA, poultry products are more likely to be adulterated if, among other circumstances, they are produced from birds that have not been treated humanely, because such birds are more likely to be bruised or to die other than by slaughter.[85]

FSIS also suggested in this Notice that poultry slaughter establishments consider a systematic approach to handling poultry in connection with slaughter. FSIS defined a systematic approach as one in which establishments focus on treating poultry in such a manner as to minimize excitement, discomfort, and accidental injury the entire time that live poultry is held in connection with slaughter. Although the adoption of such an approach is voluntary, it would likely better ensure that poultry carcasses are unadulterated.

FSIS inspection program personnel verify that poultry slaughter is conducted in accordance with good commercial practices in the pre-scald area of slaughter establishments, where they observe whether establishment employees are mistreating birds or handling them in a way that will cause death or injury, prevent thorough bleeding, or result in excessive bruising. Examples of noncompliant mistreatment could include breaking the legs of birds to hold the birds in the shackle, birds suffering or dying from heat exhaustion, and breathing birds entering the scalder.[86] Also, in 2015, FSIS issued specific instructions to inspection program personnel for recording noncompliance with the requirement for the use of good commercial practices in poultry slaughter.[87]

Section 205.242(c)(2) requires that all certified organic slaughter facilities provide, during the annual organic inspection, any FSIS noncompliance records and corrective action records related to the use of good commercial practices in the handling and slaughter of poultry in order to determine that slaughter facilities have addressed any outstanding FSIS noncompliances and are in good standing with FSIS. Not all violations of FSIS regulations result in a suspension of inspection services. In some cases, FSIS will issue a noncompliance record, and the slaughter facility must perform corrective actions to bring the slaughter facility back into compliance. The operation must provide these records to the certifying agent at inspection or upon request so that the certifying agent may verify that the slaughter facility is operating in compliance with FSIS regulations and is addressing/has addressed all corrective actions. If records revealed that an organic operation had not taken corrective actions required by FSIS within the time period allowed by FSIS, the certifying agent could initiate actions to suspend the facility's organic certification. While this action would be separate from any FSIS actions, it would impact the facility's capacity to handle organic animals. In addition, AMS recognizes that some poultry slaughter facilities in the United States are regulated by the State for intra-state poultry sales. In foreign countries, foreign governments may be the appropriate regulatory authority for poultry slaughter inspections. In all cases, operations must provide the relevant noncompliance records and corrective action records to the certifying agent during inspections or upon request.

Exemptions from poultry slaughter inspection exist for some poultry that is going to be sold to the public. The PPIA exempts from continuous inspection some establishments that slaughter poultry based on various factors, such as

[85] *Treatment of Live Poultry before Slaughter,* FSIS, 70 FR 56624, September 28, 2005.

[86] FSIS Directive 6100.3, Revision 1, *Ante-Mortem and Post-Mortem Poultry Inspection,* April 30, 2009.

[87] FSIS Notice 07–15, *Instructions for Writing Poultry Good Commercial Practices Noncompliance Records and Memorandum of Interview Letters for Poultry Mistreatment,* January 21, 2015.

volume of slaughter and the nature of operations and sales. This includes persons custom slaughtering and distributing from their own premises directly to household consumers, restaurants, hotels, and boarding houses, for use in their own dining rooms, or in compliance with religious dietary laws (21 U.S.C. chapter 10).

AMS added handling and slaughter standards for such poultry that is either exempt from or not covered by the inspection requirement of the PPIA. These requirements serve to establish a consistent and basic standard for the humane handling of organic poultry, regardless of an operation's size or method of sales. Specifically, § 205.242(c)(3)(i) prohibits hanging, carrying, or shackling any lame birds by their legs. Birds with broken legs or injured feet may suffer needlessly if carried or hung by their legs. Such birds are required to either be euthanized or made insensible before being shackled. AMS also added § 205.242(c)(3)(ii) to require that all birds hung or shackled on a chain or automated slaughter system must be stunned prior to exsanguination (bleeding). This requirement for stunning prior to exsanguination only applies to producers who shackle birds on a chain or automated system; therefore, it does not prohibit the practice more common among small-scale producers of placing the birds in killing cones before bleeding them without stunning. Additionally, this requirement does not apply to religious slaughter establishments (*e.g.,* Kosher or Halal slaughter facilities), who are required to meet all the humane handling regulatory requirements except stunning prior to shackling, hoisting, throwing, cutting, or casting. Finally, § 205.242(c)(3)(iii) requires that all birds be irreversibly insensible prior to being placed in the scalding tank.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule. Changes to the final rule are discussed below and are followed by specific topics and themes from public comment.

- In the transport fitness requirements in § 205.242(a)(2)(ii), AMS added that ''seriously crippled'' animals, in addition to ''non-ambulatory'' animals, must not be transported for sale or slaughter. This language is commonly used by the industry and prevents the inhumane and potentially unsafe slaughter of unwell animals that are still able to move.
- To provide greater flexibility in transport, AMS added to § 205.242(a)(4) that ''Use of bedding must be appropriate to the species and type of transport.'' This change addresses public comment concerns about keeping clean, dry bedding and potential animal safety concerns.
- AMS removed the requirement to always provide feed and water after 12 hours of transport. The final rule includes a general requirement that operations must describe how they maintain organic management and animal welfare when transport time exceeds 8 hours. This time period better aligns with third-party animal welfare certifications. Additionally, AMS added the phrase ''measured from the time all animals are loaded onto a vehicle until the vehicle arrives as its final destination'' to clarify that transport time does not include onloading and offloading, which commenters noted could take three to four hours.
- AMS removed specific reference to FSIS Directives 6100.3 and 6910.1 at § 205.242(c)(1), as newer versions of these Directives could someday supersede these Directives. Instead, the final rule requires that slaughter operations comply with ''applicable FSIS Directives.''
- In response to public comment, AMS replaced in § 205.242(c)(3)(ii) the term ''ritual slaughter'' with ''religious (or ritual) slaughter'' and exempted this method of slaughter from some requirements.

Responses to Public Comment

AMS received many public comments from stakeholders across the organic industry discussing this section of the proposed rule. The majority of comments generally supported AMS's proposed revisions. Many commenters requested further clarification of the proposed changes, particularly regarding the requirement for feed and water after 12 hours of transport and verification of compliance with slaughter requirements.

Transport Time and Water and Organic Feed Requirements

(*Comment*) AMS received many comments stating that it would be very difficult to meet the proposed requirement to provide water and organic feed if transport time exceeded 12 hours. Commenters noted that transport times could exceed 12 hours due to unforeseen circumstances such as weather, natural disasters, traffic, and equipment breakdown. Comments discussed the practical challenges of stopping and offloading animals to provide them with water and feed en route to a destination. For example, these comments noted the challenge of locating and accessing a certified organic stopping point to unload and feed livestock. They also noted that offloading animals after crossing state lines would activate other federal requirements such as FSIS testing. Commenters also discussed the potential added stress that stopping and unloading (and reloading) could cause animals compared to continuous transportation to the destination. Other comments noted that loading and unloading could take up to four hours and that a 12-hour limit would only allow for 8 hours of transport. Some commenters recommended changing the time threshold to align with the standards of third-party certification labels while others requested a prohibition on all transport beyond a specific time cap.

Another comment stated that the time restriction would result in sourcing lesser quality pullets for their operation, which could potentially reduce production and/or increase costs. Some commenters stated that this requirement could disproportionately impact small-scale producers and would not be neutral in terms of scale or geographic location. Comments also noted that the 12-hour feed requirement would conflict with slaughter requirements to not feed 24 hours prior to slaughter. Several comments from certifiers, organic livestock producers, and a trade association requested that the rule not prescribe feed and water during transport but require operations to demonstrate organic management and animal welfare, which may include feed and water.

(*Response*) AMS agrees that the proposed water and organic feed requirement may be difficult for some operations to meet. To provide greater flexibility for certified operations, the final rule removes the specific requirement in § 205.242(a)(5) for water and organic feed when transportation exceeds 12 hours. Instead, livestock operations must explain in their OSP how they will maintain organic management and animal welfare if transport time exceeds eight hours. AMS agrees with commenters that this eight-hour threshold better aligns with existing third-party animal welfare standards. To address commenters' concerns about loading time, AMS has also clarified that transport time is measured from the time all animals are loaded onto a vehicle until the vehicle arrives at its final destination. AMS understands that some certifying agents already require livestock operators to explain in their OSP how they will

provide feed and water if traveling over 12 hours. Under this rule, AMS expects operators to explain in their OSP how they will maintain organic management and animal welfare, which may include descriptions of access to feed and water. Certifying agents and inspectors may use this information to assess whether the management plans satisfy this rule's requirements to maintain animal welfare during transport. AMS agrees with commenters that providing feed and water are examples of how an operation may maintain animal welfare, but the rule does not explicitly require the provision of feed and water to alleviate the challenges described above.

(*Comment*) Some commenters noted that day-old chicks, which do not require additional feed since they have an absorbed yolk sac, often travel more than 12 hours from the hatchery to the final destination. Furthermore, commenters stated that providing chicks feed and water would be especially burdensome as well as time-consuming and requested AMS exempt day-old chicks from the requirement.

(*Response*) AMS acknowledges that day-old chicks are sustained by their yolk sac and do not require feed or water for extended time periods. While most day-old chicks are not organic (organic management of poultry is required no later than the second day-of-life at § 205.236), AMS recognizes that some chicks are certified organic and can travel for 12 hours or more without feed and water. The final rule does not require feed or water during transport. Instead, operations must ''describe how organic management and animal welfare will be maintained'' during transport. As for all species and types of livestock, an operation should describe in its OSP how it ensures the welfare of day-old chicks during transport, which may include feed and water.

Fitness for Transport

(*Comment*) Several comments requested clarification and additional criteria regarding an animal's fitness for transport. They asked AMS to add categories of animals that should not be transported, such as newborn, pregnant, and recently calved animals. Others asked AMS to align the rule with international transport fitness standards or third-party animal welfare standards.

(*Response*) AMS recognizes commenters' request for additional clarify on an animal's fitness for transport. The final rule states that ''all livestock must be fit for transport.'' The rule also addresses transport of young or newborn calves in at § 205.242(a)(2)(i): ''calves must have a dry navel cord and be able to stand and walk without human assistance.'' Additionally, AMS added the term ''seriously crippled'' to § 205.242(a)(2)(ii) to clarify that seriously crippled and non-ambulatory animals must not be transported for sale or slaughter. Seriously crippled is a commonly used and understood industry term that will help operations and certifying agents understand the scope of fitness for transport. AMS acknowledges some commenters' desire for the rule to align with more prescriptive third-party animal welfare standards. However, AMS believes that the current regulatory text is sufficient to ensure the humane transport of organic livestock, while also providing operations with necessary flexibility to meet the standard.

Bedding in Transport

(*Comment*) Several comments discussed the proposed rule's requirement to use bedding during transport. Some comments expressed concern that it may be difficult, impossible, or even dangerous (*e.g.,* slip risk for livestock) to provide bedding in some situations. Others pointed out that operations need flexibility to use bedding in a way that is appropriate to the type of livestock and transport. Others mentioned that ''clean'' bedding is subjective and may not be necessary or feasible given the variability of transport time, transport type, and number and type of livestock.

(*Response*) AMS recognizes that in certain circumstances, bedding is not ideal for trailer transport and that, in some cases, keeping clean, dry bedding is impossible or even unsafe (*e.g.,* slip risk for certain animals). Therefore, the final rule allows for flexibility by requiring that bedding must be provided ''as needed'' and ''as appropriate to the species and type of transport.'' This will allow operations to provide bedding that is beneficial to animal welfare but also appropriate to the type of livestock and transport, reducing undue burden and possible risk to livestock.

Emergency Plans

(*Comment*) A few comments requested clarification on the conditions under which an emergency plan is required and how certifying agents should evaluate such plans.

