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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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21
[Docket No. FAA–2022–1378]

Airworthiness Criteria: Primary Category Airworthiness Design Criteria for the ICON Aircraft Inc., Model A5–8 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Issuance of final airworthiness criteria.

SUMMARY: The FAA announces the primary category airworthiness design criteria for type certification of the ICON Aircraft Inc., (ICON) Model A5–8 airplane.

DATES: These airworthiness criteria are effective December 28, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond N. Johnston, Avionics Navigation & Flight Deck Unit (AIR–626B), Avionics & Electrical Systems Section, Technical Policy Branch, Policy & Standards Division, Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106; phone (816) 329–4159, fax (816) 329–4090, email raymond.johnston@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

ICON applied to the FAA on August 3, 2020, for a primary category type certificate (TC) under 14 CFR 21.17(f) for the Model A5–B airplanes.

The ICON Model A5–B airplane consists of a Rotax 912 iS Sport piston engine certified by European Union

Aviation Safety Agency (EASA TC E.121) with additional FAA validation requirements to account for differences between EASA CS–E requirements and FAA 14 CFR part 33 requirements. The ICON A5–B will utilize a Sensenich 3-blade composite propeller that conforms with the ASTM consensus standard for propellers identified in Tables 1 and 3 of these airworthiness design criteria. The FAA does not plan to issue TCs for the engine or the propeller.

For continued operational safety (COS) requirements, the applicant would need to utilize the processes outlined in ASTM F3198–18 identified in Tables 1 and 7 of these airworthiness design criteria to develop a COS program. Some differences exist between FAA processes for COS for primary category aircraft and those outlined for LSA in ASTM F3198–18. The operational safety risk assessment information in the appendix of ASTM F3198–18 would need to be utilized by the TC holder, except notification to the FAA is required for reportable events identified in § 21.3. The FAA will then utilize a risk assessment process in determining if mandatory action is required.

Under § 21.17(c), an application for type certification is effective for three years, unless the FAA approves a longer period. Section 21.17(d) provides that, where a TC has not been issued within the time limit established under § 21.17(c), the applicant may file for an extension and update the designated applicable regulations in the type certification basis. The effective date of the applicable airworthiness requirements for the updated type certification basis must not be earlier than 3 years before the date of issue of the type certificate. Since the project was not certificated within 3 years after the application date above, the FAA approved the applicant’s request to extend the application for type certification. As a result, the extended date of application for type certification is September 26, 2022.

The FAA issued a notice of proposed airworthiness criteria for the ICON

Model A5–B airplane, which published in the **Federal Register** on August 31, 2023 (88 FR 60153).

Discussion of Comments

The FAA received no comments.

Applicability

These airworthiness criteria, established under the provisions of § 21.17(f), are applicable to the ICON Model A5–B airplane. Should ICON apply at a later date for a change to the type certificate to include another model, these airworthiness criteria would apply to that model as well, provided the FAA finds them appropriate in accordance with the requirements of subpart D to part 21.

Conclusion

This action affects only the airworthiness criteria for one model. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

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

Airworthiness Criteria

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the ICON Model A5–B airplane. The FAA finds that compliance with the following would mitigate the risks associated with the proposed design and would provide an equivalent level of safety to existing rules.

The airworthiness criteria for the issuance of a TC for the ICON Aircraft, Inc., Model A5–B airplane, a primary category airplane, and its powerplant installation is listed in Tables 1 through 8 below.

The following certification basis, established under the provisions of § 21.17(f), is appropriate for the ICON Model A5–B airplane:

TABLE 1—AIRPLANE CERTIFICATION BASIS

Subject	Consensus standard or regulation	Title and description
Primary Type Certification	Sections 21.17(f) and 21.24, both at amendment 21–100.	“Designation of applicable regulations”, and “Issuance of type certificate: primary category aircraft.”

TABLE 1—AIRPLANE CERTIFICATION BASIS—Continued

Subject	Consensus standard or regulation	Title and description
Aircraft Design and Performance	ASTM F2245–20	“Standard Specification for Design and “Performance of a Light Sport Airplane” as modified by Table 2 of these airworthiness design criteria.
Engine	14 CFR part 33, Amendment 33–34.	The FAA will accept an engine certified by EASA to CS–E at amendment 6 that meets the additional criteria in Table 8 of these airworthiness design criteria.
Propeller	ASTM F2506–13	“Standard Specification for Design and Testing of Light Sport Aircraft Propellers” as modified by Table 3 of these airworthiness design criteria.
Noise	14 CFR part 36, Amendment 36–31.	“Noise Standards: Aircraft Type and Airworthiness Certification.”
Airframe Emergency Parachute	ASTM F2316–12	“Standard Specification for Airframe Emergency Parachutes” as modified by Table 4 of these airworthiness design criteria.
Airplane Flight Manual or Pilot’s Operating Handbook.	ASTM F2746–14	“Standard Specification for Pilot’s Operating Handbook (POH) for Light Sport Aircraft” as modified by Table 5 of these airworthiness design criteria.
Maintenance Manual	Or GAMA Specification No. 1, rev October 18, 1996. ASTM F2483–18	“Standard Practice for Maintenance and the Development of Maintenance Manuals for Light Sport Aircraft” as modified by Table 6 of these airworthiness design criteria.
Continued Operational Safety (COS).	ASTM F3198–18	“Standard Specification for Light Sport Aircraft Manufacturer’s Continued Operational Safety (COS) Program” as modified by Table 7 of these airworthiness design criteria.

TABLE 2—MODIFICATIONS APPLICABLE TO ASTM F2245–20 “STANDARD SPECIFICATIONS FOR DESIGN AND PERFORMANCE OF LIGHT SPORT AIRCRAFT”

Requirements

Include all sections of ASTM F2245–20 except section 9.1.4.

Change section 1.1 to: “This specification covers basic airworthiness requirements for the design of a fixed-wing airplane.”

Change section 1.2 to: “This specification is applicable to the design of a primary category airplane limited to two seats.”

TABLE 3—MODIFICATIONS APPLICABLE TO ASTM F2506–13 “STANDARD SPECIFICATION FOR DESIGN AND TESTING OF LIGHT SPORT AIRCRAFT PROPELLERS”

Requirements

Include all sections of ASTM F2506–13 except section 10.

TABLE 4—MODIFICATIONS APPLICABLE TO ASTM F2316–12 “STANDARD SPECIFICATION FOR AIRFRAME EMERGENCY PARACHUTES”

Requirements

Include all sections of ASTM F2316–12 except section 12.

TABLE 5—MODIFICATIONS APPLICABLE TO ASTM F2746–14 “STANDARD SPECIFICATION FOR PILOT’S OPERATING HANDBOOK (POH) FOR LIGHT SPORT AIRCRAFT”

Requirements

The airplane flight manual (AFM) must comply with all sections of ASTM F2746–14, as modified by this table, except sections 1.3, 4.6, and 7, or alternatively, the airplane flight manual must comply with GAMA Specification No. 1¹ issued February 15, 1975, and revised October 18, 1996, in which case the following modifications do not apply.

In addition to ASTM F2746–14, each part of the AFM indicated below must be approved, segregated, identified, and clearly distinguished from unapproved parts:

- Chapter 2 Limitations;
- Chapter 3 Emergency Procedures;
- Chapter 5 Performance;
- Chapter 6:
 - Weight and Balance Chart (see section 6.10.1 of ASTM F2746–14);
 - Operating Weights and Loading (see section 6.10.2 of ASTM F2746–14);
 - Center of Gravity (CG) Range and Determination (see section 6.10.3 of ASTM F2746–14);
- Chapter 8:
 - Approved Fuel Grades and Specifications (see section 6.12.5.1 of ASTM F2746–14);
 - Approved Oil Grades and Specifications (see section 6.12.5.2 of ASTM F2746–14).

In addition to ASTM F2746–14, non-approved information in the AFM must be presented in a manner acceptable to the FAA.

TABLE 5—MODIFICATIONS APPLICABLE TO ASTM F2746–14 “STANDARD SPECIFICATION FOR PILOT’S OPERATING HANDBOOK (POH) FOR LIGHT SPORT AIRCRAFT”—Continued

Requirements

Change section 6.4.1 of ASTM 2746–14 to: “A list of the standards used for the design, construction, continued airworthiness, and reference compliance with this standard.”

TABLE 6—MODIFICATIONS APPLICABLE TO ASTM F2483–18 “STANDARD PRACTICE FOR MAINTENANCE AND THE DEVELOPMENT OF MAINTENANCE MANUALS FOR LIGHT SPORT AIRCRAFT”

Requirements

Include all sections of ASTM F2483–18 *except*:

- Section 3.1.7
- Section 3.1.7.1
- Section 3.1.8
- Section 4
- Note 1 in section 5
- Section 5.3.2
- Section 5.3.3
- Section 5.3.6
- Section 6.1
- Note 5 in section 6.1
- Section 8 and all subsections and notes
- Section 9 and all subsections
- Section 10 and all subsections
- Section 11 and all subsections and notes
- Section 12 and all subsections
- Annex A1

In addition to ASTM F2483–18, a maintenance manual containing the information that the applicant considers essential for proper maintenance must be provided as indicated in § 21.24(a)(2)(iii).

In addition to ASTM F2483–18, the part of the manual containing service life limitations, the replacement or overhaul of parts, components, and accessories subject to such limitations must be approved, identified, and clearly distinguished from each other unapproved part of the maintenance manual.

Change section 3.1.9 to: “*maintenance manual(s)*—manual provided by the type design holder that specifies maintenance, repairs, or alterations authorized by the manufacturer.”

Change section 3.1.11 to: “*manufacturer*—any entity engaged in the production of, or component used on, a type certified primary category airplane.

Change section 5.3 to: “*Level of Certification*—When listing the qualification level needed to perform a task, the type certificate holder must use the appropriate qualifications from the regulations for aircraft maintenance indicated in 14 CFR part 43, appendix A.”

Change Note 4 in section 5.3.1 to: “Primary category aircraft owners may perform maintenance as outlined in part 43, appendix A.”

Change section 6.2 to: “Typical tasks considered as line maintenance include:”

TABLE 7—MODIFICATIONS APPLICABLE TO ASTM F3198–18 “STANDARD SPECIFICATION FOR LIGHT SPORT AIRCRAFT MANUFACTURER’S CONTINUED OPERATIONAL SAFETY (COS) PROGRAM”

Requirement

Include all sections of ASTM F3198–18 *except*:

- Section 1 and all subsections
- Section 5.2 and all subsections
- Section 5.3 and all subsections
- Section 6.1.1.3
- Section 6.1.1.4
- Section 7.7 and all subsections
- Section 8.1.2.1
- Section 8.2 and all subsections
- Section 10

Change section 4.1 to: “The purpose of this specification is to establish, by the manufacturer, a method by which unsafe conditions and service difficulty issues are reported, evaluated, and corrected. The type certificate holder is responsible to report failures, malfunctions or defects to the FAA as outlined in § 21.3.”

Replace “manufacturer” with “type certificate holder” throughout section 7.

¹ GAMA Specification No. 1.