(*Response*) The final rule requires emergency plans to address animal welfare problems that may occur during transport. Such emergency plans must describe how animal welfare will be maintained in emergencies, such as what to do if livestock escape during transport, or how to euthanize an animal injured during transport. Shipping and/or receiving operations must also have these emergency plans. Like all other applicable production and handling requirements in subpart C of the organic regulation, operations should describe their emergency plans in their OSP. To evaluate if an operation's emergency plans comply with the rule, certifying agents should review this part of the OSP and verify its use during on-site inspection.

Identification of Livestock in Transport

(*Comment*) Several commenters noted that some operations may not currently meet the proposed requirement in § 205.242(a)(1) that animals be clearly identified during transport and asked AMS to consider removing this requirement.

(*Response*) AMS is retaining this requirement in the final rule because identification and traceability of all organic agricultural products, including livestock, is necessary to maintain traceability within supply chains and demonstrate organic integrity. The organic regulations require all certified operations to include audit trail documentation for the organic products they handle (§ 205.103(b)(3)). Audit trail documentation includes records that are ''sufficient to determine the source, transfer of ownership, *and transportation* of any agricultural product labeled as [organic]'' (see definition of audit trail at § 205.2).

Additionally, operations are already required to ''maintain records sufficient to preserve the identity of all organically managed animals, including . . . transitioned animals'' (§ 205.236(c)). This includes preserving the identity of organic livestock during transport. Therefore, this rule's requirement to clearly identify and trace organic livestock during transport reinforces existing recordkeeping and traceability requirements, which are vitally important to maintaining and demonstrating the integrity of organic livestock.

Recordkeeping and Compliance

(*Comment*) One commenter argued that it is difficult to precisely track and record exact times that livestock spend in transit and that it is burdensome for livestock transporters to complete additional recordkeeping to verify that animals have been in transit for less than 12 hours.

(*Response*) AMS revised § 205.242(a)(5) to no longer require feed and water when transport time exceeds 12 hours. Instead, this section requires that operations describe in their OSP how organic management and animal welfare will be maintained during

transport that is longer than eight hours. Because this change requires operations to plan and prepare for long transport times, rather than precisely track and record transport times, AMS does not believe this requirement will add repetitive recordkeeping burden for operations or transporters.

(*Comment*) Several commenters were concerned that the rule's limit on transport times may conflict with U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration's ''hours of service'' regulations and/or the Twenty-Eight Hour Law, which requires that animals transported for 28 consecutive hours must be offloaded for at least five consecutive hours to get feed, water, and rest.[88]

(*Response*) After reviewing the appropriate DOT regulations and law, AMS does not believe that the rule's requirements conflict with other statutes or regulations pertaining to transport of organic livestock. The rule requires that operations describe in their OSP how organic management and animal welfare are maintained when transport time exceeds eight hours. Because the rule requires operations to plan and prepare for long transport times, rather than precisely track and adhere to transport times, this requirement does not pose a compliance conflict with the Twenty-Eight Hour Law and does not interfere with a driver's ability to comply with the DOT Hours of Service regulations. Operations transporting organic livestock must still comply with the Twenty-Eight Hour Law and any other applicable livestock transport statute or regulation.

Other Statutory and Regulatory Slaughter Requirements

(*Comment*) Several comments expressed concern that the rule's reference to other statutes and regulations in § 205.242(b) and (c) would require certifying agents to verify and enforce requirements beyond the scope of organic production and handling. Other commenters asked how certifying agents should initiate actions to suspend a facility's organic certification if slaughter records reveal that an operation has not taken corrective actions required by FSIS.

(*Response*) The rule requires that operations comply with other statutory and regulatory requirements related to the humane slaughter of livestock. AMS chose to reference these existing requirements because operations are already following these requirements. This prevents undue burden for operations to understand and comply with additional slaughter requirements unique to organic production and handling.

Certifying agents and organic inspectors are not expected to determine an organic slaughter facility's compliance with these laws and regulations, as that is the responsibility of government regulatory authorities such as FSIS. However, organic slaughter facilities must provide records of noncompliance and corrective actions that resulted from FSIS regulatory and enforcement action. These FSIS records are a valuable source of additional information that certifying agents can use to determine an operation's compliance with the organic regulation and this rule's animal welfare requirements.

Medical Treatment and Humane Euthanasia Linked To Transport and Slaughter

(*Comment*) One comment noted that § 205.242(a)(2)(ii) requires medical treatment or euthanasia prior to transport but does not explicitly require this upon arrival at a slaughter facility.

(*Response*) Although the rule does not explicitly require medical treatment and euthanasia at this point, the rule more generally requires that certified operations provide humane medical treatment and appropriate use of euthanasia at all times (see § 205.238(a), (b), and (e)). In this case, the certified slaughter facility, upon receiving a sick or injured animal, is responsible for that animal's welfare and must provide the appropriate medical treatment or humanely euthanize the animal.

F. Implementation and Compliance Dates for the Final Rule

In the proposed rule, AMS requested public comments on the most appropriate and feasible implementation approach for the final rule. AMS also proposed timeframes for various aspects of the rule and specifically requested comments on two implementation options, namely 5 years or 15 years, for the outdoor space requirements for layer operations. AMS also invited comments on implementation timelines other than those proposed by AMS.

For the final rule, AMS selected an implementation approach that requires compliance with the final rule as described below. Implementation or compliance dates are calculated from the effective date of the final rule; the specific dates that correspond with the descriptions below are listed in the **DATES** section at the beginning of this document.

Certified operations must comply with the requirements of the final rule within one (1) year from the effective date, except:

(a) Organic broiler operations already certified or certified within one year following the effective date of the final rule have an additional four years (*i.e.,* five years from the effective date) to comply with the indoor and outdoor stocking density requirements for broilers in §§ 205.241(b)(10) and (c)(6), and the outdoor space requirements related to soil and vegetation in § 205.241(c)(2).

(b) Organic layer operations already certified or certified within one year following the effective date of the final rule have an additional four years (*i.e.,* five years from the effective date) to comply with the outdoor space requirements for layers concerning outdoor stocking density, soil, and vegetation in §§ 205.241(c)(2) and (4)–(5).

(c) Organic avian operations already certified or certified within one year following the effective date of the final rule have an additional four years (*i.e.,* five years from the effective date) to comply with the applicable exit area requirements for avian operations in § 205.241(b)(4).

Operations applying for organic certification more than one year after the rule's effective date will need to comply with all the rule's requirements to become certified organic. AMS discusses and responds to public comments received on implementation of the final rule below.

Response to Public Comment: Implementation for Layer Operations

(*Comment*) AMS received many public comments about the implementation timeline for the outdoor requirements for layer operations, including many that supported alternative implementation timeframes (not Option 1 or Option 2 proposed by AMS). The majority of those commenters requested the shortest timeline possible—either an immediate implementation or a one-year implementation period. Nearly all comments argued that 15 years would be an excessively long implementation period for the final rule. Commenters stated that producers are already familiar with the proposed requirements and that consumers should not need to wait for products to meet their expectations. Commenters pointed out that many organic producers already comply with OLPS's outdoor access standards, as they have understood those standards to be what was intended in the existing organic regulations. They

[88] 49 U.S.C. 80502.

felt it would be unfair to allow non-compliant producers 15 more years to benefit from cheaper production systems. Other comments noted that producers should have expected the requirements because of the regulatory history of the rule. Comments also emphasized the widespread support of the proposed rule and noted an immediate need to remedy the imbalance in the marketplace.

Several comments wrote in support of the five-year implementation option (Option 1) for outdoor requirements for layer operations. These comments generally supported swift implementation, with many indicating that five years should be the maximum amount of time that AMS allows for producers to comply with the final rule. Many comments also stated that extending implementation of this rule past five years would erode trust in the organic label and contribute to further market failure.

(*Response*) Despite the broad popularity of an implementation period shorter than Option 1 (*e.g.,* immediate or one-year period), AMS has determined that the most appropriate implementation period for the outdoor space requirements for layer operations is five years. The Regulatory Impact Analysis that accompanies this final rule reflects this timeframe for the purposes of calculating the costs and benefits of this rule. AMS recognizes that a very brief implementation period would most quickly resolve the widely divergent outdoor layer practices that currently exist among organic layer operations. However, some currently certified organic operations will need to acquire land, build new facilities, and transition nonorganic land to organic production to meet the requirements of the final rule. Many of the comments favoring longer implementation periods highlighted these costs or the ability to recoup costs as a reason to allow for more time.[89] AMS estimates that up to 70% of production will need to modify facilities or exit.[90]

Because of these costs, AMS has determined that allowing currently certified organic layer operations (and operations obtaining certification within one year of the effective date) five years from the effective date to comply with the final rule is warranted and appropriate and would not cause excess burden. AMS also recognizes that some businesses will require capital to meet the requirements of the final rule, and time is required to adjust business and operational practices. The final rule adopts a five-year implementation for layer operations because AMS believes it fulfills the OFPA's purpose to ensure consistency in standards in a timely manner, while also providing sufficient time for operations to complete activities to remain in compliance with outdoor space requirements. With five years to implement the outdoor requirements, layer operations will have sufficient time to acquire and transition land for outdoor areas (land requires a minimum of three years to transition to organic) and to build or modify facilities to meet the new requirements. If an operation chooses not to meet the requirements after five years, it may stop operating as organic or switch to another market.

In response to comments that organic operations should have been aware of possible changes to the requirements (and should require less time to comply), AMS recognizes there is a lengthy regulatory history associated with this rule, as evidenced by the NOSB recommendations on these topics starting as early as 2009. However, AMS does not expect that producers should have anticipated the requirements in this final rule and modified their practices, nor could they have known the specific requirements of this final rule. Therefore, AMS believes that the five-year implementation period for the final rule is both appropriate and reasonable.

(*Comment*) Many comments suggested that three years would be sufficient for existing organic layer operations to come into compliance with the rule without undue hardship. Comments noted that three years is the typical transition timeframe for operations to make capital and management investments to become certified organic. Some comments asked that AMS allow currently certified operations three years to comply, as this aligns with the three-year transition period for an operation transitioning to organic production. These commenters stated that existing organic layer operations should be treated the same as any new operation that seeks certification. A related comment suggested that AMS set a three-year compliance date, but allow an additional fourth year only for operations that could demonstrate they had made capital purchases and had been actively seeking certification prior to the final rule's effective date.

(*Response*) AMS recognizes that transition of land (for outdoor access) only requires three years and that some operations may be able to comply with this final rule within three years. Additionally, AMS recognizes that many organic operations have made significant investments in facilities that are currently certified by USDA-accredited certifying agents as meeting the current requirements. While three years may be sufficient for some operations to meet the requirements of the final rule, other operations could require more than three years to comply with the final rule. For example, operations may need to identify and acquire land, research, plan, build facilities, transition land for three years (for outdoor space), and secure certification. In consideration of the time required to complete these activities, AMS is providing for a five-year implementation period to allow layer operations to comply with the outdoor space requirements in this final rule.

(*Comment*) Very few commenters wrote in support of a 15-year implementation for the outdoor requirements for layer operations. These commenters argued that this timeframe would better coincide with the 15-year IRS depreciation schedule for single-purpose agricultural buildings (*i.e.,* facilities that provide outdoor access via porches). They argued that operations built their facilities in ''good faith'' and should be able to realize the benefits of those investments. AMS also received comments suggesting a slightly shorter implementation timeline of 12.5 years. Similarly, these comments stated that some producers have made significant investments in systems that were permitted under previous policy interpretations and that the timeframe would allow producers to depreciate the value of existing facilities according to IRS depreciation schedules.

On the other hand, most comments were strongly opposed to AMS adopting a 15-year implementation for the final rule. Comments noted that a 15-year implementation period would perpetuate the existing double standard, further erode consumer trust in the organic label, and make the work of organic certifiers difficult. AMS believes this length of implementation would

[89] For example see: *https://www.regulations.gov/comment/AMS-NOP-21-0073-29374*; *https://www.regulations.gov/comment/AMS-NOP-21-0073-27673.*

[90] Because larger operations, like aviaries, tend to use porches, the level of production using porches is higher than the number of producers. Originally AMS had estimated this to be approximately 90%, but industry feedback during the OLPP rulemaking process stated that it was closer to 70% with the three other practices being about equal in the marketplace. However, during the OLPS Proposed Rule comment period, the only information AMS identified related to the number of operations with porches would indicate less than 37.7% of production has porches. See: *https://www.regulations.gov/comment/AMS-NOP-21-0073-39082.*

See the RIA for more information.

contradict OFPA's purpose to assure consumers that organic products meet a consistent standard. Another noted that a 15-year implementation period would be exceedingly long and be at odds with the purpose of the statute. Others noted that the long timeframe would extend the economic burden and costs incurred by producers that already comply with the requirements in the final rule. These costs include costs of obtaining extra labels (*e.g.,* third-party animal welfare certifications), extra advertising and marketing expenses (to differentiate their eggs under the same label), and extra expenses on the production level (such as the cost of maintaining appropriate outdoor pasture). Others argued that organic certification is a voluntary program, and that AMS should not allow additional time to operations that cannot meet the requirements that consumers expect. As noted by a commenter, it is a privilege afforded by the organic label's robust standards and certification, not a right, to sell into the organic market.

(*Response*) AMS has chosen not to adopt a 15-year or a 12.5-year implementation period for layer requirements in the final rule. Instead, AMS is providing five years for layer operations to comply with outdoor space requirements. AMS recognizes that a five-year implementation may not allow some operations to fully depreciate the value of their facilities. However, AMS is addressing several concerns by issuing this final rule, and mitigation of economic impacts to operations certified prior to the effective date of this final rule is only one of AMS's objectives. AMS is also seeking to balance any impacts with an implementation timeframe(s) that will remedy the inconsistent interpretation and enforcement of the organic regulations. AMS appreciates that a long implementation timeframe would be least impactful for some operations, but AMS is not selecting this approach because it would likely undermine AMS's other objectives in this final rule. Specifically, this option would pose a continued risk to consumer confidence in the organic label.

Response to Public Comments: Implementation for Broilers and New Entrants, Exit Areas

(*Comment*) Several comments from broiler operations stated that if AMS adopted a space requirement for broilers of 5.0 lbs. per square foot that they would need more than three years to comply with the requirement, which is the timeframe in the proposed rule. These commenters noted that a 5.0 lbs. per square foot stocking density is less than the current industry standard, and currently certified operations would need to build new poultry houses to produce at the same level and meet the requirement. Commenters were not necessarily opposed to the proposed requirement but requested five years to comply with the requirement rather than the three years proposed.

(*Response*) The final rule provides five years for broiler operations to comply. AMS considered this rule comprehensively and determined that a stocking density of 5 lbs. per square foot is preferred over alternatives. See additional discussion on this topic in the ''Responses to public comment'' section of Section D, ''Avian Living Conditions.'' AMS recognizes that broiler operations will likely require five years to comply with the final rule's stocking density requirements, as comments indicate that current practices exceed the maximum stocking rate required by this final rule. In response to comments, AMS is providing five years for broiler operations to comply with the indoor and outdoor stocking density requirements of the final rule. AMS expects this timeframe will give operations time to source, acquire, and potentially transition new land (a three-year process). Further, while not the primary reason for AMS selecting this timeframe, the timeframe aligns that for broilers with that of layer operations, and in turn, simplifies the certifying agents' implementation of the rule.

Additionally, new entrants that become certified within one year of the final rule's effective date will have until five years after the effective date to comply with all requirements. AMS is providing this additional flexibility in recognition of operations that may have started the process to become certified organic before publication of this final rule. The implementation timelines for broiler operations will allow operations to adjust practices to meet the requirements without causing disruption to the market.

(*Comment*) Some comments supported the general timeline for allowing five years for implementation but requested that AMS provide less flexibility for new entrants. These commenters generally suggested that operations certified any later than one year after the final rule's effective date should be required to comply with all the requirements to achieve certification. In the proposed rule, AMS described one implementation schedule that would have required new entrants in the first three years (after the effective date of the final rule) to comply with the final rule in five years from the effective date.

(*Response*) As suggested by many comments, the final rule provides new entrants certified within the first year of the final rule's effective date with five years (from the effective date) to comply. Operations certified any time after one year following the rule's effective date will need to comply with the final rule to achieve certification. AMS believes that this timeline for new entrants is reasonable, as it should allow operations that have been planning to become certified (but are not yet certified) with an extended period to comply with the final rule. At the same time, a one-year period (rather than a three-year period) may reduce the amount of organic product on the market that does not comply with all requirements in the final rule, and better reflects AMS's objective to assure consumers that organic products meet a consistent standard.

(*Comment*) Some comments on implementation timeframes indicated that the requirements for exit areas should also be on a delayed implementation schedule, along with outdoor space requirements.

(*Response*) AMS is clarifying that avian producers will have five years to comply with the requirements related to indoor space requirements related to exit areas at § 205.241(b)(4). See a discussion of this requirement in the AVIAN LIVING CONDITIONS section above. The requirements for exit areas at § 205.241(b) are included within ''indoor space requirements'' in the organization of the rule, but AMS recognizes these requirements are inseparable from outdoor space requirements (§ 205.241(c)), which may be implemented over a five-year period for layer and broiler operations. AMS is providing operations with five years to implement the exit area requirements at § 205.241(b). This time should allow the necessary time for certifying agents to assess operations for compliance with the requirement and allow the necessary time for operations to modify practices and facilities, as necessary, to meet the requirement. Within one year of the effective date of the final rule, all operations, except for layer operations (which have a five-year implementation period for outdoor space requirements), must still comply with requirements described at § 205.241(c)(1) that require access to outdoor space and door spacing that promotes and encourages outside access for all birds on a daily basis.

G. Severability

In this final rule, we adopt additional organic standards for livestock. The constituent elements each operate independently to ensure consistent organic livestock standards. Were any element of this scheme stayed or invalidated by a reviewing court, the elements that remained in effect would continue to provide consistent organic livestock standards. For instance, organic consumers have long benefitted from Organic Rules governing organic production and handling. The provisions we adopt today would continue to ensure that organic products meet a consistent standard even if they did not extend to all organic livestock sectors. Similarly, the different livestock care practices regulated under this rule each pose distinct concerns for different aspects of organic livestock production. Finally, the benefit of the provisions for customers of any organic livestock product does not hinge on the same standards applying to other organic livestock products. Accordingly, we consider each of the provisions adopted in this final rule to be severable, both internally and from other provisions at 7 CFR part 205. In the event of a stay or invalidation of any part of any provision, or of any provision as it applies to certain organic livestock handling or production practices, USDA's intent is to otherwise preserve the rule to the fullest possible extent.

Accordingly, AMS has added a severability provision in § 205.391 of 7 CFR part 205.

V. Regulatory Analyses

A. Summary of Economic Analyses

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act), the Office of Information and Regulatory Affairs has determined that this action meets the criteria set forth in 5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated as a significant regulatory action (Sec. 3(f))(1) under Executive Order 12866, as updated by Executive Order 14094, and therefore, has been reviewed by OMB.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

AMS has prepared a Regulatory Impact Analysis (RIA) and Regulatory Flexibility Analysis (RFA) to address these objectives. The following discussion summarizes the economic analysis AMS performed to estimate the impact of this rule. A complete economic analysis is available at *https://www.regulations.gov/*. You can access the economic analysis by searching for document number AMS–NOP–21–0073.

Regulatory Impact Analysis

AMS's economic impact analysis describes the benefits and costs of the rule, with a focus on organic egg and broiler production, which AMS determined will drive the benefits and costs of this rule. We anticipate many of these producers will face additional production costs in acquiring outdoor space for layers and indoor space for broilers and will likewise generate benefits through increased consumer willingness to pay for these newly acquired organic poultry attributes. As stated above in the EXECUTIVE SUMMARY, AMS anticipates the annualized 20-year net benefit of this rule will be $59.1–$78.1 million. The following section will summarize some of the assumptions and methods of our analysis. For more detail, see the Regulatory Impact Analysis.

To calculate benefits and costs in the organic egg market, AMS assessed producers' current conditions and considered how producers may respond to the requirements. For organic layers, the key factor affecting compliance is the availability of land to accommodate all the birds at the required stocking density. Producers that are not already in compliance with the rule's requirements are most likely to either acquire land or exit the organic market. (They could reduce flock size to accommodate the new spacing requirements or cease production, but AMS considers these outcomes unlikely as they are less profitable than either of the alternatives.)

AMS used research that estimated consumers' willingness to pay for layers' outdoor access between $0.16 and $0.25 per dozen eggs.[91] By multiplying the midpoint of the low ($0.16) and high ($0.25) points of that range by the projected number (in dozens) of organic eggs produced by layers that are estimated to newly have outdoor access as a result of this rule, AMS estimates that the 20-year annualized benefits for layer operations will range between $76.6–89.6 million.

We estimate the annual costs for organic egg production are $28.1–$32.9 million (discounted annualized value) if 50% of egg production in 2023 transitions to the cage-free egg market by the 5-year compliance date, with an additional temporary economic welfare loss of $8.7–$16.0 million.

TABLE 3—EXECUTIVE SUMMARY: UNIT COSTS AND BENEFITS FOR EGGS AND BROILERS

	Eggs dozen	Broilers
Unit Benefits and Costs		
Avg. Benefit Per Unit (Consumer Willingness to Pay) *	0.205	0.14/lb
Cost Change in Average Total Cost of Production Per Unit	0.06	0.02/lb

[91] Yan Heng, et al., (2013). Consumer Attitudes toward Farm-Animal Welfare: The Case of Laying Hens. Journal of Agricultural and Resource Economics 38(3):418–434.

TABLE 3—EXECUTIVE SUMMARY: UNIT COSTS AND BENEFITS FOR EGGS AND BROILERS—Continued

	Eggs dozen	Broilers
Net Benefit per Unit Gaining Outdoor Access	0.145	0.16/lb
Total Annualized Benefits and Costs		
20-Year Annualized Discounted Benefits (3%) ($1,000) *	$89,564	$35,641
20-Year Annualized Discounted Benefits (7%) (1,000) *	76,641	31,467
20-Year Annualized Discounted Costs (3%) (1,000)	32,893	5,491
20-Year Annualized Discounted Costs (7%) (1,000)	28,147	4,848
20-Year Annualized Discounted Economic Welfare Loss (3%) (1,000)	8,709	0
20-Year Annualized Discounted Economic Welfare Loss (7%) (1,000)	16,046	0
Total Annualized Net Benefits		
20-Year Annualized Discounted Net Benefits (3%) ($1,000)	$47,962	$30,149
20-Year Annualized Discounted Net Benefits (7%) (1,000)	32,448	26,619
One-time Domestic Information Collection Cost (1,000)		4,930

* Layer benefit reports the mid-point benefits of the two estimates ($0.16/dz. and $0.25/dz.).

In the organic broiler industry, AMS assumes that organic broiler producers will build enough new facilities to comply with the stocking density requirements and remain in the organic market at their current production level.

To calculate the benefits for broilers, AMS reviewed relevant research and established a willingness to pay of $0.14 per pound of chicken from birds with more indoor space.[92] Based on this, AMS estimates that the annual discounted benefits for broiler operations will range between $31.5–$35.6 million. We estimate the annual costs for organic broiler production at $4.8–$5.5 million. This reflects the costs of building additional housing to meet the indoor stocking density requirement. AMS considered several alternatives to this final rule, including different spacing and density requirements and alternatives to rulemaking altogether. These alternatives are discussed in more detail in the rule's Regulatory Impact Analysis, but briefly, they are:

• *Guidance to the industry as an alternative to regulations*—Based on public comments to draft guidance that AMS published regarding outdoor access for poultry, AMS has determined the organic poultry market needs more prescriptive guidelines to clarify the intent of the outdoor access requirements in the organic regulations.[93]

• *Consumer education in lieu of rulemaking*—AMS has determined that a campaign to educate consumers would have limited effectiveness and would not fulfill NOP's mandate under OFPA to assure consumers that organic products meet a consistent standard.