In addition to the EASA CS-E, amendment 6 requirements,² the following requirements from 14 CFR part 33, amendment 33–34 also apply.

TABLE 8—FAA VALIDATION OF EASA STATE OF DESIGN RECIPROCATING AIRCRAFT ENGINES

Subject	14 CFR Part 33
Instructions for Continued Airworthiness (ICA).	Section 33.4, appendices A33.1(b), A33.2, A33.3(b) and (c), and A33.4(a)(2).
Engine ratings and operating limitations including reciprocating engine limits.	Sections 33.7(b)(6) and (b)(8).
Durability (Propeller blade pitch control systems).	Section 33.19(b).
Turbine, compressor, fan, and turbo-supercharger rotor overspeed.	Section 33.27.
Turbocharger rotors ..	Section 33.34.
Lubrication system	Sections 33.39(a) and (c).
Vibration test	Sections 33.43(a) and (c).
Endurance test	Section 33.49(d).

Issued in Kansas City, Missouri, on November 20, 2023.

Patrick R. Mullen,

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

[FR Doc. 2023–26027 Filed 11–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43 and 91

[Docket No. FAA–2023–1836; Amdt. Nos. 43–53A and 91–371A]

RIN 2120–AL70

Inclusion of Additional Automatic Dependent Surveillance-Broadcast (ADS-B) Out Technical Standard Orders; Incorporation by Reference; Confirmation of Effective Date

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the December 18, 2023, effective date of the “Inclusion of Additional Automatic Dependent Surveillance-Broadcast

(ADS-B) Out Technical Standard Orders; Incorporation by Reference” direct final rule published on October 17, 2023. The direct final rule amends the Automatic Dependent Surveillance-Broadcast (ADS-B) Out requirements to allow aircraft meeting the performance requirements in Technical Standard Order (TSO)–C166c (Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS-B) and Traffic Information Service—Broadcast (TIS-B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz)), or TSO–C154d, (Universal Access Transceiver (UAT) ADS-B Equipment Operating on the Radio Frequency of 978 Megahertz (MHz)) to meet the regulations. Aircraft equipped with ADS-B Out that meets the performance requirements of either TSO–C166c or TSO–C154d will provide additional information to pilots and air traffic control, including weather information, spectrum monitoring, and airspeed. They will also enable new wake turbulence applications, enhance weather forecasting, and enable or enhance ADS-B In applications such as Flight Interval Management.

DATES: The effective date of December 18, 2023, for the direct final rule published October 17, 2023 (88 FR 71468) is confirmed.

Incorporation by reference: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Office of the Federal Register as of December 18, 2023. The incorporation by reference of certain other publications listed in this rule was approved by the Director of the Office of the Federal Register as of August 11, 2010.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see “How To Obtain Additional Information” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Juan Sebastian Yanguas, Airspace Rules & Regulations, AJV–P21, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8783; email Juan.S.Yanguas@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This action confirms the effective date of the “Inclusion of Additional Automatic Dependent Surveillance-Broadcast (ADS-B) Out Technical Standard Orders; Incorporation by

Reference” direct final rule.¹ As of January 1, 2020, Federal Aviation Administration (FAA) regulations, codified in title 14 Code of Federal Regulations (14 CFR), §§ 91.225 and 91.227, require aircraft to equip with Automatic Dependent Surveillance-Broadcast (ADS-B) Out to operate in expressly identified airspace areas. ADS-B Out equipment must meet the performance requirements in § 91.227 along with those in Technical Standard Orders (TSO)–C166b or TSO–C154c. This rule revised §§ 91.225 and 91.227 to allow aircraft with equipment that meets the performance requirements in the new TSOs, TSO–C166c and TSO–C154d, to also operate in compliance with the regulations. Specifically, to allow use of these new TSOs, the direct final rule incorporates by reference TSO–C166c, TSO–C154d, section 2 of RTCA DO–260C, RTCA DO–260C Change 1, and section 2 of RTCA DO–282C into 14 CFR 91.225 and 91.227. These new performance requirements enable new wake turbulence applications, incorporate functionality for high-altitude and high-velocity vehicles, and enhance weather forecasting. The addition of TSO–C166c and TSO–C154d to the list of permitted TSOs will not negatively affect current users because TSO–C166b and TSO–C154c will remain as acceptable performance requirements.

This rule also made minor changes to other regulatory sections of part 91. It revised § 91.215 to remove the requirement that transponders reply to intermode interrogations, as International Civil Aviation Organization (ICAO) prohibited those replies in ICAO Annex 10 Volume IV Standards and Recommended Practices and new transponder certifications do not include the capability to reply to intermode interrogations. This rule also removed the requirement in part 43, appendix F, to verify response to an intermode interrogation.

II. Discussion of Comments

The FAA received one comment related to this direct final rule. AIRBUS Commercial Aircraft commented that they believed Advisory Circulars 20–165, Airworthiness Approval of Automatic Dependent Surveillance—Broadcast OUT Systems, and Advisory Circular 20–172, Airworthiness Approval for ADS-B In Systems and Applications, covering the installation of ADS-B Out and ADS-B In,

¹ *Inclusion of Additional Automatic Dependent Surveillance-Broadcast (ADS-B) Technical Standard Orders; Incorporation by Reference* direct final rule, 88 FR 71468 (Oct. 17, 2023).

² CS–E, Amendment 6—Aircraft cybersecurity.

respectively, should be updated to account for TSO-C166c as part of the rulemaking.

The FAA is revising Advisory Circular 20-165B to directly address the Technical Standard Orders being incorporated by reference into FAA regulations through this rulemaking. The FAA will make the revision available for public comment through the Advisory Circular comment process prior to issuance. The existing guidance can continue to be used until the FAA issues the revised Advisory Circular.

The FAA is also revising Advisory Circular 20-172B to address Technical Standard Order C195c. However, as TSO-C195 and AC 20-172 (and later revisions) are standards and guidance for ADS-B In equipment, those publications are not applicable to this rulemaking, which pertains to rules that only require ADS-B Out systems, and this rulemaking therefore does not reference TSO-C195c or AC 20-172C.

Therefore, the effective date of the direct final rule published October 17, 2023, at 88 FR 71468 is confirmed.

III. How To Obtain Additional Information

A copy of this direct final rule, the confirmation document, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this direct final rule confirmation will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <https://www.federalregister.gov> and the Government Publishing Office's website at <https://www.govinfo.gov>. A copy may also be found on the FAA's Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Interested persons must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

Issued under authority provided by 49 U.S.C. 106(f), 40103, and 44701, in Washington, DC, on November 21, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2023-26145 Filed 11-27-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2023-0243; **Airspace**
Docket No. 23-ASO-31]

RIN 2120-AA66

Renaming of Restricted Areas R-5311A, R-5311B, and R-5311C; Fort Bragg, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action is an administrative change to rename restricted areas R-5311A, R-5311B, and R-5311C, Fort Bragg, NC, and to update the using agency description to reflect the change. Additionally, geographic coordinate technical amendments for two boundary points listed in the restricted areas are made to accurately align the existing boundary with the Little River referenced in the descriptions. This action partially implements recommendations of the Commission on the Naming of Items (Naming Commission) of the Department of Defense (DoD) as established by section 370 of the Fiscal Year (FY) 2021 National Defense Authorization Act (NDAA).

DATES: Effective date 0901 UTC, January 25, 2024.

ADDRESSES: A copy of this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the information in the airspace descriptions of restricted areas R-5311A, R-5311B, and R-5311C.

Background

The FY 2021 NDAA directed the DoD to establish a commission relating to assigning, modifying, or removing of names, symbols, displays, monuments, and paraphernalia to assets of the DoD that commemorate the Confederate States of America or any person who served voluntarily with the Confederate States of America.¹ In January 2023, the Secretary of Defense directed all DoD organizations to begin full implementation of the Naming Commission's recommendations. As approved by the Secretary of Defense, the name "Fort Bragg, NC" is changed to "Fort Liberty, NC." Consequently, this rulemaking action implements the requisite changes to part 73 by updating the airspace descriptions of restricted areas R-5311A, R-5311B, and R-5311C to reflect the new name.

Upon review of the restricted areas, the FAA identified two boundary points used in the boundary descriptions that required technical amendment to accurately align with the Little River used in the description. This action includes the geographic coordinate technical amendments to align the northern boundary with the Little River, as originally intended.

The Rule

This action amends 14 CFR part 73 by updating the airspace titles and using agency descriptions for restricted areas R-5311A, R-5311B, and R-5311C by removing the name "Fort Bragg, NC" and replacing it with "Fort Liberty, NC."

The FAA also makes a technical amendment to two geographic points in the description of restricted areas R-5311A, R-5311B, and R-5311C. These minor amendments to the geographic coordinates more accurately describe the intersection of each restricted area where it meets the Little River in North

¹ Public Law 116-283, 134 Stat. 3388, Jan. 1, 2021.

Carolina. Updating these coordinates does not change the boundary of the restricted areas, but rather increases the accuracy of the waterway due to digital precision survey. The point “lat. 35°10’47” N, long. 79°01’55” W” is changed to “lat. 35°10’40” N, long. 79°01’56” W”; and the point “lat. 35°09’41” N, long. 79°20’09” W” is changed to “lat. 35°09’43” N, long. 79°20’07” W”.

This action consists of administrative name changes and minor technical amendments only and does not affect the boundaries, altitudes, time of designation, or activities conducted in the restricted areas. Therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of making administrative name changes to the geographic location and using agency information of restricted areas R-5311A, R-5311B, and R-5311C, and minor geographic coordinate technical amendments, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5d, which categorically excludes from further environmental impact review rulemaking actions where modification of the technical description of special use airspace (SUA) that does not alter the dimensions, altitudes, or times of designation of the airspace (such as changes in designation of the controlling or using agency, or correction of typographical errors). In

accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—Special Use Airspace

- 1. The authority citation for 14 CFR part 73 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.

§ 73.53 North Carolina [Amended]

- 2. Section 73.53 is amended as follows:

* * * * *

R-5311A Fort Bragg, NC [Removed]

R-5311B Fort Bragg, NC [Removed]

R-5311C Fort Bragg, NC [Removed]

R-5311A Fort Liberty, NC [New]

Boundaries. Beginning at lat. 35°10’40” N, long. 79°01’56” W; to lat. 35°08’48” N, long. 79°01’59” W; to lat. 35°07’01” N, long. 79°02’29” W; to lat. 35°05’36” N, long. 79°01’49” W; to lat. 35°02’56” N, long. 79°05’39” W; to lat. 35°02’46” N, long. 79°20’09” W; to lat. 35°07’06” N, long. 79°22’49” W; to lat. 35°09’43” N, long. 79°20’07” W; thence along Little River to the point of beginning.

Designated altitudes. Surface to but not including 7,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Army, Commanding General, Fort Liberty, NC.

R-5311B Fort Liberty, NC [New]

Boundaries. Beginning at lat. 35°10’40” N, long. 79°01’56” W; to lat. 35°08’48” N, long. 79°01’59” W; to lat. 35°07’01” N, long. 79°02’29” W; to lat. 35°05’36” N, long. 79°01’49” W; to lat. 35°02’56” N, long. 79°05’39” W; to lat. 35°02’46” N, long. 79°20’09” W; to lat. 35°07’06” N, long. 79°22’49” W; to lat. 35°09’43” N, long. 79°20’07” W; thence along Little River to the point of beginning.