• *Alternative space and density requirements*—AMS considered a range of indoor stocking densities and outdoor space requirements. We compared NOSB recommendations with the standards of third-party animal welfare certifications and major organic trade partners like Canada and the European Union. We also considered the current operating conditions of organic producers and the risk of market disruptions if too many producers were forced out of the organic market. AMS balanced these competing interests in setting the standards for this final rule.

• *Implementation timeline*—AMS compared the costs and benefits of the two implementation options (5 years and 15 years). We determined that the 5-year option, despite slightly higher costs, resulted in greater net benefit annualized over 20 years than the 15-year option. Additionally, nearly all public comments found the 15-year option less preferable, with many stating that long implementation would erode their trust in the organic label. This public response indicates a financial risk that although we did not quantify, we did consider. AMS concluded that a 5-year implementation is the most beneficial option.

AMS's Regulatory Impact Analysis concludes that this rule is reasonably expected to provide a net benefit to the organic market. In addition, its provisions will ensure consistent standards as directed by OFPA and benefit consumers by reducing consumer welfare loss (*i.e.,* the difference in value between attributes—such as outdoor access—consumers think they are paying for and those they are actually receiving). Furthermore, these provisions help minimize the risk to consumer confidence in the organic label, which affects all organic markets, not just eggs and chicken. For further information on AMS's economic analysis, see the Regulatory Impact Analysis for this rule.

Regulatory Flexibility Analysis

AMS also performed additional analysis to determine the rule's impact to domestic small businesses including avian and mammalian livestock producers and slaughter facilities that currently hold or are pursuing USDA organic certification, as well as organic certifying agents. This analysis revealed that the cost of implementing this rule will fall on certified organic egg and broiler producers. AMS finds that these requirements will not add significant costs to other organic livestock sectors because these requirements seek to codify existing industry practices. AMS expects that most organic layer operations affected by this rule and about one third of all organic broiler operations are small businesses as defined by Small Business Administration criteria. AMS expects that the costs to comply with the outdoor space requirements will be

[92] Mulder, M., & Zomer, S. (2017). Dutch consumers' willingness to pay for broiler welfare. Journal of Applied Animal Welfare Science, 20(2), 137–154. This estimate is adjusted for the context and reduced by the average observed premium difference between American and European consumers across all sustainable food products from Li, S., & Kallas, Z. (2021). Meta-analysis of consumers' willingness to pay for sustainable food products. *Appetite, 163,* 105239.

[93] On October 13, 2010, AMS published a Notice of Availability of Draft Guidance and Request for Comments in the **Federal Register** (75 FR 62693). See Section D, ''Organic Livestock Regulatory History,'' for more detail.

more burdensome for larger organic layer producers and they are more likely to transition to a cage-free label. These operations will require significantly more land and will be less likely to have that area available for expansion. For small egg producers, business revenues would need to be less than $137,195 to $154,922 per firm for the rule to cost more than 3% of revenue. For small broiler producers, business revenues would need to be less than $117,456 to $132,632 per firm for the rule to cost more than 3% of revenue. AMS also expects that organic producers may have some increased costs to meet the reporting and recordkeeping requirements that will be associated with this rule. These are described in the Paperwork Reduction Act section. Additionally, while certifying agents are small entities that will be affected by this rule, AMS does not expect these certifying agents to incur substantial costs as a result of this action.

A complete economic analysis of this rule is available at *https://www.regulations.gov/*. You can access this rule and the economic analysis by searching for document number AMS–NOP–21–0073.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations to avoid unduly burdening the court system. This rule cannot be applied retroactively. States and local jurisdictions are preempted under OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in sec. 6514(b) of OFPA. States are also preempted under secs. 6503 through 6507 of OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of OFPA.

Pursuant to sec. 6507(b)(2) of OFPA, a state organic certification program that has been approved by the Secretary may contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state under certain circumstances. Such additional requirements must (a) further the purposes of OFPA, (b) not be inconsistent with OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to sec. 6519(c)(6) of OFPA, this rulemaking does not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

OFPA at 7 U.S.C. 6520 provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Executive Order 13132

Executive Order (E.O.) 13132 mandates that federal agencies consider how their policymaking and regulatory activities impact the policymaking discretion of States and local officials and how well such efforts conform to the principles of federalism defined in said order. This executive order only pertains to regulations with clear federalism implications.

AMS has determined that this rulemaking conforms with the principles of federalism described in E.O. 13132. The rule does not impose substantial direct costs or effects on States, does not alter the relationship between States and the federal government, and does not alter the distribution of powers and responsibilities among the various levels of government. States had the opportunity to comment on the proposed rule. No States provided public comment on the federalism implications of this rule. Therefore, AMS has concluded that this rulemaking does not have federalism implications.

D. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments.'' E.O. 13175 requires Federal agencies to consult and coordinate 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, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

AMS has determined that the targeted scope of this final rule does not have substantial direct effects on one or more Tribes; however, AMS continues to seek opportunities engaging Tribal nations on new rulemaking. Accordingly, AMS hosted a virtual Tribal consultation meeting on September 9, 2021, where the draft proposed rule was discussed with Tribal leaders. No questions or concerns were brought to AMS's attention about the proposed rule by any Tribal leaders at the meeting. Additionally, no public comments or form letter campaigns were received from Tribes expressing concern over Tribal implications of this rule. If a Tribe requests consultation in the future, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

E. Civil Rights Impact Analysis

AMS has reviewed this rulemaking in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis, to address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. This rule will affect organic livestock producers; AMS determined that this rule has no potential for affecting organic livestock producers in protected groups differently than the general population of organic livestock producers.

Protected individuals have the same opportunity to participate in NOP as non-protected individuals. USDA organic regulations prohibit discrimination by certifying agents. Specifically, § 205.501(d) of the current regulations for accreditation of certifying agents provides that ''No private or governmental entity accredited as a certifying agent under this subpart shall exclude from participation in or deny the benefits of NOP to any person due to

discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.'' Section 205.501(a)(2) requires ''certifying agents to demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart'' including the prohibition on discrimination. The granting of accreditation to certifying agents under § 205.506 requires the review of information submitted by the certifying agent and an on-site review of the certifying agent's client operation. Further, if certification is denied, § 205.405(d) requires that the certifying agent notify the applicant of their right to file an appeal to the AMS Administrator in accordance with § 205.681.

These regulations provide protections against discrimination, thereby permitting all producers, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status, who voluntarily choose to adhere to the rule and qualify, to be certified as meeting NOP requirements by an accredited certifying agent. This action in no way changes any of these protections against discrimination.

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), AMS is requesting Office of Management and Budget (OMB) review and approval for a new information collection totaling 101,110 hours for the reporting and recordkeeping requirements contained in this final rule. OMB previously approved information collection requests associated with the NOP as OMB control number 0581–0191. With OMB approval, AMS intends to merge this new information collection (OMB control number 0591–0293) request into the previously approved NOP information collection request (OMB control number 0581–0191). Presented in the proposed rule (87 FR 48562, August 09, 2022) and reiterated below, AMS describes and estimates the annual burden (*i.e.,* the amount of time and cost of labor) for entities to prepare and maintain information to participate in this voluntary labeling program (USDA organic certification). OFPA provides authority for this action.[94]

Title: National Organic Program: Organic Livestock and Poultry Standards.

OMB Control Number: 0581–0293.

Expiration Date of Approval: Three years from OMB date of approval.

Type of Request: New collection.

Abstract

Information collection and recordkeeping are necessary to implement reporting and recordkeeping necessitated by amendments to standards for organic livestock and poultry production under the USDA organic regulations (§§ 205.238, 205.239, 205.241, and 205.242). This final rule clarifies and expands on existing USDA organic requirements to support consistent interpretation and enforcement of organic livestock standards. By doing so, it supports the purposes of OFPA, ''to assure consumers that organically produced products meet a consistent standard'' and to ''establish national standards'' for products marketed as organic, and to further facilitate interstate commerce of organic products (7 U.S.C. 6501). Additional information on the purpose and need for this rule is included in the BACKGROUND section of this rule.

Overview

All certified organic operations must develop and maintain an organic system plan (OSP) to comply with the USDA organic regulations (§ 205.201). The OSP must include a description of practices and procedures to be performed and maintained, including the frequency with which they will be performed. Under this final rule, organic livestock and poultry operations are subject to additional reporting requirements. The amendments to §§ 205.238, 205.239, 205.241, and 205.242 require livestock and poultry operations to provide specific documentation as a part of the OSP related to their production practices—including minimum space requirements, outdoor access, preventive health care practices (*e.g.,* physical alterations, euthanasia, parasite prevention plans), and humane transportation and slaughter practices. This documentation will enable certifying agents to make consistent certification decisions and facilitate fairness and transparency for the organic producers and consumers that participate in this market.

The PRA requires AMS to estimate the reporting and recordkeeping burden of rulemaking. Per § 205.103 of the USDA organic regulations, operations must maintain and make available upon request such records as are necessary to demonstrate compliance. Sections 205.501(a)(9) and 205.510(b) also require that accredited certifying agents must maintain and make available upon request records that are necessary to verify compliance and maintain accreditation.

In response to overall public comments, and discussed in the overview of the rule above, AMS modified some reporting and recordkeeping requirements in this final rule. The final rule:

1. Removes the requirement for certified operations to record lameness in livestock.

2. Changes the ammonia monitoring requirements for poultry operations. Instead of recording ammonia levels monthly, operations must record ammonia levels weekly.

AMS expects that most of the reporting and recordkeeping burden for this rule will occur in the first year after the rule's effective date. During this time, new operations, existing operations, exempt operations, inspectors, certifying agents, and State Organic Programs will implement the new reporting and recordkeeping requirements. The estimated reporting and recordkeeping burden is described in sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden.*

AMS expects ammonia monitoring to be the only increase in reporting and recordkeeping burden related to this rule for operations beyond the first year. Other reporting and recordkeeping requirements of this rulemaking would become routine to maintain after the first year and fall under existing reporting and recordkeeping burdens described in the NOP's previously approved information collection request (OMB control number 0581–0191). Going forward, weekly ammonia monitoring will become a new routine activity that is not currently identified in the NOP's approved information collection request. The new information that certified operations will be required to record and report for certification will assist certifying agents and inspectors with evaluating operations' compliance with the USDA organic regulations.

Beyond the first year, AMS expects no increase in reporting and recordkeeping burden for inspectors and certifying agents currently involved in livestock certification, as certifying agents are required to observe the same reporting and recordkeeping requirements to maintain accreditation. These current reporting and recordkeeping requirements are routine activities that

[94] USDA OFPA: The Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. 6501–6524, is the statute from which the Agricultural Marketing Service (AMS) derives authority to administer the National Organic Program (NOP), and authority to amend the regulations as described in this rulemaking. *https://uscode.house.gov/view.xhtml?path=/prelim@title7/chapter94&edition=prelim.*

are currently identified in the NOP's approved information collection request.

AMS expects this rule will impose only minor reporting and recordkeeping burden on exempt operations or State Organic Programs in the first year (see Table 4). Under the USDA organic regulations, some types of organic operations are exempt from the requirement for certification. This may include operations that sell less than $5,000 in organic products annually. However, these exempt operations must maintain records of organic management to support their organic claims (§ 205.101(i)). State Organic Programs enforce OFPA in their state under the authority of AMS and must observe the same reporting and recordkeeping requirements to maintain this authority. The current reporting and recordkeeping requirements for exempt operations and State Organic Programs are routine activities that are currently identified in the NOP's approved information collection request.