Designated altitudes. From 7,000 feet MSL to but not including 12,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Army, Commanding General, Fort Liberty, NC.

R-5311C Fort Liberty, NC [New]

Boundaries. Beginning at lat. 35°10’40” N, long. 79°01’56” W; to lat. 35°08’48” N, long. 79°01’59” W; to lat. 35°07’01” N, long. 79°02’29” W; to lat. 35°05’36” N, long. 79°01’49” W; to lat. 35°02’56” N, long. 79°05’39” W; to lat. 35°02’46” N, long. 79°20’09” W; to lat. 35°07’06” N, long. 79°22’49” W; to lat. 35°09’43” N, long. 79°20’07” W; thence along Little River to the point of beginning.

Designated altitudes. From 12,000 feet MSL to but not including FL 290.

Time of designation. Continuous.

Controlling agency. FAA Washington ARTCC.

Using agency. U.S. Army, Commanding General, Fort Liberty, NC.

* * * * *

Issued in Washington, DC, on November 20, 2023.

Karen L. Chiodini,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2023–26003 Filed 11–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 130 and 131

[Docket No. FDA–2023–D–4722]

Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled “Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt—Small Entity Compliance Guide.” The small entity compliance guide (SECG) is intended to explain the actions a small entity must take to comply with FDA’s regulations after recent changes made by our 2021 final rule titled “Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt

and Nonfat Yogurt and To Amend the Standard for Yogurt,” 2022 final rule titled “International Dairy Foods Association and Chobani, Inc.: Response to the Objections and Requests for a Public Hearing on the Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt,” and 2023 final order titled “International Dairy Foods Association: Response to the Objections and Requests for a Public Hearing on the Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and Amend the Standard for Yogurt.”

DATES: The announcement of the guidance is published in the **Federal Register** on November 28, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–D–4722 for “Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt; Small Entity Compliance Guide.” 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.” We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the SECG to the Office of Nutrition and Food Labeling, Product Evaluation and Labeling Branch, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT:

Vivien Yan Peng, Office of Nutrition and Food Labeling (HFS–820), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371; or Jessica Ritsick, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled “Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt; Small Entity Compliance Guide.”

In the **Federal Register** of June 11, 2021 (86 FR 31117), we issued a final rule titled “Milk and Cream Products and Yogurt Products; Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt” (2021 final rule). The 2021 final rule amended title 21 of the *Code of Federal Regulations* at parts 130 and 131 (21 CFR parts 130 and 131) by revoking the standards of identity for lowfat yogurt and nonfat yogurt and amending the standard of identity for yogurt in numerous respects. In brief, we revoked the standards for lowfat yogurt and nonfat yogurt. Consequently, lowfat yogurt and nonfat yogurt became covered under the general definition and standard of identity in 21 CFR 130.10, which sets out requirements for foods that deviate from other standardized foods due to compliance with a nutrient content claim. The 2021 final rule also amended the standard of identity for yogurt by making certain technical changes, established functional classes of safe and suitable ingredients, replaced the list of nutritive sweeteners with the term “nutritive carbohydrate sweeteners,” and permitted and required certain statements about cultures under certain conditions.

The International Dairy Foods Association (IDFA) and Chobani, Inc., timely filed objections and requested a hearing with respect to several provisions in the 2021 final rule. In the **Federal Register** of March 23, 2022 (87 FR 16394), we issued a notice providing clarification on which provisions of the final rule were stayed and which requirements of the previous final rule that we issued in 1981 (46 FR 9924) were in effect pending final action. We completed our evaluation of the objections, and, on December 15, 2022, we published a final rule denying requests for a hearing with respect to all but one of the objections, providing modifications to certain provisions in the 2021 final rule, and announcing that the stay of effectiveness of provisions for which hearings were denied was lifted (87 FR 76559) (2022 final rule). The 2022 final rule did not address IDFA's objections and request for a hearing on the acidity requirement of yogurt, and we instead addressed this in a proposed order sent to IDFA and posted to the docket for public review.

We did not receive any response to the proposed order, and on April 14, 2023, we published a final order, "International Dairy Foods Association: Response to the Objections and Requests for a Public Hearing on the Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and Amend the Standard for Yogurt" (88 FR 22907) (2023 final order). The 2023 final order modified the acidity requirement in 21 CFR 131.200(a) of the 2021 final rule.

Manufacturers must begin complying with the rule for products labeled on or after January 1, 2024.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule would have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing this SECG consistent with our good guidance practices regulation (21 CFR 10.115). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the SECG at <https://www.fda.gov/FoodGuidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: November 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26095 Filed 11–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0231]

RIN 1625–AA09

Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, CA. This action is necessary to allow the bridge owner to complete rehabilitation of the bridge after an unexpected delay in delivery of custom made electronics.

DATES:

Effective date: This temporary interim rule is effective from 5 p.m. on November 30, 2023, through 5 p.m. on March 1, 2024.

Comments: Comments and related material must reach the Coast Guard on or before December 28, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG–2023–0231) in the "SEARCH" box and click "SEARCH". In the Document Type column, select "Supporting & Related Material".

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary interim rule, call or email Carl Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations [Delete/add any abbreviations not used/used in this document]

CFR Code of Federal Regulations
Caltrans California Department of Transportation
CADFW California Department of Fish and Wildlife
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This bridge is non-operational and will be non-operational until rehabilitation work can be completed.

On October 27, 2022 the Coast Guard issued a General Deviation which allowed the bridge owner, Caltrans, to deviate from the current operating schedule in 33 CFR 117.183 to conduct major mechanical and electrical rehabilitation of the bridge. Due to delays in procuring materials, vandalism of critical electrical submarine cables, and an active winter storm season, the project ran past the end date of April 23, 2023 of the General Deviation. The bridge could not be brought back to operating condition until the delivery of the critical Program Logic Control circuit and the replacement or repairs to the submarine cable could be made. On October 17, 2023, Caltrans informed the Coast Guard that critical electronic components, needed to complete the rehabilitation of the bridge, were still on back-order and not expected to be delivered in time for a project completion deadline of November 30, 2023. It is anticipated that

the parts will be delivered in the beginning of next year, the bridge work complete and the span operational by March 1, 2024. There is insufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the **Federal Register**. For reasons presented above, delaying the effective date of this rule would be impracticable and contrary to the public interest due to the fact that the bridge is currently inoperable and will not be back into operation until the rehabilitation work can be completed.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, CA. The Caltrans Route 4 highway bridge has a vertical clearance, in the closed position, of 12.7 feet at mean high water and unlimited vertical clearance when opened.

The existing drawbridge regulation, 33 CFR 117.183, states that the draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8. Caltrans, the bridge owner, has requested this modification as additional time is required to complete the bridge rehabilitation.

Drawtender logs, during a previous test deviation conducted May 5, 2021 to August 7, 2021, recorded the following number of CADFW vessel openings: four in May, eight in June, four in July, and two in August. One survey vessel passed in July. No recreational or commercial vessels requested an opening of the bridge span during that 90-day test deviation.

On October 27, 2022 the Coast Guard issued a General Deviation which allowed the bridge owner, Caltrans, to

deviate from the current operating schedule in 33 CFR 117.183 to conduct major mechanical and electrical rehabilitation of the bridge. Due to various delays, the project ran past the end date of April 23, 2023 of the General Deviation. On April 20, 2023, the Coast Guard published a temporary interim rule with request for comments that extended the deviation from the operating schedule until November 30, 2023. 88 FR 24336. During the comment period that ended May 22, 2023, no comments were received.

On October 17, 2023, Caltrans informed the Coast Guard that critical electronic components, needed to complete the rehabilitation of the bridge, were still on back-order and not expected to be delivered in time for a project completion deadline of November 30, 2023. It is anticipated that the parts will be delivered in the beginning of next year, the bridge work complete and the span operational by March 1, 2024. This temporary interim rule allows for a further deviation from the operating schedule until March 1, 2024.

IV. Discussion of the Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract, CA. This rule allows the bridge to be secured in the closed-to-navigation position through 5 p.m. on March 1, 2024.

As part of the rehabilitation of the bridge, Caltrans has removed and is replacing all the electronics as well as key mechanical components that control the operation of the swing span. On January 31, 2023, vandals caused damage to one of the three newly installed custom-made submarine cables. On April 1, 2023 the contractor informed Caltrans that the custom-made Program Logic Control circuit, which is the circuit that controls the operation of the swing span, was delayed due to supply chain issues. These two critical components of bridge operations, as well as an active storm season, caused the delay of the completion of the rehabilitation of the bridge. On October 17, 2023, Caltrans informed the Coast Guard that critical electronic components, needed to complete the rehabilitation of the bridge, were still on back-order and not expected to be delivered to meet the November 30, 2023 deadline to bring the swing span

back into operation. It is anticipated that the parts will be delivered in the beginning of next year, the bridge work complete and the span operational by March 1, 2024. Currently, the swing span remains inoperable until rehabilitation work is completed. The anticipated completion of the rehabilitation work is March 1, 2024.

V. Regulatory Analyses

We developed this temporary interim rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that little or no commercial or recreational vessel traffic will be impacted by this rule. Furthermore, the swing span of the bridge, as of date of the publication of this rule, is not operational and cannot resume operations until delivery of delayed parts and the repair to or replacement of the vandalized electrical submarine cable is made.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1. Revision No. 01.3

§ 117.183 [Amended]

■ 2. Section 117.183 is stayed from November 30, 2023, until 5 p.m. on March 1, 2024.

■ 3. Add section § 117.T184 to read as follows:

§ 117.T184 Old River.

The draw of the California Department of Transportation (Route 4) highway bridge, mile 14.8 between Victoria Island and Byron Tract need not be opened for the passage of vessels.

Dated: November 20, 2023.

Andrew M. Sugimoto,

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

[FR Doc. 2023–26017 Filed 11–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0898]

Safety Zone; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a fireworks display at The Wharf DC on December 2, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District identifies the safety zone for this event in Washington, DC. During the enforcement period, vessels may not enter, remain in, or transit through the safety zone unless authorized to do so by the COTP or his representative, and vessels in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified in line no. 1 of table 2 to 33 CFR 165.506(h)(2) from 7 p.m. until 9 p.m. on December 2, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST2 Hollie Givens, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–57–2596, email MDNCRMarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for a fireworks display at The Wharf DC from 7:00 p.m. to 9:00 p.m. on December 2, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District, § 165.506, specifies the location of the safety zone for the fireworks show, which encompasses portions of the Washington Channel in the Upper Potomac River. During the enforcement period, as reflected in § 165.506(b), if

you are the operator of a vessel in the vicinity of the safety zone, you may not enter, remain in, or transit through the safety zone unless authorized to do so by the COTP or his representative, and you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

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

Dated: November 20, 2023.

David E. O'Connell,

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

[FR Doc. 2023–26152 Filed 11–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0662]

RIN 1625–AA00

Safety Zone; Ashtabula Power Plant Breakwater Armor Stone Removal, Lake Erie, Ashtabula, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Lake Erie. This action is necessary to provide for the safety of life and property on these navigable waters near Ashtabula, Ohio during the Ashtabula power plant breakwater armor stone removal project. This rule will prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Buffalo.

DATES: This rule is effective without actual notice from November 28, 2023 through 11:59 p.m. on December 1, 2024. For the purposes of enforcement, actual notice will be used from 7 a.m. on November 16, 2023, until November 28, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0662 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or

email Lieutenant Jared Stevens, Waterways Management Division, MSU Cleveland, U.S. Coast Guard; telephone 216–937–0124, email Jared.M.Stevens@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because insufficient time remains to publish an NPRM and receive public comments prior to commencement of the deconstruction and removal project.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule to wait for a comment period to run would be contrary to the public interest by inhibiting the Coast Guard’s ability to protect vessels in these navigable waters during this deconstruction and removal project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Buffalo has determined a safety zone is needed to protect vessel traffic from November 16, 2023, through December 1, 2024, during this deconstruction and removal project which will remove the breakwater armor stone near the Ashtabula power plant in Ashtabula, Ohio.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on November 16, 2023, through 11:59 p.m. on December 1, 2024. The safety zone will cover all navigable waters encompassing a 350-

yard radius zone centered on coordinates 41°54′43″ N, 080°46′09″ W (NAD83) located near the Ashtabula power plant located at 2133 Lake Road East, Ashtabula, Ohio. The zone may require enforcement beyond the stated times in the case that the construction project runs into unforeseen delays.

The COTP Buffalo has determined a safety zone is needed to protect vessels during this deconstruction and removal project. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP, or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based the need to ensure the safety of vessels in these navigable waters during this construction project.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone intended to ensure the safety of vessels near a construction project. It is categorically excluded from further review under paragraph L63(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 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.T09–0662 to read as follows:

§ 165.T09–0662 Safety Zone; Ashtabula Power Plant Breakwater Armor Stone Removal, Lake Erie, Ashtabula, OH.

(a) *Location.* The safety zone will cover all navigable waters encompassing a 350-yard radius zone centered on position 41°54'43" N, 080°46'09" W (NAD83), located near the old Ashtabula power plant (2133 Lake Road East, Ashtabula, Ohio) on Lake Erie in Ashtabula, Ohio.

(b) *Enforcement period.* This section will be enforced from 7 a.m. on November 16, 2023, through 11:59 p.m. on December 1, 2024.

(c) *Definitions.* Official Patrol Vessel 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 Sector Buffalo, (COTP) in the enforcement of the regulations in this section. Participant means all persons and vessels attending the event.

(d) *Regulations.* (1) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM.”

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state or local law enforcement and sponsor provided vessels designated or assigned by the COTP Sector Buffalo, to patrol the event.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

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

(6) Any spectator vessel may anchor outside the regulated areas specified in this chapter, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

Dated: November 17, 2023.

S.M. Murray,

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

[FR Doc. 2023–26149 Filed 11–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AR62

Payments Under State Home Care Agreements for Nursing Home Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with one change, a proposed rule amending its State home per diem regulation to provide a new formula for calculating the prevailing rate VA would pay a State home that enters into a State home care agreement to provide nursing home care to eligible veterans.

DATES: This rule is effective December 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Colette Alvarez, Chief of Staff Home Per Diem Program, Geriatrics and Extended Care (12GEC), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (FR) on December 21, 2022, VA proposed to amend its per diem regulations in part 51 of title 38, Code of Federal Regulations (CFR) to provide a new formula for calculating the prevailing rate VA will pay a State home that enters into a State home care agreement to provide nursing home care to eligible veterans. 87 FR 78038. VA provided a 60-day comment period, which ended on February 21, 2023. Two comments were received, one of which included multiple issues, and these comments are addressed below by topic. VA makes one change to the rule based on the comments received.

U.S. Public Health Service (USPHS) and Eligibility for Care in a State Home

One commenter questioned whether veterans of the USPHS are eligible for care in State homes even if the State does not recognize service in the USPHS for veteran status. The commenter further asserts that USPHS veterans are veterans by Federal law and eligible for all VA benefits, and if a State home is receiving funding from VA then a USPHS veteran should be eligible for care in that State home even if the State does not recognize a USPHS veteran for other State benefits.

While VA considers this comment outside of the scope of the rulemaking, we clarify that an individual is a veteran under 38 United States Code (U.S.C.) 101(2) if the individual “served in the active military, naval, air, or space service and . . . was discharged or released therefrom under conditions other than dishonorable.” “Active military, naval, air, or space service” includes “active duty” and certain periods of “active duty for training” and “inactive duty training” which are all defined by 38 U.S.C. 101(21)–(24). These terms prescribe the type of service an individual needs to have had to be eligible for VA health care benefits under 38 U.S.C. 1710 and 1705 and are inclusive of service in the USPHS. 38 Code of **Federal Register** (CFR) 17.31 generally incorporates the 38 U.S.C. 101 definitions of active service, active duty, active duty for training, and inactive duty training, as well as certain other service recognized as active service under 38 U.S.C. 106. In short, § 17.31 addresses the duty periods considered under active service for eligibility for VA medical benefits, and it is inclusive of service in the USPHS. Thus, an individual with full-time service in the USPHS may qualify as a “veteran” for purposes of health care benefits administered by VA.

However, the designation of veteran for purposes of VA health care benefits does not require a State home to accept a veteran into State home. The VA State home program pays per diem to State homes for three types of care provided to eligible veterans: nursing home care, domiciliary care, and adult day health care (ADHC). The statutory authority for the payment program is set forth at 38 U.S.C. 1741–43 and VA has published regulations governing this program at 38 CFR part 51. Sections 51.50 through 51.52 address which veterans are eligible for purposes of payment of per diem for nursing home care, domiciliary care, and ADHC, respectively. An important distinction is that while VA can pay per diem to State homes for care

provided to eligible veterans, State homes are not obligated to accept all eligible veterans. VA does not have management authority over State homes. State homes are owned and operated by State governments and each State establishes eligibility and admission criteria for its homes. State homes may have additional admission requirements such as age, wartime service, years of service, and residency requirements. Therefore, VA is unable to dictate which eligible veterans for purposes of payment of per diem may be admitted to a State home. VA makes no changes based on this comment.

State Home Responsibilities Under the Prevailing Rate

One commenter raised concerns that VA is proposing to continue to use the Centers for Medicare and Medicaid Services (CMS) Prospective Payment System (PPS) for creating the baseline for the prevailing rate without utilizing Medicare’s consolidated billing guidelines to confirm which services are covered under the rate. Specifically, the commenter referred to the Medicare Claims Processing Manual Chapter 6—Skilled Nursing Facility (SNF) Inpatient Part A Billing and SNF Consolidated Billing (Medicare Manual).¹ The commenter stated that all services considered within the scope and capability of nursing home care are paid under the PPS rate and that the Medicare Manual lists which services are included and excluded under the PPS rate. Further, the commenter suggested that VA should use the Medicare Manual to confirm which services are covered under the prevailing rate because State homes are finding more instances where there is an expectation for State homes to pay for services that have been specifically excluded under PPS. The commenter specifically mentioned psychologist and psychiatric services, and high-cost medications (e.g., high-intensity anti-cancer drugs). The commenter also stated that all drugs not listed on the most recent VA formulary should qualify for an exclusion from the prevailing rate calculation since these medications are not routinely administered in a SNF or are exceptionally expensive. Finally, the commenter requested a guide for State homes and VA staff to determine the

¹ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Medicare Claims Processing Manual Chapter 6—SNF Inpatient Part A Billing and SNF Consolidated Billing (Rev. 11109, 11–04–21), <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/clm104c06.pdf> (last visited April 11, 2023).

financial responsibility for the full coordination of care.

We interpret that this commenter is expressing concern that State homes are not being adequately compensated by VA under the prevailing rate for certain care (such as psychologist and psychiatric services, and high-cost medications as mentioned in the comment) by virtue of VA not using the Medicare Manual to confirm which services are covered and which services are excluded. Further we interpret that this commenter believes that if VA uses the Medicare Manual to confirm covered and excluded services, then State homes would be allowed to seek payment for excluded services in addition to the prevailing rate. However, VA has no clear indication that State homes are being inadequately compensated for care, even when drugs and medications, and psychologist and psychiatric services are furnished. We also believe that VA's current payment structure for State home care will remedy inadequate compensation were it to become an issue. Under § 51.41, payment by VA to State homes for care of a veteran is payment in full for care the State home provides that veteran. 38 U.S.C. 1745(a)(3). In accordance with 38 U.S.C. 1745(a)(2), VA has developed a payment methodology to adequately reimburse State homes for the care provided under agreements with VA, where VA has established two methods of payment in 38 CFR 51.41, one each for State home contracts and State home care agreements, respectively. State homes that enter into contracts will be compensated at the rate negotiated in the contract. On the other hand, State homes that enter into State home care agreements will be compensated using the prevailing rate, which is calculated to compensate State homes for the average cost of providing nursing home care to the veterans whose care is covered under 38 CFR 51.41, including, as indicated in § 51.41(c)(2), the cost of drugs and medicines. Although the costs of all drugs and medications, including those that are not on the VA formulary, as well as psychologist and psychiatric services are not payable separately from general payments under State home care agreements, if a State home cannot accept the prevailing rate that VA offers in a State home care agreement, that State home has the option to request a contract under § 51.41 and would then be able to negotiate with VA for a specific contract rate.

We otherwise do not find that using the Medicare Manual the commenter references would be appropriate or necessarily transferrable to the

determination of which services are covered and which services are excluded under the prevailing rate as that Medicare Manual is used for care in a SNF that is measured in only limited benefit periods, whereas VA's payments are not so limited. In the cited Medicare Manual, in each benefit period, Medicare Part A covers up to 20 full days of care, after that Medicare Part A covers up to an additional 80 days with the beneficiary paying coinsurance for each day, and after 100 days, the SNF coverage exhausts and the beneficiary pays for all care, except for certain Medicare Part B services.² The benefit period begins on the day a Medicare beneficiary is admitted to a hospital or SNF as an inpatient and ends after the beneficiary has not been a hospital inpatient or received skilled care in a SNF for 60 consecutive days.³ Once the benefit period ends, a new benefit period begins when the beneficiary is admitted to a hospital or SNF.⁴ Further, a new benefit period does not begin due to a change in diagnosis, condition, or calendar year.⁵ However, unlike Medicare part A coverage, under § 51.41, VA will pay a State home the prevailing rate for the duration that a State home provides care to a veteran, even if it exceeds Medicare's 100 day benefit period. Therefore, VA believes that because the Medicare Manual referenced by the commenter is premised on a limited benefit period, it is not applicable or relevant to the payment VA provides to State homes under the prevailing rate for an indefinite period of time.

For the reasons stated above VA makes no changes based on this comment.