Recording and reporting information is essential to the integrity of the USDA organic industry. A record trail is a critical tool that inspectors, certifying agents, State Organic Programs, and AMS use to verify that organic management practices meet the requirements of OFPA and its regulations. The collected information also supports AMS' mission, program objectives, and management needs by enabling AMS to assess the efficiency and effectiveness of the NOP. This information informs AMS decisions when evaluating compliance with OFPA and the USDA organic regulations, administering the NOP, and establishing the cost of the USDA organic program. Finally, this information supports AMS's direct enforcement and response to noncompliances with the USDA organic regulations.

Responses to Public Comment

In the proposed rule (87 FR 48562, August 09, 2022), AMS invited comments from the public on the estimated reporting and recordkeeping burden required because of this rulemaking. Public comments relating to the paperwork burden generally indicated that the reporting and recordkeeping burdens were low and that the proposed changes should be implemented.

AMS's responses to comments on five specific questions posed by AMS follow. First, AMS sought comments on:

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility.

(*Comment*) Two commenters indicated that the paperwork requirement associated with verifying transport times would be excessively burdensome for operations and also questioned if AMS had considered Department of Transportation (DOT) Hours of Service (HOS) regulations (49 CFR 385.1(k)(1)). AMS's complete response to this comment is discussed in more detail in TRANSPORT AND SLAUGHTER.

(*Response*) In the final rule, AMS removed a proposed requirement for organic food and water after more than 12 hours of transport. Instead, the final rule requires that operations describe how animal welfare is maintained if transport time exceeds eight hours. The final rule continues to require that operations keep records of transport times. AMS disagrees with comments that claimed transport records would be excessively burdensome. Long transport times for animals can negatively impact animal health and welfare if proper measures are not taken, and records are essential for certifiers to assess transport times. Furthermore, the rule does not specify or require an exact form or format for these records, to provide flexibility and reduce burden for producers to meet the requirement.

AMS also requested comments on:

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.

(*Comment*) A commenter indicated that implementation of the new requirements of this rulemaking will take longer than one year. AMS's response to this comment and other comments regarding the implementation timeline for this rulemaking is discussed in section IV.F, IMPLEMENTATION AND COMPLIANCE DATES. This commenter also indicated that the cost of this new burden will be higher than what was estimated in the proposed rule. They stated that this is because livestock inspectors collect more than the $30.70 per hour rate reported in the proposed rule. Finally, the commenter indicated that additional reporting and recording at annual organic inspections was not fully accounted for, implying that inspections will take longer than AMS estimated.

(*Response*) In the proposed rule, AMS estimated inspector wages and benefits by referencing data from the U.S. Bureau of Labor Statistics on Agricultural Inspectors (Standard Occupational Classification (SOC) code 45–2011), and average civilian employer compensation costs.[95] [96] The commenter did not propose a different wage rate for inspectors that AMS could verify, nor did they suggest a different estimate of how long inspections will take to account for the new requirements. Therefore, AMS has not changed the methods used to estimate wages and benefits. However, in this final rule, AMS has updated the wages, benefits, and data on the number of operations (new, existing, and exempt), certifying agents, and inspectors to update the reporting and recordkeeping burden. The estimates of reporting and recordkeeping burden are discussed in sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden.*

Additionally, AMS asked for comments on, ''Ways to enhance the quality, utility, and clarity of the information to be collected.''

(*Comment*) A commenter stated that AMS should reduce the paperwork burden on organic operations in areas where the reduction would not negatively impact animal welfare or overall compliance with the USDA organic regulations. The commenter did not state what portion(s) of the proposed reporting and recordkeeping requirements were unnecessary.

(*Response*) Under the PRA (44 U.S.C. 3501–3520) and in response to the comment, AMS has sought regulatory options that minimize paperwork burden. For example, AMS removed a specific requirement that would have required producers to keep detailed records related to lameness in a herd.

AMS also sought comments on:

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.

(*Comment*) A commenter stated that poultry stocking density definitions and standards should refer to the number of animals in addition to the weight. Other commenters also stated that requiring slaughter facilities to provide AMS with

[95] U.S. BLS Inspectors: Bureau of Labor Statistics. Mean hourly wage for Agricultural Inspectors (Standard Occupational Classification (SOC) code 45–2011) was $22.80. *Occupational Employment and Wage Statistics.* ''*May 2021 National Occupational Employment and Wage Estimates United States.*'' *Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.*

[96] U.S. BLS Benefits: Bureau of Labor Statistics. Domestic benefits were reported at 31 percent of total average civilian employer compensation costs. *Economic News Release. Employer Costs for Employee Compensation Summary.* ''*Employer Costs for Employee Compensation December 2022.*'' *USDL–23–0488. Published March 17, 2023. https://www.bls.gov/news.release/ecec.nr0.htm.*

any noncompliance records or corrective actions issued by the USDA Food Safety and Inspection Service (FSIS) would be duplicative and unnecessary. They stated that FSIS inspectors are specifically trained to understand the Poultry Products Inspection Act (PPIA) and the Verification of Good Commercial Practices for Poultry, and therefore, FSIS should continue to oversee poultry slaughter, not AMS. Finally, they stated that requiring operations to report this information would possibly create jurisdictional issues between FSIS and AMS.

(*Response*) Organic slaughter requirements and AMS's justification for these regulatory changes are described in Section IV.E, TRANSPORT AND SLAUGHTER. As described in that section, organic certifying agents and inspectors are not expected to determine an organic slaughter facility's compliance with these laws and regulations, as that is the responsibility of other government regulatory authorities (such as FSIS). However, organic slaughter facilities must provide records of noncompliance and corrective actions that resulted from FSIS regulatory and enforcement action. These FSIS records are a valuable source of information that certifying agents can use to determine an operation's compliance with the organic regulation and this rule's animal welfare requirements. AMS has not changed the estimation of reporting and recordkeeping burden for the new information collection requirements of this rulemaking based on these comments.

Finally, AMS requested comments on its estimates and assumptions:

AMS estimates that the total number of certified organic operations will grow by 5.6% annually, based on the increase in operations recorded in INTEGRITY during the last 12 months. Is this a reasonable and accurate projection of future growth, given the additional burdens imposed by this proposed rulemaking?

(*Comment*) A few commenters expressed concern with the estimated future growth presented in the proposed rule. One stated that the proposed changes will impose additional financial burdens with little benefits to organic poultry operations. Commenters expressed concern that the number of organic operations would decrease rather than increase.

(*Response*) AMS disagrees with the comment that this rulemaking will have little benefit on organic poultry operations. This rule clarifies and expands on regulations to support consistent interpretation and enforcement of organic livestock and poultry standards. The final rule specifies requirements for outdoor space (per bird), access to outdoor space from poultry houses (exit areas), and indoor thresholds for ammonia gas. The rule also elaborates on the current standards (7 CFR 205.239) related to situations that warrant temporary confinement of animals, among other requirements.

AMS investigated the concern that organic operations will decrease and reevaluated the data used to estimate the growth of the organic livestock industry. In the proposed rule, data on overall organic operations was used to calculate an estimated growth rate. In response to comments, AMS refines the data in this final rule to focus on organic livestock operations. AMS searched organic livestock operations listed in the Organic Integrity Database on January 01, 2022, and January 01, 2023.[97] Based on this data—5,445 certified livestock operations in 2022 and 5,883 certified livestock operations in 2023—AMS changes the estimated future growth of organic livestock operations to eight percent (8%). AMS has updated the estimated reporting and recordkeeping burden accordingly. The estimated reporting and recordkeeping burden is discussed in Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden.*

Public Comments Conclusion

The estimated reporting and recordkeeping burden for the new information collection requirements of this rulemaking are summarized in the Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden* below. In general, public comment received did not dispute AMS's estimate of the information collection reporting and recordkeeping burden presented in the proposed rule.

In the proposed rule, AMS estimated that new and current organic operations would need four hours to incorporate the new reporting and recordkeeping requirements of this rulemaking into their OSPs (including one-time preparation of all practices, procedures, and information necessary to comply with these new requirements). AMS made changes in this final rule that decrease required reporting and/or recordkeeping related to lameness and increased the frequency of ammonia monitoring (see sections on Livestock Care and Production Practices Standard and Avian Living Conditions). However, AMS does not believe these changes will substantially affect the time operations will require to incorporate the new requirements into their OSPs. Table 4 describes the reporting and recordkeeping burden in more detail.

AMS has updated the following data used to estimate reporting and recordkeeping burden:

1. Wage and benefit data from the U.S. Bureau of Labor Statistics, Organization for Economic Co-Operation and Development (OECD), and the World Bank.[98] [99] [100]

2. Number of new, existing, and exempt organic operations.[101] [102]

3. Number of domestic and foreign livestock inspectors and certifying agents.[103]

The estimated reporting and recordkeeping burden is discussed in Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden.*

Calculating Reporting and Recordkeeping Burden

AMS identifies four types of entities (respondents) that will need to submit and maintain information to participate in organic livestock and poultry certification:

1. Organic livestock and poultry operations.
2. Accredited certifying agents.
3. Inspectors.
4. State Organic Programs.

To understand the reporting and recordkeeping costs of this rulemaking more precisely, AMS calculated the potential impacts utilizing domestic and foreign labor rates (per hour) plus benefits.

AMS calculates the time burden of the new reporting and recordkeeping requirements of this rulemaking by estimating the following:

1. The number of respondents.
2. Frequency of response.
3. Total number of burden hours per year.

The number of respondents is based on operation, certifier, inspector, and State Organic Program data from the Organic Integrity Database.[104] The frequency of responses is estimated to

[97] USDA NOP OID: Organic Integrity Database, *https://organic.ams.usda.gov/integrity/.*

[98] U.S. Bureau of Labor Statistics, *https://www.bls.gov.*

[99] Organization for Economic Co-Operation and Development (OECD), *https://www.oecd.org/.*

[100] The World Bank, *https://data.worldbank.org/.*

[101] USDA NOP OID: Organic Integrity Database, *https://organic.ams.usda.gov/integrity/.*

[102] USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey. Updated April 2016. https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf.*

[103] USDA NOP OID: Organic Integrity Database, *https://organic.ams.usda.gov/integrity/.*

[104] USDA NOP OID: Organic Integrity Database, *https://organic.ams.usda.gov/integrity/.*

be the total annual responses and the number of responses per respondent in twelve months. The total number of burden hours per year is estimated to be the total annual responses multiplied by the number of hours per response.

AMS estimates the cost (financial) burden of the new reporting and recordkeeping requirements of this rulemaking by estimating the following:

1. Total hours per respondent.
2. Total hours for all respondents.
3. Capital and other non-labor costs per respondent.
4. Total capital and other non-labor costs for all respondents.

The total hours per respondent and for all respondents were estimated based on the number of respondents and the amount of time AMS estimates will be needed to report and record new information based on this rulemaking. Unchanged from the proposed rule, AMS describes in Table 4a and 4b the hours necessary for respondents to report and record new information required by this rulemaking.