Prevailing Rate for ADHC

One commenter stated that the ADHC prevailing rate includes transportation to and from the ADHC program and is a key element of the service to veterans and their caregivers. The commenter asserted that due to the Coronavirus Disease-2019 (COVID-19), the cost of ambulette transportation has tripled in labor, gas, vehicle maintenance, and insurance and that these costs have grown much higher than the typical inflationary increase in the SNF

Consumer Price Index (CPI), which the commenter asserted was used by VA to calculate the proposed rate change. To the extent the commenter is concerned that the CPI index for medical care that includes an item for nursing home and adult day care services⁶ is not sufficient to cover the cost of ambulette transportation, VA did not use any CPI index as a factor in the proposed change to the prevailing rate for nursing home care. As stated in the proposed rule, VA believes that the CMS SNF Market Basket rate would more accurately reflect actual costs than would an alternate method such as a component of the CPI. 87 FR 78040 (December 21, 2022). VA makes no changes based on this comment.

One commenter raised concerns regarding the proposed non-substantive change for the title of § 51.41(c) from "*Payments under State home agreements.*" to *Payments for nursing home care under State home care agreements.*" The commenter noted that the calculation of the prevailing rate for nursing home care is also the foundation for the prevailing rate paid for ADHC and that it is equally important to ensure the rate paid for ADHC is representative of the services being provided. VA agrees with the commenter that § 51.41(c) is the current foundation for the prevailing rate paid for ADHC. On March 27, 2018, the State Veterans Home Adult Day Health Care Improvement Act of 2017 (ADHC Improvement Act), Public Law 115-159, was signed into law. The ADHC Improvement Act added a new paragraph (d) to 38 U.S.C. 1745 authorizing VA to pay State homes for providing medical supervision adult day health care to eligible veterans. A proposed rule to implement the ADHC Improvement Act is currently being developed which will be made available to the public for comment. Any changes to the title of § 51.41(c), if necessary, will be addressed in that rulemaking; therefore, VA will not finalize the proposed revision to the title of § 51.41(c) and the title will remain as "*Payments under State home care agreements.*"

Based on the rationale set forth in this document, VA is adopting the proposed rule as final with one change as noted above.

² U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Medicare Learning Network: Skilled Nursing Facility Billing Reference, ICN MLN006846 (May 2022), <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/EnrollmentResources/provider-resources/snf-billing-reference.html> (last visited April 11, 2023).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ U.S. Department of Labor, U.S. Bureau of Labor Statistics, Consumer Price Index, Measuring Price Change in the CPI: Medical Care (Feb. 10, 2023), <https://www.bls.gov/cpi/factsheets/medical-care.htm> (last visited April 7, 2023).

Executive Orders 12866, 13563 and 14094

Executive Orders 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The rulemaking revises the formula VA uses to calculate the per diem it pays State homes for nursing home care of certain veterans. The effect of the rule is to change VA payments to State homes. Therefore, this rule only affects veterans and State homes.

All State homes are owned, operated, and managed by State governments, except for a small number operated by entities under contract with State governments. Neither these contractors nor State governments are small entities as defined in 5 U.S.C. 601. State homes subject to this final rulemaking are State homes that are currently under a State home care agreement, those that enter into a new agreement, and any facility that begins an agreement for the first time. The rule will impose no direct costs on the State homes. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis

requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act

Although this action relates to provisions constituting collections of information at 38 CFR 51.41, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information would be associated with this final rule. The information collection requirements for § 51.41(e) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0091 and 2900–0160.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 51

Administrative practice and procedure, Claims, Adult Day Health Care, Dental health, Domiciliary, Government contracts, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on November 16, 2023, 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.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons described in the preamble, Department of Veterans Affairs amends 38 CFR part 51 as follows:

PART 51—PER DIEM FOR NURSING HOME, DOMICILIARY, OR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

■ 1. The general authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743, 1745, and as follows.

* * * * *

■ 2. In § 51.41 revise paragraph (c)(1) to read as follows:

§ 51.41 Contracts and State home care agreements for certain veterans with service-connected disabilities.

* * * * *

(c) * * *

(1) State homes must sign an agreement to receive payment from VA for providing care to certain eligible veterans under a State home care agreement. A State home care agreement for nursing home care under this section will provide for payments at the rate determined by the following formula.

(i) Determine whether the Resource Utilization Groups (RUG) or Skilled Nursing Facility Prospective Payment System (SNF–PPS) applies.

(A) For State homes in a metropolitan statistical area, use the published fiscal year Centers for Medicare and Medicaid Services (CMS) RUG case-mix levels for the applicable metropolitan statistical area.

(B) For State homes in a rural area, use the published fiscal year CMS SNF–PPS case-mix levels for the applicable rural area.

(ii) Compute the daily rate for each State home, using the following formula in the order described:

(A) Multiply the labor component by the State home wage index for each of the applicable case-mix levels.

(B) Add to that amount the non-labor component.

(C) Divide the sum of the results of these calculations by the number of applicable case-mix levels.

(D) Add to this quotient the amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, then multiplied by 12, then divided by the number of days in the year. The resulting sum is the per diem baseline rate for the State home.

(E) Multiply the per diem baseline rate from the previous year by the CMS Skilled Nursing Facilities (SNF) Market Basket increase in effect as of December 28, 2023. The sum establishes the reference total per diem baseline rate

from which subsequent fiscal year per diem rates will be calculated. For calculation of SNF per diem rates for subsequent fiscal years VA will apply the CMS SNF Market Basket increase to the total per diem each year.

Note 1 to paragraph (c)(1): The amount calculated under this formula reflects the prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a State home. The amount calculated under this formula applies to both new and existing facilities with State home care agreements. Further, the formula for establishing these rates includes CMS information that is published in the **Federal Register** every year and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

* * * * *

§ 51.70 [Amended]

■ 3. In § 51.70, in paragraph (n), remove “51.110(d)(2)(ii) of this part” and add in its place “51.110(e)(2)(ii)”.

§ 51.110 [Amended]

■ 4. In § 51.110, in paragraph (d), remove “Version 2.0” and add in its place “Version 3.0”.

§ 51.300 [Amended]

■ 5. In § 51.300, in paragraph (d)(3), remove “(a)(2)(i) through (vii)” and add in its place “(d)(2)(i) through (vii)”.

[FR Doc. 2023–25998 Filed 11–27–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0076; FRL–10663–02–R9]

Air Plan Revisions; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter (PM) from wood burning devices. We are approving a local measure that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective December 28, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0076. All documents in the docket 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 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: 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: Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On April 14, 2023 (88 FR 22978), the EPA proposed to approve the following measure into the California SIP.

TABLE 1—SUBMITTED MEASURE

Local agency	Resolution No.	Measure title	Adopted	Submitted
SJVUAPCD	21–11–7	Burn Cleaner Fireplace and Woodstove Change-out Incentive Measure (“Burn Cleaner Incentive Measure”).	11/18/2021	03/17/2022

We proposed to approve this measure because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the measure and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received three public comments. The first two comments fail to identify any issue that is germane to our action on the measure and are outside the scope of this rulemaking. One of these comments included offensive content and was therefore not posted to the public docket. The other comment discusses wildfires and vehicle emissions. Our response to the

third comment from Sheraz Gill, Deputy Air Pollution Control Officer (APCO) of SJVUAPCD, is below.

Comment: After providing a summary of the measure, the commenter expresses concerns that, although the measure meets all four integrity elements necessary for an incentive measure to be fully approvable into the SIP, the EPA has chosen to not give SIP emission reduction credit. The commenter states “. . . the District is concerned with EPA’s proposed approval not including emission reduction credit for this measure, as the program has achieved and will continue to achieve significant emissions reductions in the San Joaquin Valley.” The commenter recommends that the EPA include in our final approval of

this measure SIP credit for the specific emission reductions quantified.

Response: As explained in our proposal, SJVUAPCD regulates a PM_{2.5} nonattainment area classified as Serious for the 1997 (24-hour 65 µg/m³ and annual 15 µg/m³ limit), 2006 (24-hour 35 µg/m³ limit), and 2012 (annual 12 µg/m³ limit) PM_{2.5} National Ambient Air Quality Standards (NAAQS). The District adopted the 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} NAAQS (2018 PM_{2.5} Plan) in November 2018 to help bring the District into attainment for these NAAQS.¹ The 2018 PM_{2.5} Plan includes aggregate emissions reduction commitments by the SJVUAPCD to achieve an additional 1.30 tons per day (tpd), annual average, direct PM_{2.5}

¹ 2018 PM_{2.5} Plan, ES–8.

emission reductions by 2024 and 2025 for the 35 µg/m³ 2006 24-hour PM_{2.5} NAAQS and 12 µg/m³ 2012 annual PM_{2.5} NAAQS, respectively. The Burn Cleaner Incentive Measure was intended to fulfill a portion of these aggregate emission reduction commitments, by achieving 0.33 tpd of direct PM_{2.5} emission reductions by 2024 and 2025, on an annual average basis.

However, as noted in our Technical Support Document (TSD), the Ninth Circuit vacated and remanded a portion of the EPA's approval of the 2006 24-hour PM_{2.5} NAAQS portions of the 2018 PM_{2.5} Plan on April 13, 2022.² Therefore, further work is needed to evaluate the emissions reductions necessary to attain the 2006 NAAQS by 2024. Additionally, on October 27, 2022, CARB withdrew the portions of the 2018 PM_{2.5} Plan pertaining to the Serious area plan requirements for the 2012 annual PM_{2.5} NAAQS.³ As a result, the State will need to submit a new attainment plan for the 2012 PM_{2.5} NAAQS. Therefore, the EPA will evaluate emission reductions associated with Burn Cleaner Incentive Measure in the context of future attainment plan actions for the 2006 and 2012 PM_{2.5} NAAQS.

III. EPA Action

No comments were submitted that change our assessment of the measure as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this measure into the California SIP.

As stated within the EPA's proposed action, we are codifying this measure as additional material in the Code of Federal Regulations, rather than through incorporation by reference, because, under its terms, the measure contains commitments enforceable only against the District and because the measure is not a substantive rule of general applicability.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting federal

requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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 approves 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 to positive 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.

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 20, 2023.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

² *Medical Advocates for Healthy Air v. EPA*, Case No. 20-72780, Dkt. #58-1 (9th Cir., April 13, 2022).

³ Letter from Steven Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated October 27, 2022.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(606) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(606) The following materials were submitted on March 17, 2022, by the Governor's designee as an attachment to a letter dated March 16, 2022.

(i) [Reserved]

(ii) *Additional materials.* (A) San Joaquin Valley Unified Air Pollution Control District.

(1) San Joaquin Valley Unified Air Pollution Control District Resolution No. 21–11–7, In the Matter of: State Implementation Credit for Residential Wood Burning Device Change-Out Incentive Measure, adopted on November 18, 2021.

(2) [Reserved]

(B) [Reserved]

* * * * *

[FR Doc. 2023–26013 Filed 11–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2023–0252; FRL–11034–02–R2]

Approval of Air Quality Implementation Plans; New Jersey; Exemptions To Improve Resiliency, Air Toxics Thresholds, PM_{2.5} and Ammonia Emission Statement Reporting, and PM_{2.5} in Air Permitting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving adoptions, repeals, and amendments to the New Jersey State Implementation Plan (SIP) concerning exemptions to improve resiliency during emergency situations, updates to hazardous air pollutant (HAP) reporting thresholds, updates to the certification and submission of emission statements, and the addition of Federal New Source Review (NSR) requirements for fine particles (PM_{2.5}).