TABLE 4—ESTIMATED HOURS FOR RESPONDENTS TO REPORT AND RECORD NEW INFORMATION

Reporting or recordkeeping requirement description	Number of reporting responses per respondent	Reporting hours per response	Annual recordkeeping hours per recordkeeper
Operations			
Subpart B—Applicability exempt producers and handlers (11.5% of current total certified that are exempt from organic certification) document compliance and maintain records for not less than 3 yrs	0	0	1
Certified operators maintain records for not less than 5 years	0	0	2
New operations submit their initial organic system plan (OSP): including one-time reading of the rule's applicable regulatory requirements and preparation of all practices, procedures, and information necessary to comply with new livestock and poultry requirements	1	6	0
Current certified operations submit updated OSP: including one-time reading of the rule's applicable regulatory requirements and preparation of all practices, procedures, and information necessary to comply with new livestock and poultry requirements	1	6	0
Livestock and poultry operations' first on-site inspection that includes new livestock and poultry practices and procedures	1	2	0
Certifying Agents			
Review of Application/Updates: agents review and process OSP applications/updates from livestock and poultry operations in compliance with new requirements for the first time and maintain records	108	2	1
Provide information and training to operations regarding livestock and poultry requirements	1	3	n/a
Accreditation of Certifying Agents—Form TM–10CG—Provide Policies, Procedures, Evidence of Expertise and Ability, describe organizational units, primary location, areas of certification (crops, livestock, and handling), States & foreign countries where they operate, lists of currently certified operations, conduct & provide results of performance evaluations of personnel & inspectors, conduct program evaluations of their certification activities, provide procedures for residue testing, and other information that will assist in evaluating their application, and comply with any other requirements. Includes one-time preparation of practices and procedures necessary to comply with new livestock and poultry practice requirements	1	2	1
Provide training to Certification Review Personnel and Inspectors regarding new livestock and poultry practices	2	5	n/a
Certification Review Personnel receive training regarding new livestock and poultry practices	1	5	n/a
Inspectors			
Inspectors provide on-site inspection reports addressing new requirements for livestock and poultry operations to the certifying agent	33	2	n/a
Inspectors receive 5 hours of training per new livestock and poultry practices	1	5	n/a
State Organic Programs			
State Organic Programs: States submit proposed State Organic Program to Secretary	n/a	n/a	n/a
States update State Organic Program to the Secretary	1	2	1

To estimate the capital and other non-labor costs of the reporting and recordkeeping requirements per respondent and on all respondents, AMS uses data on prevailing domestic and foreign wages and benefits.[105] [106] [107]

The estimated reporting and recordkeeping burden is discussed in Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden*.

Total (Domestic and Foreign) Information Collection Cost (Reporting and Recordkeeping) of Rulemaking: $4,929,563.

AMS estimated a total of 7,346 reporting and recordkeeping respondents, with 40,348 total responses (in the first year of implementing the new reporting and recordkeeping requirements, after which there are no additional responses), and an overall total burden of 113,934 hours. This total hourly burden averages 16 hours per respondent, $671 per respondent, and $4,929,563 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

1. Organic Livestock and Poultry Operations

AMS estimated a total of 7,095 reporting and recordkeeping respondents, with 12,824 total responses (in the first year of implementing the new reporting and recordkeeping requirements, after which

[105] U.S. BLS Benefits: Bureau of Labor Statistics. Domestic benefits were reported at 31 percent of total average civilian employer compensation costs. *Economic News Release. Employer Costs for Employee Compensation Summary.* ''*EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—December 2022.*'' *USDL–23–0488. Published March 17, 2023. https://www.bls.gov/news.release/ecec.nr0.htm.*

[106] World Bank—Foreign wages: The data reports that GDP per capita for OECD member countries is 70.1% of U.S. GDP in 2021. *Accessed March 22, 2023. https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[107] OECD—Foreign benefits: The source of foreign benefit rates is based on the average Organization for Economic Co-Operation and Development (OECD) member countries tax wedge rate of 34.58% in 2021. *Accessed March 22, 2023. https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

there are no additional responses), and an overall burden of 64,802 hours.

Based on eight percent (8%) projected growth in livestock operations, AMS expects to add 475 operations to the 5,937 operations currently certified for the livestock scope.[108] In addition, AMS estimates that 683 exempt livestock operations will be impacted by the new recordkeeping requirements.[109]

AMS estimated nine burden hours per respondent, costing $430 per respondent, and $3,052,383 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

2. Accredited Certifying Agents

AMS estimated a total of 58 reporting and recordkeeping respondents, with 13,766 total responses (in the first year of implementing the new reporting and recordkeeping requirements, after which there are no additional responses), and an overall burden of 35,345 hours. AMS estimated 609 burden hours per respondent, costing $26,013 per respondent, and $1,508,729 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

3. Inspectors

AMS estimated a total of 192 reporting and recordkeeping respondents, with 6,604 responses (in the first year of implementing the new reporting and recordkeeping requirements, after which there are no additional responses), and an overall burden of 13,784 hours. AMS estimated 72 burden hours per respondent, costing $1,919 per respondent, and $368,308 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6. Inspectors do not have recordkeeping obligations, as certifying agents maintain the records of inspection reports, so inspectors are not included in Table 5.

4. State Organic Programs

AMS estimated a total of one reporting and recordkeeping respondent, with one response (in the first year of implementing the new reporting and recordkeeping requirements, after which there are no additional responses), an overall burden of three hours, costing the respondent $143. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

Summary of Reporting Burden

Total All Reporting Burden Cost: $4,827,105.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 hours per respondent.

Respondents: New and existing certified organic and applicant livestock and poultry operations, certifying agents, inspectors, and State Organic Programs.

Estimated Number of Reporting Respondents: 6,663.

Estimated Number of Reporting Responses: 33,194.

Estimated Total Reporting Burden on Respondents: 100,310 hours.

Estimated Total Reporting Responses per Reporting Respondents: Five reporting responses per reporting respondent.

AMS estimated a total of 6,663 reporting respondents, with 33,194 total responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 100,310 reporting hours. AMS estimated 15 burden hours per respondent, costing $643 per respondent and $4,287,105 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

1. Organic Livestock and Poultry Operations

AMS estimated a total of 6,412 reporting respondents, with 12,824 total responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 38,472 reporting hours. AMS estimated six burden hours per respondent, costing $282 per respondent, and $1,811,193 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

2. Accredited Certifying Agents

AMS estimated a total of 58 reporting respondents, with 13,766 total responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 35,229 hours. AMS estimated 607 burden hours per respondent, costing $25,927 per respondent and $1,503,778 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

3. Inspectors

AMS estimated a total of 192 reporting respondents, with 6,604 total responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 13,784 hours. AMS estimated 72 burden hours per respondent, costing $1,919 per respondent, and $368,308 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

4. State Organic Programs

AMS estimated a total of one reporting respondent, with one response (in the first year of implementing the new reporting requirements, after which there are no additional responses), an overall burden of two hours, resulting in a total cost of $95 to the respondent. The data used to estimate reporting burden is displayed in more detail in Table 5.

TABLE 5—SUMMARY OF REPORTING BURDEN

Organic operations reporting burden	Number of respondents [110] [111]	Total reporting hours	Average respondent hours	Wage + benefits [112] [96] [113] [114]	Average respondent costs	Total reporting costs
Certified livestock operations—new and existing—Domestic	5,334	42,673	6	$49.40	$395	$1,581,036
Certified livestock operations—new and existing—Foreign	1,078	8,623	6	35.59	285	230,156

[108] USDA NOP OID: Organic Integrity Database, *https://organic.ams.usda.gov/integrity/*.

[109] USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey. Updated April 2016. https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf.*

TABLE 5—SUMMARY OF REPORTING BURDEN—Continued

Organic operations reporting burden	Number of respondents [110] [111]	Total reporting hours	Average respondent hours	Wage + benefits [112] [96] [113] [114]	Average respondent costs	Total reporting costs
Operations total	6,412	51,296	6		377	2,414,924
USDA accredited certifiers reporting burden						
Certifiers—Domestic	36	21,866	607	47.75	29,003	1,044,101
Certifiers—Foreign	22	13,363	607	34.40	20,894	459,677
Certifiers total	58	35,229	607		25,927	1,503,778
Inspectors reporting burden						
Inspectors—Domestic	113	8,555	76	29.87	2,257	255,529
Inspectors—Foreign	79	5,228	66	21.57	1,433	112,778
Inspectors total	192	13,784	72		1,919	368,308
State Organic Programs reporting burden						
State Organic Programs	1	2	2	47.75	95	95
State Organic Programs total	1	2	2		95	95
Total reporting burden—all respondents	6,663	100,310	15		643	4,287,105

Summary of Recordkeeping Burden

Total All Recordkeeping Burden Cost: $642,458.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average two hours per respondent.

Respondents: New and existing certified operations, exempt operations, certifying agents, and State Organic Programs.

Estimated Number of Recordkeeping Respondents: 7,154 respondents.

Estimated Total Recordkeeping Burden on Respondents: 13,624 hours.

AMS estimated a total of 7,154 recordkeeping respondents (in the first year of implementing the new recordkeeping requirements, after which there are no additional responses). AMS estimated two burden hours per respondent and 13,624 total burden hours for all respondents, costing $90 per respondent and $642,458 for all respondents. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

1. Organic Livestock and Poultry Operations

AMS estimated a total of 7,095 recordkeeping respondents (in the first year of implementing the new recordkeeping requirements, after which there is no additional recordkeeping). AMS estimated two burden hours per respondent and 13,507 total burden hours for all respondents, costing $90 per respondent and $637,459 for all respondents. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

2. Accredited Certifying Agents

AMS estimated a total of 58 recordkeeping respondents (in the first year of implementing the new recordkeeping requirements, after which there are no additional responses) AMS estimated two burden hours per respondent and 116 total burden hours for all respondents, costing $85 per respondent and $4,952 for all respondents. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

3. State Organic Programs

AMS estimated a total of one recordkeeping respondent (in the first year of implementing the new recordkeeping requirements, after which there are no additional responses), an overall burden of one hour, resulting in a total cost of $48 to the respondent. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

TABLE 6—SUMMARY OF RECORDKEEPING BURDENS

Organic operations recordkeeping burden	Number of respondents [115] [116]	Total recordkeeping hours	Average respondent hours	Wage + benefits [117] [96] [118] [119]	Average respondent costs	Total recordkeeping costs
Certified livestock operations—new and existing—Domestic	5,334	10,668	2	$49.40	$99	$527,012
Certified livestock operations—new and existing—Foreign	1,078	2,156	2	35.59	71	76,719

[110] USDA NOP OID: Organic Integrity Database, *https://organic.ams.usda.gov/integrity/*.

[111] USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey. Updated April 2016. https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf.*

[112] U.S. BLS Inspectors: Bureau of Labor Statistics. Mean hourly wage for Agricultural Inspectors (Standard Occupational Classification (SOC) code 45–2011) was $22.80. *Occupational Employment and Wage Statistics.* ''*May 2021 National Occupational Employment and Wage Estimates United States.*'' *Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.*

[113] U.S. BLS Operations: Bureau of Labor Statistics. Mean hourly wage for Farmers, Ranchers, and Other Agricultural Managers (Standard Occupational Classification (SOC) code 11–9013) was $37.71. *Occupational Employment and Wage Statistics.* ''*May 2021 National Occupational Employment and Wage Estimates United States.*'' *Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.*

[114] U.S. BLS Certifiers and State Organic Programs (SOP): Bureau of Labor Statistics. Mean hourly wage for Compliance Officers (Standard Occupational Classification (SOC) code 13–1041) was $36.45. *Occupational Employment and Wage Statistics.* ''*May 2021 National Occupational Employment and Wage Estimates United States.*'' *Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.*

TABLE 6—SUMMARY OF RECORDKEEPING BURDENS—Continued

Organic operations recordkeeping burden	Number of respondents [115] [116]	Total recordkeeping hours	Average respondent hours	Wage + benefits [117] [96] [118] [119]	Average respondent costs	Total recordkeeping costs
Exempt livestock operations (11.5% of certified)	683	683	1	49.40	49	33,728
Operations total	7095	13,507	2		90	637,459
USDA-accredited certifiers recordkeeping burden						
Certifiers—Domestic	36	72	2	47.75	95	3,438
Certifiers—Foreign	22	44	2	34.40	69	1,514
Certifiers total	58	116	2		85	4,952
State Organic Programs recordkeeping burden						
State Organic Programs	1	1	1	47.75	48	48
State Organic Programs total	1	1	1		48	48
Total recordkeeping burden—all respondents	7,154	13,624	2		90	642,458

G. Related Documents

Documents related to this final rule include the Organic Foods Production Act of 1990, as amended, (*7 U.S.C. 6501–6524*) and its implementing regulations (*7 CFR part 205*). The NOSB deliberated and made the recommendations described in this final rule at public meetings announced in the following **Federal Register** notices: *67 FR 19375* (April 19, 2002); *74 FR 46411* (September 9, 2009); *75 FR 57194* (September 20, 2010); and *76 FR 62336* (October 7, 2011). NOSB meetings are open to the public and allow for public participation.

AMS published a series of past proposed rules that addressed, in part, the organic livestock requirements at: *62 FR 65850* (December 16, 1997); *65 FR 13512* (March 13, 2000); *71 FR 24820* (April 27, 2006); *73 FR 63584* (October 24, 2008), and *81 FR 21956* (April 13, 2016). Past final rules relevant to this topic were published at: *65 FR 80548* (December 21, 2000); *71 FR 32803* (June 7, 2006); *75 FR 7154* (February 17, 2010); and 87 FR 19740 (April 5, 2022). AMS activities and documents that followed publication of the January 19, 2017 OLPP final rule (*82 FR 7042*) are detailed above in Section II.D., Organic Livestock Regulatory History.

On August 9, 2022, AMS published the OLPS proposed rule (87 FR 48562) to notify the public of the proposed changes to the organic livestock standards and to request comments on the proposed changes.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records, Fees, Imports, Labeling, Livestock, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons stated in the preamble, the Agricultural Marketing Service amends 7 CFR part 205 as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6524.

■ 2. Amend § 205.2 by adding definitions for ''Beak trimming'', ''Caponization'', ''Cattle wattling'', ''De-beaking'', ''De-snooding'', ''Dubbing'', ''Indoors or indoor space'', ''Induced molting'', ''Mulesing'', ''Non-ambulatory'', ''Outdoors or outdoor space'', ''Perch'', ''Pullets'', ''Religious (or ritual) slaughter'', ''Stocking density'', ''Toe clipping'', and ''Vegetation'' in alphabetical order to read as follows:

§ 205.2 Terms defined.

* * * * *

Beak trimming. The removal of not more than one-quarter to one-third of the upper beak or the removal of one-quarter to one-third of both the upper and lower beaks of a bird in order to control injurious pecking and cannibalism.

* * * * *

Caponization. Castration of chickens, turkeys, pheasants, and other avian species.

Cattle wattling. The surgical separation of two layers of the skin from the connective tissue for along a 2-to-4-inch path on the dewlap, neck, or shoulders used for ownership identification.

* * * * *

De-beaking. The removal of more than one-third of the upper beak or removal of more than one-third of both the upper and lower beaks of a bird.

De-snooding. The removal of the turkey snood (a fleshy protuberance on the forehead of male turkeys).

* * * * *

Dubbing. The removal of poultry combs and wattles.

* * * * *

[115] USDA NOP OID: Organic Integrity Database, *https://organic.ams.usda.gov/integrity/*.

[116] USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey. Updated April 2016. https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf.*

[117] U.S. BLS Inspectors: Bureau of Labor Statistics. Mean hourly wage for Agricultural Inspectors (Standard Occupational Classification (SOC) code 45–2011) was $22.80. *Occupational Employment and Wage Statistics.* ''*May 2021 National Occupational Employment and Wage Estimates United States.*'' *Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.*

[118] U.S. BLS Operations: Bureau of Labor Statistics. Mean hourly wage for Farmers, Ranchers, and Other Agricultural Managers (Standard Occupational Classification (SOC) code 11–9013) was $37.71. *Occupational Employment and Wage Statistics.* ''*May 2021 National Occupational Employment and Wage Estimates United States.*'' *Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.*

[119] U.S. BLS Certifiers and State Organic Programs (SOP): Bureau of Labor Statistics. Mean hourly wage for Compliance Officers (Standard Occupational Classification (SOC) code 13–1041) was $36.45. *Occupational Employment and Wage Statistics.* ''*May 2021 National Occupational Employment and Wage Estimates United States.*'' *Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.*

Indoors or indoor space. The space inside of an enclosed building or housing structure available to livestock. Indoor space for avian species includes, but is not limited to:

(1) *Mobile housing.* A mobile structure for avian species with solid or perforated flooring that is moved regularly and allows birds to continuously access areas outside the structure during daytime hours.

(2) *Aviary housing.* A fixed structure for avian species that has multiple tiers or levels.

(3) *Slatted/mesh floor housing.* A fixed structure for avian species that has both: a slatted floor where perches, feed, and water are provided over a pit or belt for manure collection; and litter covering the remaining solid floor.

(4) *Floor litter housing.* A fixed structure for avian species that has absorbent litter covering the entire floor.

Induced molting. Molting that is artificially initiated.

* * * * *

Mulesing. The removal of skin from the buttocks of sheep, approximately 2 to 4 inches wide and running away from the anus to the hock to prevent fly strike.

* * * * *

Non-ambulatory. As defined in 9 CFR 309.2(b).

* * * * *

Outdoors or outdoor space. Any area outside an enclosed building or enclosed housing structure. Enclosed housing structures with open sides (*e.g.,* open-sided freestall barns) are not to be considered outdoors or outdoor space. Outdoor space for avian species includes, but is not limited to:

(1) Pasture pens (avian). Floorless pens, with full or partial roofing, that are moved regularly, provide direct access to soil and vegetation, and allow birds to express natural behaviors.

(2) Shade structures that are not enclosed.

* * * * *

Perch. A rod- or branch-type structure above the floor or ground that accommodates roosting and allows birds to utilize vertical space.

* * * * *

Pullets. Female chickens or other avian species being raised for egg production that have not yet started to lay eggs.

* * * * *

Religious (or ritual) slaughter. Slaughtering in accordance with the ritual requirements of any religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.

* * * * *

Stocking density. The liveweight or number of animals on a given area or unit of land.

* * * * *

Toe clipping. The removal of the nail and distal joint of the back two toes of a bird.

* * * * *

Vegetation. Living plant matter that is anchored in the soil by roots and provides ground cover.

* * * * *

■ 3. Revise § 205.238 to read as follows:

§ 205.238 Livestock care and production practices standard.

(a) *Preventive health care practices.* The producer must establish and maintain preventive health care practices, including:

(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites.

(2) Provision of a feed ration sufficient to meet nutritional requirements of the animal, including vitamins, minerals, proteins and/or amino acids, fatty acids, energy sources, and fiber (ruminants).

(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites.

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species.

(5) Physical alterations may be performed for identification purposes or the safety of the animal. Physical alterations must be performed: at a young age for the species, in a manner that minimizes stress and pain, and by a person that is capable of performing the physical alteration in a manner that minimizes stress and pain.

(i) The following practices may not be routinely used and must be used only with documentation that alternative methods to prevent harm failed: needle teeth clipping (no more than top one-third of the tooth) in pigs and tail docking in pigs.

(ii) The following practices are prohibited: de-beaking, de-snooding, caponization, dubbing, toe clipping of chickens, toe clipping of turkeys unless with infra-red at hatchery, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.

(6) Administration of vaccines and other veterinary biologics.

(7) All surgical procedures necessary to treat an illness or injury shall be undertaken in a manner that employs best management practices to promote the animal's wellbeing and to minimize pain, stress, and suffering, with the use of allowed anesthetics, analgesics, and sedatives, as appropriate.

(8) Monitoring of lameness; timely and appropriate treatment of lameness for the species; and mitigation of the causes of lameness.

(b) *Preventive medicines and parasiticides.* Producers may administer medications that are allowed under § 205.603 of this part to alleviate pain or suffering, and when preventive practices and veterinary biologics are inadequate to prevent sickness. Parasiticides allowed under § 205.603 of this part may be used on:

(1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labeled, or represented as organically produced; and

(2) Dairy animals, as allowed under § 205.603 of this part.

(3) Fiber bearing animals, as allowed under § 205.603 of this part.

(c) *Prohibited practices.* An organic livestock operation must not:

(1) Sell, label, or represent as organic any animal or product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603 of this part, or any substance that contains a non-synthetic substance prohibited in § 205.604 of this part. Milk from animals undergoing treatment with synthetic substances that are allowed under § 205.603 of this part but have associated withdrawal periods cannot be sold, labeled, or represented as organic during the withdrawal period but may be fed to calves on the same operation. Milk from animals undergoing treatment with prohibited substances cannot be sold, labeled, or represented as organic or fed to organic livestock.

(2) Administer synthetic medications unless:

(i) In the presence of illness or to alleviate pain and suffering, and

(ii) That such medications are allowed under § 205.603 of this part.

(3) Administer hormones for growth promotion, production, or reproduction, except as provided in § 205.603 of this part.

(4) Administer synthetic parasiticides on a routine basis.

(5) Administer synthetic parasiticides to slaughter stock.

(6) Administer animal drugs in violation of the Federal Food, Drug, and Cosmetic Act; or

(7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and neither the animal nor its products shall be sold, labeled, or represented as organically produced.

(8) Withhold individual treatment designed to minimize pain and suffering for injured, diseased, or sick animals, which may include forms of euthanasia as recommended by the American Veterinary Medical Association.

(9) Neglect to identify and record treatment of sick and injured animals in animal health records.

(10) Practice induced molting.

(d) *Parasite control plans.* (1) Organic livestock operations must have comprehensive plans to minimize internal parasite problems in livestock, including preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak.

(2) [Reserved]

(e) *Euthanasia.* (1) Organic livestock operations must have written plans for prompt, humane euthanasia for sick or injured livestock suffering from irreversible disease or injury.

(2) The following methods of euthanasia are not permitted: suffocation; manual blow to the head by blunt instrument or manual blunt force trauma; and the use of equipment that crushes the neck, including killing pliers or Burdizzo clamps.

(3) Following a euthanasia procedure, livestock must be carefully examined to ensure that they are dead.

■ 4. Revise § 205.239 to read as follows:

§ 205.239 Mammalian and non-avian livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions, which accommodate the wellbeing and natural behavior of animals, including:

(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with paragraphs (b) and (c) of this section. Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed without competition for food. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.

(2) For all ruminants, management on pasture and daily grazing throughout the grazing season(s) to meet the requirements of § 205.237 of this part, except as provided for in paragraphs (b), (c), and (d) of this section.

(3) Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(iii) of this part, and, if applicable, organically handled by operations certified under this part.

(4) Shelter designed to allow for:

(i) Over a 24-hour period, sufficient space and freedom to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior;

(ii) Temperature level, ventilation, and air circulation suitable to the species;

(iii) Reduction of potential for livestock injury; and

(iv) Indoor housing must have areas for bedding and resting that are sufficiently large, solidly built, and comfortable so that animals are kept clean and dry, as appropriate for the species, and free of lesions.

(5) The use of yards, feeding pads, feedlots and laneways that shall be well-drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.

(6) Housing, pens, runs, equipment, and utensils shall be properly cleaned and disinfected as needed to prevent cross-infection and build-up of disease-carrying organisms.

(7) Dairy young stock may be housed in individual pens until completion of the weaning process, provided that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell, and hear other animals.

(8) Swine must be housed in a group, except:

(i) Sows may be housed individually at farrowing and during the suckling period; gestation and farrowing crates are prohibited;

(ii) Boars; and

(iii) Swine with multiple documented instances of aggression or for recovery from an illness.

(9) Piglets shall not be kept on flat decks or in piglet cages.

(10) For swine, rooting materials must be provided, except during the farrowing and suckling period.

(11) In confined housing with stalls for mammalian livestock, enough stalls must be present to provide for the natural behaviors of the animals. A cage must not be called a stall. For group-housed swine, the number of individual feeding stalls may be less than the number of animals, as long as all animals are fed routinely over a 24-hour period. For group-housed cattle, bedded packs, compost packs, tie-stalls, free-stalls, and stanchion barns are all acceptable housing as part of an overall organic system plan.

(12) Outdoor space must be provided year-round. When the outdoor space includes soil, vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production.