The intended effect of New Jersey's revisions are to enable government and business entities to be more resilient during and following disruptions from natural and human-caused disasters; update HAP unit risk factors and reference concentrations to reflect current research, scientific, and technological advancements; update provisions to require the reporting of PM_{2.5} and ammonia (NH₃) emissions at the source level and update the electronic reporting of emission statements to adapt with advancements and Federal requirements; and conform the State's rules on air permits to the EPA's NSR requirements for PM_{2.5} to ensure a source does not adversely impact the EPA-established National Ambient Air Quality Standards (NAAQS). Other revisions New Jersey made, which the EPA is approving with this notice of final rulemaking, will conform administrative penalties to the approved rules and correct errors and inconsistencies throughout the State's SIP. This action is being taken in accordance with the requirements of the Clean Air Act. The EPA proposed to approve this rule on September 28, 2023, and received no comments.

DATES: This final rule is effective on December 28, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2023–0252. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formally referred to as 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 electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Nicholas Ferreira, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3127, or by email at ferreira.nicholas@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. What is the background for this action?
- II. Environmental Justice Considerations
- III. What comments were received in response to the EPA's proposed action?
- IV. What action is the EPA taking?
- V. Incorporation by Reference

VI. Statutory and Executive Order Reviews

I. What is the background for this action?

On September 28, 2023 (88 FR 66733), the EPA published a Notice of Proposed Rulemaking that proposed to approve State Implementation Plan (SIP) revisions submitted by the State of New Jersey on December 14, 2017, and August 23, 2018, for the purpose of approving new rules, repeals, and amendments to subchapter 8, subchapter 16, subchapter 17, subchapter 18, subchapter 19, and subchapter 21 of New Jersey Administrative Code, Title 7, Chapter 27 (N.J.A.C. 7:27); as well as to subchapter 3 of N.J.A.C., Title 7, Chapter 27A.

New Jersey's revisions to N.J.A.C. 7:27 implement changes based on the experience the State has gained in response to disruptions caused by natural disasters such as Superstorm Sandy and discussions that the State has held with representatives of the regulated community and environmental groups. New Jersey's revisions include exemptions from air emission control and permitting requirements that will provide flexibility for facilities to use low-emitting temporary and portable equipment to improve resiliency during emergency situations.

Additionally, New Jersey's revisions update HAP reporting thresholds using the most recent science-based methodologies; amend the rules governing emissions statements to require each facility to report criteria pollutants and precursors (including PM_{2.5} and ammonia) at the source level; revise the rules governing certification and electronic submittal of emissions statements; revise the New Source Review (NSR) requirements to implement the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}); and modify penalty provisions to provide consistency with the State's revisions finalized for approval within this notice. For the reasons herein stated, the EPA is approving the revisions made by New Jersey to strengthen the effectiveness of the State's SIP.

The specific details of New Jersey's SIP submittals and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's September 28, 2023, proposed rulemaking (88 FR 66733).

II. Environmental Justice Considerations

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review State choices, and approve those choices if they meet the minimum criteria of the Act.

The specific details of New Jersey's Environmental Justice (EJ) considerations are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's September 28, 2023, proposed rulemaking (88 FR 66733).

Furthermore, as the EPA stated in the proposed rulemaking, although New Jersey included EJ considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. New Jersey's provisions being approved by the EPA within this notice address statewide matters, and since EJ issues are more accurately captured when evaluating relatively smaller areas or on a community level basis, the EPA determined it would not have been appropriate to evaluate EJ concerns at a statewide level.

The EPA expects that this final action will be neutral or contribute to reduced environmental and health impacts on all populations in New Jersey, including people of color and low-income populations in New Jersey. At a minimum, this final action is not expected to worsen any air quality and it is expected this action will ensure the State is meeting requirements to attain and/or maintain air quality standards. The EPA therefore concludes that this final action will not have or lead to disproportionately high or adverse human health or environmental effects on communities with EJ concerns.

III. What comments were received in response to the EPA's proposed action?

The EPA provided a 30-day review and comment period for the September 28, 2023, proposed rule. The comment period ended on October 30, 2023. The EPA received no comments on this action; therefore, the EPA is finalizing action as proposed.

IV. What action is the EPA taking?

The EPA is approving New Jersey's revisions to N.J.A.C. 7:27 subchapter 8, "Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit)," section 8.1,

"Definitions;" and subchapter 21, "Emission Statements," submitted to EPA on December 14, 2017 (State effective November 6, 2017), and as further updated in a SIP revision to EPA on August 23, 2018 (State effective January 16, 2018).

The EPA is also approving New Jersey's revisions to N.J.A.C. 7:27 subchapter 18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)," submitted to EPA on December 14, 2017 (State effective November 6, 2017).

In addition, the EPA is approving the State's revisions to N.J.A.C. 7:27 subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Compounds;" subchapter 17, "Control and Prohibition of Air Pollution by Toxic Substances;" subchapter 19, "Control and Prohibition of Air Pollution by Oxides of Nitrogen;" and Chapter 27A, subchapter 3.10, "Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act," submitted to EPA on August 23, 2018 (State effective January 16, 2018).

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference revisions to N.J.A.C. 7:27 subchapter 8, "Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit)," section 8.1, "Definitions;" subchapter 16, "Control and Prohibition of Air Pollution by Volatile Organic Compounds;" subchapter 17, "Control and Prohibition of Air Pollution by Toxic Substances;" subchapter 18, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules);" subchapter 19, "Control and Prohibition of Air Pollution by Oxides of Nitrogen;" subchapter 21, "Emission Statements;" and Chapter 27A, subchapter 3.10, "Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act," as discussed in Section I. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the

EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

VI. 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, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 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 approves 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 it will not

¹ 62 FR 27968 (May 22, 1997).

impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. 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.” 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 NJDEP evaluated EJ as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA’s evaluation of the NJDEP’s EJ considerations is described in detail under the section titled, “Environmental Justice Considerations,” within the September 28, 2023, Notice of Proposed Rulemaking (88 FR 66733). The analysis was done for the purpose of providing

additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of New Jersey’s evaluation of EJ. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is 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 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference,

Intergovernmental relations, Nitrogen Oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Lisa Garcia,

Regional Administrator, Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 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.*

Subpart FF—New Jersey

■ 2. In § 52.1570, the table in paragraph (c) is amended by:

- a. Removing the entry for “Title 7, Chapter 27, Section 8.1 and 8.2”;
- b. Adding entries for “Title 7, Chapter 27, Section 8.1” and “Title 7, Chapter 27, Section 8.2” in numerical order after the entry Title 7, Chapter 27, Subchapter 8; and
- c. Revising the entries for “Title 7, Chapter 27, Subchapter 16”, “Title 7, Chapter 27, Subchapter 17”, “Title 7, Chapter 27, Subchapter 18”, “Title 7, Chapter 27, Subchapter 19”, “Title 7, Chapter 27, Subchapter 21”, and “Title 7, Chapter 27A, Subchapter 3.10”.

The revisions and additions read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * *	* * *	* * *	* * *	* * *
Title 7, Chapter 27, Section 8.1.	Definitions	January 16, 2018.	11/28/2023	• EPA approval finalized at [insert Federal Register citation].
Title 7, Chapter 27, Section 8.2.	Applicability	June 20, 1994	August 7, 1997, 62 FR 42412.	
* * *	* * *	* * *	* * *	* * *
Title 7, Chapter 27, Subchapter 16.	Control and Prohibition of Air Pollution by Volatile Organic Compounds.	January 16, 2018.	11/28/2023	• EPA approval finalized at [insert Federal Register citation].
Title 7, Chapter 27, Subchapter 17.	Control and Prohibition of Air Pollution by Toxic Substances.	January 16, 2018.	11/28/2023	• EPA approval finalized at [insert Federal Register citation].

EPA-APPROVED NEW JERSEY STATE REGULATIONS AND LAWS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 7, Chapter 27, Subchapter 18.	Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules).	November 6, 2017.	11/28/2023	• EPA approval finalized at [insert Federal Register citation].
Title 7, Chapter 27, Subchapter 19.	Control and Prohibition of Air Pollution by Oxides of Nitrogen.	January 16, 2018.	11/28/2023	• EPA approval finalized at [insert Federal Register citation]. • Subchapter 19 is approved into the SIP except for the following provisions: (1) Phased compliance plan through repowering in Section 19.21 that allows for implementation beyond May 1, 1999; and (2) phased compliance plan through the use of innovative control technology in Section 19.23 that allows for implementation beyond May 1, 1999.
Title 7, Chapter 27, Subchapter 21.	Emission Statements	January 16, 2018.	11/28/2023	• EPA approval finalized at [insert Federal Register citation]. • Section 7:27–21.3(b)(1) and 7:27–21.3(b)(2) of New Jersey's Emission Statement rule requires facilities to report on the following pollutants to assist the State in air quality planning needs: Hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1, 1, 1 trichloroethane, carbon dioxide and methane. EPA will not take SIP-related enforcement action on these pollutants.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Title 7, Chapter 27A, Subchapter 3.10.	Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act.	January 16, 2018.	11/28/2023	• EPA approval finalized at [insert Federal Register citation].
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

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[FR Doc. 2023–26022 Filed 11–27–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 1, 4, 9, 13, 39, and 52****[FAR Case 2020–011; Docket No. FAR–2020–011; Sequence No. 1]****RIN 9000–AO13****Federal Acquisition Regulation:
Implementation of Federal Acquisition
Supply Chain Security Act (FASCSA)
Orders****AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).**ACTION:** Interim rule; extension of comment period.

SUMMARY: DoD, GSA, and NASA issued an interim rule on October 5, 2023, amending the Federal Acquisition Regulation (FAR) to implement supply chain risk information sharing and exclusion or removal orders consistent with the Federal Acquisition Supply Chain Security Act of 2018 and a final rule issued by the Federal Acquisition Security Council. The deadline for submitting comments is being extended from December 4, 2023, to February 2, 2024, to provide additional time for interested parties to provide comments on the proposed rule. The effective date of this rule is not being changed and remains December 4, 2023.

DATES: For the interim rule published on October 5, 2023 (88 FR 69503), the deadline to submit comments is extended. Submit comments by February 2, 2024.

ADDRESSES: Submit comments in response to FAR Case 2020–011 via the Federal eRulemaking portal at <https://www.regulations.gov> by searching for “FAR Case 2020–011”. Select the link “Comment Now” that corresponds with FAR Case 2020–011. Follow the

instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2020–011” 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 “FAR Case 2020–011” 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. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Marissa Ryba, Procurement Analyst, at 314–586–1280 or marissa.ryba@gsa.gov. For information pertaining to status,

publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2023–06, FAR Case 2020–011.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA and NASA published an interim rule in the **Federal Register** at 88 FR 69503 on October 5, 2023. The comment period is extended to February 2, 2024, to allow additional time for interested parties to develop comments on the rule. The effective date of this rule is not being changed and remains December 4, 2023.

List of Subjects in 48 CFR Parts 1, 4, 9, 13, 39, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–26046 Filed 11–27–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230427–0115; RTID 0648–XD523]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Partial Holdback of Commercial Quota for Gag in the Gulf of Mexico

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

ACTION: Temporary rule; commercial quota holdback.

SUMMARY: NMFS issues this temporary rule to withhold a portion of the commercial allocation of gag for the 2024 fishing year in anticipation of the upcoming rulemaking for Amendment 56 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that would amend the FMP by implementing measures to end overfishing of gag and establish a rebuilding plan for the stock. These measures would, in part, reduce the commercial sector annual catch limit (ACL) and commercial quota. This temporary rule will withhold the

distribution of gag individual fishing quota (IFQ) allocation on January 1, 2024, to shareholders in the Groupers and Tilefishes IFQ (GT–IFQ) program in the amount equal to the anticipated reduction in the commercial quota and set the red grouper multi-use allocation to zero as required when gag is in a rebuilding plan.

DATES: This temporary rule is effective from January 1, 2024, until June 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: daniel.luers@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the Gulf of Mexico (Gulf) includes gag and is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and approved and implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Gulf gag fishery is divided into commercial and recreational sectors, with a stock ACL that is allocated 39 percent to the commercial sector and 61 percent to the recreational sector. The commercial sector is managed under the GT–IFQ program and landings are constrained to the commercial quota, which is reduced from the commercial ACL. Recreational harvest is currently permitted from June 1 each year until NMFS projects that recreational landings reach the recreational ACL. If the recreational ACL is exceeded, recreational harvest is constrained the following year to the recreational annual catch target. All weights described in this temporary rule are in gutted weight.

In January 2022, NMFS notified the Council that gag is overfished and undergoing overfishing. In July 2022, the Council sent a letter to NMFS recommending interim measures to reduce overfishing beginning in the 2023 fishing year while the Council developed Amendment 56 to the FMP to implement permanent measures to end overfishing and rebuild the stock. The interim measures, effective from May 3, 2023, through May 2, 2024, reduced the gag catch limits and modified the recreational season (88 FR 27701, May 3, 2023). Therefore, the current commercial ACL and commercial quota, implemented through those interim measures, are 258,000 lb (117,027 kg) and 199,000 lb (90,265 kg), respectively.

On October 18, 2023, NMFS published an announcement of availability for Amendment 56 (88 FR 71812, October 18, 2023), and on November 9, NMFS published a

proposed rule to implement Amendment 56 (88 FR 77246, November 9, 2023). As described in the announcement of availability and proposed rule, if Amendment 56 is approved and implemented the commercial ACL and commercial quota for the 2024 fishing year would be further reduced to 155,000 lb (70,307 kg) and 147,000 lb (66,678 kg). Under the GT–IFQ program, annual quota is distributed to IFQ shareholders as allocation (including multi-use allocation) on January 1, and most IFQ program participants begin to use or transfer their allocation early in each year. After shareholders begin transferring or landing allocation, NMFS is not able to retroactively withdraw allocation from shareholder accounts if a commercial quota decrease became effective after the beginning of the fishing year. Regulations at 50 CFR 622.22(a)(4), authorize NMFS to withhold distribution of IFQ allocation on January 1 in the amount equal to an expected reduction in the commercial quota. Accordingly, through this temporary rule NMFS withholds distribution of the portion of the 2024 commercial quota of gag equal to the anticipated reduction recommended by the Council in Amendment 56. Because Amendment 56 would also establish a rebuilding plan for gag, multi-use allocation of red grouper would be set a zero on implementation. Therefore, through this temporary rule, NMFS will set the red grouper IFQ multi-use allocation at zero.

NMFS will distribute the available gag allocation, on January 1, 2024.

If NMFS does not implement Amendment 56, including the revised commercial quota, by June 1, 2024, then NMFS will distribute the withheld allocation back to the current shareholders, as determined by the shares held on the same date that NMFS distributes the withheld IFQ quota.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken under 50 CFR 622.22(a)(4), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866, and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulation at 50 CFR 622.22(a)(4) has already been subject to notice and public comment,

and the public is aware that the Council has submitted Amendment 56 to end overfishing of gag beginning in the 2024 fishing year. Therefore, all that remains is to notify the public that a portion of the commercial gag allocation in 2024 will be withheld to allow for the implementation of the Amendment 56 in 2024, if approved. Such procedures are contrary to the public interest because notice and comment would not allow NMFS to implement the Amendment 56 measures to end overfishing during the 2024 fishing year. If NMFS does not withhold the necessary commercial gag allocation, shareholders can begin transferring or landing allocation on January 1, 2024, and NMFS would not be able to retroactively withdraw allocation from shareholder accounts.

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

Dated: November 22, 2023.

Kelly Denit,

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

[FR Doc. 2023–26211 Filed 11–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200124–0029; RTID 0648–XD535]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2024 Red Snapper Private Angling Component Closure in Federal Waters Off Texas

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a closure for the 2024 fishing season for the red snapper recreational private angling component in the exclusive economic zone (EEZ) off Texas in the Gulf of Mexico (Gulf) through this temporary rule. The red snapper recreational private angling component in the Gulf EEZ off Texas will close on January 1, 2024, until 12:01 a.m., local time, on June 1, 2024. This closure is necessary to prevent the private angling component from exceeding the Texas regional management area annual catch

limit (ACL) and to prevent overfishing of the Gulf red snapper resource.

DATES: This closure is effective at 12:01 a.m., local time, on January 1, 2024, until 12:01 a.m., local time, on June 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: Daniel.Luers@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is approved by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and implemented through regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component, and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational ACL (recreational quota) between the components and established separate seasonal closures for the two components. On February 6, 2020, NMFS implemented Amendments 50 A–F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocated a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation.

As described at 50 CFR 622.23(c), a Gulf state with an active delegation may request that NMFS close all, or an area of, Federal waters off that state to the harvest and possession of red snapper by private anglers. The state is required to request the closure by letter to NMFS, providing dates and geographic coordinates for the closure. If the request is within the scope of the analysis in Amendment 50A, NMFS publishes a notification in the **Federal Register** implementing the closure for the fishing year. Based on the analysis in Amendment 50A, Texas may request a closure of all Federal waters off the State to allow a year-round fishing season in state waters. As described at

50 CFR 622.2, “off Texas” is defined as the waters in the Gulf west of a rhumb line from 29°32.1′ N lat., 93°47.7′ W long. to 26°11.4′ N lat., 92°53′ W long., which line is an extension of the boundary between Louisiana and Texas.

On November 8, 2023, NMFS received a request from the Texas Parks and Wildlife Department (TPWD) to close the EEZ off Texas to the red snapper recreational private angling component during the 2024 fishing year. Texas requested that the closure be effective from January 1 through May 31, 2024. NMFS has determined that this request is within the scope of the analysis contained within Amendment 50A, which analyzed the potential impacts of a closure of all Federal waters off Texas, consistent with Texas’s intent to maintain a year-round fishing season in State waters during which a part of Texas’ ACL could be caught.

Therefore, the red snapper recreational private angling component in the Gulf EEZ off Texas will close at 12:01 a.m., local time, on January 1, 2024, until 12:01 a.m., local time, on June 1, 2024. This closure applies to all private-anglers (those on board vessels that have not been issued a valid charter vessel/headboat permit for Gulf reef fish) regardless of which state they are from or where they intend to land. Once the EEZ off Texas opens on June 1, 2023, TPWD will continue to monitor private recreational landings, and if necessary, will request that NMFS again close the EEZ in 2024 to ensure the Texas regional management area ACL is not exceeded.

On and after the effective dates of this closure in the EEZ off Texas, the harvest and possession of red snapper in the EEZ off Texas by the private angling component is prohibited and the bag and possession limits for the red snapper private angling component in the closed area is zero.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.23(c), which was issued pursuant to 304(b), and is exempt from review under Executive Order 12866, and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the area closure authority

and the state-specific private angling ACLs has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because a failure to implement

the closure immediately would be inconsistent with Texas's State management plan and may result in less access to red snapper in State waters.

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

Dated: November 22, 2023.

Kelly Denit,

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

[FR Doc. 2023-26187 Filed 11-27-23; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 88, No. 227

Tuesday, November 28, 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 39

[Docket No. FAA-2023-1211; Project Identifier MCAI-2022-01598-E]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM) that proposed to adopt a new airworthiness directive (AD) that would have applied to all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model BR700-715A1-30, BR700-715B1-30, and BR700-715C1-30 engines. The NPRM would have required repetitive fluorescent penetrant inspections (FPIs) of the front flange scallops of the LPC booster rotor for any cracks, replacement or repair of the LPC booster rotor if necessary and, as an optional terminating action to the repetitive FPIs, a visual inspection for malformed scallop edge geometry and malformed surface conditions, as specified in a European Union Aviation Safety Agency (EASA) AD. Since the NPRM was issued, the FAA issued AD 2023-17-11, which addresses the unsafe condition identified in the NPRM. Accordingly, the NPRM is withdrawn.

DATES: As of November 28, 2023, the proposed rule which was published in the **Federal Register** on June 14, 2023 (88 FR 38762), is withdrawn.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1211; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this AD action (withdrawal), the mandatory continuing

airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238-7241; email: Sungmo.D.Cho@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, had issued EASA AD 2022-0252 dated December 16, 2022 (later revised to EASA AD 2022-0252R1, dated April 28, 2023 (EASA AD 2022-0252R1)) to correct an unsafe condition for all RRD Model BR700-715A1-30, BR700-715B1-30, and BR700-715C1-30 engines. EASA later issued EASA AD 2023-0152, dated July 25, 2023 (EASA AD 2023-0152) (also referred to as the MCAI), which supersedes EASA AD 2022-0252R1.

The FAA issued an NPRM that proposed to amend 14 CFR part 39 by adding an AD for all RRD Model BR700-715A1-30, BR700-715B1-30, and BR700-715C1-30 engines, which was published in the **Federal Register** on June 14, 2023 (88 FR 38762). The NPRM was prompted by EASA AD 2022-0252, which stated that occurrences have been reported of finding malformed scallop edge geometry and surface conditions at the front flange scallops of certain LPC booster rotors. The NPRM proposed to require repetitive FPIs of the front flange scallops of the LPC booster rotor for any cracks, replacement, or repair of the LPC booster rotor if necessary and, as an optional terminating action to the repetitive FPIs, a visual inspection for malformed scallop edge geometry and malformed surface conditions.

Actions Since the NPRM Was Issued

Since the NPRM was issued, the FAA has reviewed the MCAI, which supersedes EASA AD 2022-0252R1. The MCAI discusses the reported occurrences of finding malformed scallop edge geometry and surface conditions at the front flange of scallops of certain LPC booster rotors, which

were also discussed in EASA AD 2022-0252R1. The MCAI includes both more restrictive compliance times for certain engines and extended compliance times for certain other engines. The MCAI also refers to the updated service information referenced by the commenters, specifies repetitive FPIs of the front flange scallops of the LPC booster rotor for any cracks, replacement or repair of the LPC booster rotor if necessary and, as an optional terminating action to the repetitive FPIs, a visual inspection for malformed scallop edge geometry and malformed surface conditions.