(b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of:

(1) Inclement weather;

(2) The animal's stage of life, however, lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this part;

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized;

(4) Risk to soil or water quality;

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither the various life stages nor lactation is an illness or injury);

(6) Sorting or shipping animals and livestock sales, provided that the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;

(7) Breeding: Except, that, animals shall not be confined any longer than necessary for natural breeding or to perform artificial insemination. Animals may not be confined to observe estrus, and animals may not be confined after breeding to confirm pregnancy; and

(8) 4–H, National FFA Organization, and other youth projects, for no more than one week prior to a fair or other demonstration, through the event, and

up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event. Notwithstanding the requirements in paragraph (b)(6) of this section, facilities where 4–H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating animals to be sold as organic, provided all other organic management practices are followed.

(c) The producer of an organic livestock operation may, in addition to the times permitted under paragraph (b) of this section, temporarily deny a ruminant animal pasture or outdoor access under the following conditions:

(1) One week at the end of a lactation for dry off (for denial of access to pasture only), three weeks prior to parturition (birthing), parturition, and up to one week after parturition;

(2) In the case of newborn dairy cattle, for up to six months, after which they must be on pasture during the grazing season and may no longer be individually housed: Except, That, any animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely;

(3) In the case of fiber bearing animals, for short periods for shearing; and

(4) In the case of dairy animals, for short periods daily for milking. Milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average of at least 30 percent DMI from grazing throughout the grazing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.

(d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location. Yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feed lot to feed without crowding and without competition for food. The finishing period shall not exceed one-fifth (1/5) of the animal's total life or 120 days, whichever is shorter.

(e) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.

■ 5. Add § 205.241 to read as follows:

§ 205.241 Avian living conditions.

(a) *Avian year-round living conditions.* The producer of an organic poultry operation must establish and maintain year-round poultry living conditions that accommodate the health and natural behavior of poultry, including: year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; and adequate outdoor space to escape aggressive behaviors suitable to the species, its stage of life, the climate, and environment. Poultry may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section. Continuous total confinement of poultry indoors is prohibited.

(b) *Indoor space requirements.* (1) Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch both wings simultaneously, stand normally, and engage in natural behaviors.

(2) Producers must monitor ammonia levels at least weekly by taking measurements at the height of the birds' heads and implement practices to maintain ammonia levels below 20 ppm. When ammonia levels exceed 20 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 20 ppm. Ammonia levels must not exceed 25 ppm.

(3) For layers and all other fully feathered birds, artificial light may be used to prolong the day length, to provide up to 16 hours of continuous light per 24-hour period (*i.e.,* minimum of 8 hours of continuous darkness per 24-hour period). Artificial light intensity should be lowered gradually to encourage hens to move to perches or settle for the night. Artificial light spectrum may not be manipulated to increase feed intake and growth rate.

(4) Exit areas—poultry houses must have at least 1 linear foot of exit area for every 360 birds, measured across the base of the exit, but no less than one linear foot of exit area for flocks with fewer than 360 birds. Exit areas must be appropriately distributed and sized to ensure that all birds have ready access to the outdoors;

(i) If exit areas are not provided at a ratio of at least 1 linear foot per 360 birds, a certifier may approve practices that provide less than 1 linear feet per 360 birds only if an operation describes its practices (in the organic system plan) and demonstrates that ready access to the outdoors is provided for all birds;

(ii) Producers subject to requirements in 21 CFR part 118—Production, Storage, and Transportation of Shell Eggs, must take steps to prevent stray poultry, wild birds, cats, and other animals from entering poultry houses.

(5) Perches—for layers (Gallus gallus), six inches of perch space must be provided per bird. Perch space may include the alighting rail in front of the nest boxes. All layers must be able to perch at the same time except for aviary housing, in which 55 percent of layers must be able to perch at the same time. Floors in slatted/mesh floor housing cannot be counted as perch space.

(6) All birds must have access to areas in the house that allow for scratching and dust bathing, except, that mobile housing may meet this requirement when paired with outdoor space that provides birds with areas for scratching and dust bathing. Litter must be provided and maintained in a dry condition in the house.

(7) Non-mobile houses with slatted/mesh floors must have 15 percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.

(8) For layers (*Gallus gallus*), indoor stocking density must meet one or both of the following rates, expressed in different terms.

(i) Mobile housing: not to exceed 4.5 pounds per square foot; or, alternatively, a rate of at least 1.5 square feet per bird will comply with the requirement.

(ii) Aviary housing: not to exceed 4.5 pounds per square foot; or, alternatively, a rate of at least 1.5 square feet per bird will comply with the requirement.

(iii) Slatted/mesh floor housing: not to exceed 3.75 pounds per square foot; or, alternatively, a rate of at least 1.8 square feet per bird will comply with the requirement.

(iv) Floor litter housing: not to exceed 3.0 pounds per square foot; or, alternatively, a rate of at least 2.2 square feet per bird will comply with the requirement.

(v) Other housing: not to exceed 2.25 pounds per square foot; or, alternatively, a rate of at least 3.0 square feet per bird will comply with the requirement.

(9) For pullets (*Gallus gallus*), indoor stocking density must not exceed 3.0

pounds of bird per square foot; or, alternatively, a rate of at least 1.7 square feet per bird will comply with the requirement.

(10) For broilers (*Gallus gallus*), indoor stocking density must not exceed 5.0 pounds of bird per square foot; or, alternatively, a rate of at least 2.0 square feet per bird will comply with the requirement.

(11) Indoor space includes flat areas available to birds, excluding nest boxes.

(12) Indoor space may include enclosed porches and lean-to type structures (*e.g.,* screened in, roofed) as long as the birds always have access to the space, including during temporary confinement events. If birds do not have continuous access to the porch during temporary confinement events, this space must not be considered indoors.

(c) *Outdoor space requirements.* (1) Access to outdoor space and door spacing must be designed to promote and encourage outside access for all birds on a daily basis. Producers must provide access to the outdoors at an early age to encourage (*i.e.,* train) birds to go outdoors. Birds may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section.

(2) At least 75 percent of outdoor space must be soil. Outdoor space with soil must include vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production. Vegetative cover must be maintained in a manner that does not provide harborage for rodents and other pests.

(3) Shade may be provided by structures, trees, or other objects in the outdoor area.

(4) For layers (*Gallus gallus*), outdoor space must be provided at a rate of no less than one square foot for every 2.25 pounds of bird in the flock; or, alternatively, a rate of at least 3.0 square feet per bird will comply with the requirement.

(5) For pullets (*Gallus gallus*), outdoor space must be provided at a rate of no less than one square foot for every 3.0 pounds of bird in the flock; or, alternatively, a rate of at least 1.7 square feet per bird will comply with the requirement.

(6) For broilers (*Gallus gallus*), outdoor space must be provided at a rate of no less than one square foot for every 5.0 pounds of bird in the flock; or, alternatively, a rate of at least 2.0 square feet per bird will comply with the requirement.

(7) Outdoor space may include structures that are not enclosed (*e.g.,* with roof but no walls) and allow birds to freely access other outdoor space.

(d) *Temporary confinement.* The producer of an organic poultry operation may temporarily confine birds. Confinement must be recorded. Operations may temporarily confine birds when one of the following circumstances exists:

(1) Inclement weather, including when air temperatures are under 32 degrees F or above 90 degrees F.

(2) The animal's stage of life, including:

(i) The first 4 weeks of life for broilers (*Gallus gallus*);

(ii) The first 16 weeks of life for pullets (*Gallus gallus*); and

(iii) Until fully feathered for bird species other than *Gallus gallus.*

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized.

(4) Risk to soil or water quality.

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither various life stages nor egg laying is an illness or injury).

(6) Sorting or shipping birds and poultry sales, provided that the birds are maintained under continuous organic management, throughout the extent of their allowed confinement.

(7) For nest box training, provided that birds shall not be confined any longer than required to establish the proper behavior. Confinement for nest box training must not exceed five weeks over the life of the bird.

(8) For 4–H, National FFA Organization, and other youth projects, provided that temporary confinement for no more than one week prior to a fair or other demonstration, through the event, and up to 24 hours after the birds have arrived home at the conclusion of the event. During temporary confinement, birds must be under continuous organic management, including organic feed, for the duration of confinement. Notwithstanding the requirements in paragraph (d)(6) of this section, facilities where 4–H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating birds to be sold as organic, provided all other organic management practices are followed.

(e) *Manure management.* The producer of an organic poultry operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms. The producer must also optimize recycling of nutrients and must manage outdoor access areas in a manner that does not put soil or water quality at risk.

■ 6. Add § 205.242 to read as follows:

§ 205.242 Transport and slaughter.

(a) *Transportation.* (1) Certified organic livestock must be clearly identified as organic, and this identity must be traceable for the duration of transport.

(2) All livestock must be fit for transport to buyers, auction or slaughter facilities.

(i) Calves must have a dry navel cord and be able to stand and walk without human assistance.

(ii) Seriously crippled and non-ambulatory animals must not be transported for sale or slaughter. Such animals may be medically treated or euthanized.

(3) Adequate and season-appropriate ventilation is required for all livestock trailers, shipping containers, and any other mode of transportation used to protect animals against cold and heat stresses.

(4) During any transport and prior to slaughter, bedding must be provided on trailer floors and in holding pens, as needed, to keep livestock clean, dry, and comfortable. Use of bedding must be appropriate to the species and type of transport. Bedding is not required in poultry crates. When roughages are used for bedding, they must be certified organic.

(5) For transport that exceeds eight hours, measured from the time all animals are loaded onto a vehicle until the vehicle arrives at its final destination, the operation must describe how organic management and animal welfare will be maintained.

(i) The producer or handler of an organic livestock operation, who is responsible for overseeing the transport of organic livestock, must provide records to certifying agents during inspections or upon request that demonstrate that transport times for organic livestock are not detrimental to the welfare of the animals and meet the requirements of paragraph (a)(5) of this section.

(ii) [Reserved]

(6) Organic producers and handlers, who are responsible for overseeing the transport of organic livestock, must have emergency plans in place that adequately address possible animal welfare problems that might occur during transport.

(b) *Mammalian slaughter.* (1) Producers and handlers who slaughter organic livestock must be in compliance, as determined by FSIS, with the Federal Meat Inspection Act (21 U.S.C. 603(b) and 21 U.S.C. 610(b)), the regulations at 9 CFR part 313 regarding humane handling and slaughter of livestock, and the

regulations of 9 CFR part 309 regarding ante-mortem inspection.

(2) Producers and handlers who slaughter organic exotic animals must be in compliance with the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*), the regulations at 9 CFR parts 313 and 352 regarding the humane handling and slaughter of exotic animals, and the regulations of 9 CFR part 309 regarding ante-mortem inspection.

(3) Producers and handlers who slaughter organic livestock or exotic animals must provide all noncompliance records related to humane handling and slaughter issued by the controlling national, federal, or state authority and all records of subsequent corrective actions to certifying agents during inspections or upon request.

(c) *Avian slaughter.* (1) Producers and handlers who slaughter organic poultry must be in compliance, as determined by FSIS, with the Poultry Products Inspection Act requirements (21 U.S.C. 453(g)(5)); the regulations at paragraph (v) of the definition of ''*Adulterated*'' in 9 CFR 381.1(b), and 9 CFR 381.90, and 381.65(b)); and applicable FSIS Directives.

(2) Producers and handlers who slaughter organic poultry must provide all noncompliance records related to the use of good commercial practices in connection with slaughter issued by the controlling national, federal, or state authority and all records of subsequent corrective actions to the certifying agent at inspection or upon request.

(3) Producers and handlers who slaughter organic poultry, but are exempt from or not covered by the requirements of the Poultry Products Inspection Act, must ensure that:

(i) No lame birds may be shackled, hung, or carried by their legs;

(ii) All birds shackled on a chain or automated system must be stunned prior to exsanguination, with the exception of religious slaughter; and

(iii) All birds must be irreversibly insensible prior to being placed in the scalding tank.

■ 7. Add § 205.691 to read as follows:

§ 205.691 Severability.

If any provision of any subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of any subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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