Additionally, the FAA received comments on the NPRM from four commenters. Commenters included Hawaiian Airlines (Hawaiian), Delta Air Lines (Delta), The Boeing Company, and Air Line Pilots Association, International (ALPA). Boeing and ALPA supported the NPRM without change. However, comments from Hawaiian and Delta identified concerns with the NPRM. These comments requested a revision to the NPRM to refer to the updated manufacturer service information and the inclusion of suitable materials required to perform the required actions.

Consequently, the FAA issued AD 2023-17-11, Amendment 39-22537 (88 FR 60566, September 5, 2023), which was prompted by EASA AD 2023-0152. AD 2023-17-11 incorporates the specifications of EASA AD 2023-0152 to correct an unsafe condition for all RRD Model BR700-715A1-30, BR700-715B1-30, and BR700-715C1-30 engines; refers to the revised service information (which addresses the concerns of both Delta and Hawaiian commenters); addresses the unsafe condition and negates the need for this proposed AD.

FAA's Determination

The FAA has determined that the proposed AD is not necessary to address the identified safety concern. Accordingly, the NPRM is withdrawn.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

■ Accordingly, the notice of proposed rulemaking, Docket No. FAA–2023–1211; Project Identifier MCAI–2022–01598–E, which was published in the **Federal Register** on June 14, 2023 (88 FR 38762), is withdrawn.

Issued on November 20, 2023.

Ross Landes,

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

[FR Doc. 2023–26090 Filed 11–27–23; 8:45 am]

BILLING CODE 4910–13–P

PEACE CORPS**22 CFR Part 303**

RIN 0420–AA31

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: The Peace Corps.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations that the Peace Corps follows in processing requests under the Freedom of Information Act (FOIA) to comply with the FOIA Improvement Act of 2016. The amendments would clarify and update procedures for requesting information from the Peace Corps and procedures that the Peace Corps follows in responding to requests from the public.

DATES: Comments must be received by December 28, 2023.

ADDRESSES: You may send comments, identified by Regulatory Information Number (RIN) 0420–AA31, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.

- *Email:* policy@peacecorps.gov. Include RIN 0420–AA31 in the subject line of the message.

- *Mail:* The Peace Corps/The Office of the General Counsel/1275 First Street NE/Washington, DC 20526.

Instructions: All submissions received must include the receiving agency's name, which is the Peace Corps, designate the Office of the General Counsel, and note the RIN for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David van Hoogstraten, Supervisory

Associate General Counsel at (202) 692–2150 or dvanhoogstraten@peacecorps.gov.

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (the Act). The Act specifically requires all agencies to review and update their FOIA regulations in accordance with its provisions, and the Peace Corps is making changes to its regulations accordingly. Among other requirements, the Act addresses a range of procedural issues that affect Peace Corps FOIA regulations, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that agencies provide notice to requesters of dispute resolution services at various times throughout the FOIA process. The proposed rule would revise and update policies and procedures concerning the Peace Corps FOIA process, which were last published in the **Federal Register** (FR) on April 10, 2014 (79 FR 19816), entered into effect on May 12, 2014, and currently appear at 22 CFR part 303.

Request for Comments: The Peace Corps invites public comment on all aspects of this proposed rule and will take those comments into account before publishing a final rule. The proposed rule makes small adjustments for clarification, rearranges and redesignates sections in a more logical order, streamlines the language of some procedural provisions, and makes the following key changes:

22 CFR Part 303

(1) *Definitions.* Section 303.2 is expanded to revise current definitions and add definitions for the following terms: “Compelling need,” “Confidential commercial information,” “Direct costs,” “Unusual circumstances,” and “Initial denial authority (IDA).”

(2) *Public reading room.* Section 303.5 is revised to delete reference to a physical public reading room and to provide for a public electronic FOIA Library on the Peace Corps website on which certain specified records will be made available. Also, related to this change, the former § 303.6 (*Procedures for use of public reading room.*) is deleted.

(3) *Requests for records.* This section, the former § 303.8, has been redesignated as § 303.7 and is updated to provide revised procedures for the following paragraphs:

- (b) through (d) Submitting a FOIA request;
- (f) Requesting a waiver or reduction of fees;

- (h) Initial response/delays to FOIA requests;
- (j) Giving notice of delays; and
- (l) Requesting expedited processing and appeals from denials of requests for expedited processing.

(4) *Timing of responses to requests.* A new § 303.8 sets forth guidelines and procedures for:

(a) Order of response to FOIA requests;

(b) Multitrack processing;

(c) Delays in responses due to unusual circumstances and notice of such delays and of the availability of both the FOIA Public Liaison and the dispute resolution services provided for by the Office of Government Information Services (OGIS);

(d) Aggregating requests; and

(e) Expedited processing.

(5) *Exemptions for withholding records.* A revised § 303.9 provides that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) *Responses to requests.* A new § 303.11 sets forth guidelines and procedures for:

(a) Electronic communication with requesters;

(b) Acknowledgement of requests that will take longer than 10 working days to process;

(c) Estimated dates of completion and interim responses;

(d) The granting of requests;

(e) Adverse determination of requests;

(f) Markings on released documents; and

(g) Use of records exclusions.

(7) *Appeals.* A renumbered § 303.13, formerly § 303.12, is updated to set forth revised guidelines and procedures for:

(a) Submitting appeals;

(b) Adjudication of appeals;

(c) Decisions on appeals;

(d) Engaging in dispute resolution services offered by OGIS; and

(e) When an appeal is required.

(8) *Confidential commercial information.* A new § 303.14 sets forth guidelines and procedures for:

(a) Designation of confidential commercial information;

(b) When notice to submitters is required;

(c) Exceptions to submitter notice requirements;

(d) Opportunity to object to disclosure;

(e) Analysis of objections;

(f) Notice of intent to disclose;

(g) Notice of FOIA lawsuit; and

(h) Requester notification.

(9) *Preservation of records.* A new § 303.15 sets forth guidelines and procedures for preserving records

pertaining to the requests it receives under this subpart.

(10) *Fees*. A revised § 303.16, formerly § 303.13, incorporates the new statutory restrictions on charging fees in certain circumstances, reflects developments in the case law, and streamlines the description of the factors to be considered when making fee waiver determinations. In this regard, § 303.16(a) is revised to conform to recent appellate court decisions addressing two FOIA fee categories: “representative of the news media” and “educational institution.” Section 303.16(e)(2), which addresses restrictions on charging fees when the FOIA’s time limits are not met, is revised to reflect changes made to those restrictions by the FOIA Improvement Act of 2016. Specifically, these changes reflect that the Peace Corps may not charge search fees or duplication fees for representatives of the news media and educational/non-commercial scientific institution requesters when the Peace Corps fails to comply with the FOIA’s time limits. The restriction on charging fees is excused and the Peace Corps may charge fees as usual when it satisfies one of three exceptions detailed at 5 U.S.C. 552(a)(4)(A)(viii)(II) and incorporated into this section at § 303.16(e)(2)(ii) through (iv). Lastly, § 303.16(l), which addresses the requirements for a waiver or reduction of fees, is revised to specify that requesters may seek a waiver of fees and to streamline and simplify the description of the factors to be considered by the Peace Corps when making fee waiver determinations.

(11) *Procedures for responding to a subpoena*. A redesignated § 303.17, formerly § 303.14, is updated to revise the definition of “employee” in this section to include volunteers and trainees of the Peace Corps for purposes only of § 303.17.

(12) *Other rights and services*. A new § 303.18 sets forth that nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of

Regulation, and the Peace Corps has determined it to be non-significant within the meaning of Executive Order 12866. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See the Office of Management and Budget’s (OMB’s) Memorandum titled “Interim Guidance Implementing section 2 of the Executive order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017), supplemented by OMB’s Memorandum titled “Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs.’”

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 22 CFR Part 303

Freedom of Information Act.

For the reasons set out in the preamble, the Peace Corps proposes to amend 22 CFR part 303 as follows:

PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 303 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 22 U.S.C. 2501 *et seq.*; 31 U.S.C. 3717.

■ 2. Revise § 303.2 as follows:

§ 303.2 Definitions.

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester has made a commercial use request, the Peace Corps will look to the use to which a requester will put the documents requested. When the Peace Corps has reasonable cause to doubt the requester’s stated use of the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a category.

Compelling need means:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Peace Corps or Federal Government activity and the request is made by a person primarily engaged in disseminating information; or

(3) A matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps’ or the Federal Government’s integrity which affect public confidence.

Confidential commercial information means commercial or financial information obtained by the Peace Corps from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Direct costs are those expenses that the Peace Corps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses, such as the costs of space, and of heating or lighting a facility.

Duplication means the process of making a copy of a record requested pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education which operates a program or programs of scholarly research.

Expedited processing means the process set forth in the FOIA that allows requesters to ask for expedited processing of their FOIA request if they can demonstrate a compelling need.

Fee waiver means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

FOIA Public Liaison means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Initial denial authority (IDA) is an official who has been granted authority as the FOIA Officer who may deny FOIA requests of the Peace Corps based on one or more of the nine categories of exemptions from mandatory disclosure. An IDA also: denies a fee category claim by a requester; denies a request for expedited processing due to demonstrated compelling need; denies a request for a waiver or reduction of fees; reviews a fee estimate; and confirms that no records were located in response to a request.

Non-commercial scientific institution means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

OIG records means those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.

Records means books, papers, maps, photographs, or other documentary materials, regardless of whether the format is physical or electronic, made or received by the Peace Corps in connection with the transaction of Peace Corps' business and preserved by the Peace Corps as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Peace Corps, or

because of the informational value of data in them. The term does not include, inter alia, books, magazines, or other materials acquired solely for library purpose, or that are otherwise publicly available.

Representative of the news media is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

Requester category means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

Review means the process of examining a document located in response to a request to determine whether any portion of such document is exempt from disclosure. It also includes processing any such document for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive

manner. If the Agency cannot identify the requested records after a 2 hour search, it can determine that the records were not adequately described and ask the requester to provide a more specific request.

Submitter means any person or entity, including a corporation, state, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

Unusual circumstances, as used in this part, mean circumstances attending a request for information and are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request: (1) The need to search for and collect the requested records from offices or locations that are separate from the office processing the request; (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization having a substantial interest in the determination of the request or among two or more offices of the Peace Corps having a substantial subject matter interest therein.

■ 3. Revise § 303.3 to read as follows:

§ 303.3 Policy.

(a) The Peace Corps will make its records concerning its operations, activities, and business available to the public consistent with the requirements of the FOIA and will not withhold requested information unless the Peace Corps reasonably foresees that disclosure would harm an interest protected by an exemption under the FOIA or a disclosure that is prohibited by law.

(b) The Peace Corps may make discretionary disclosures of records or information, without a formal FOIA request and that may be exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(c) Requests for records of the Office of Inspector General (OIG records), as defined in § 303.2, and appeals from denials of requests for OIG records are subject to this policy and will be granted or denied consistent with § 303.10(b) through (c) through their own FOIA adjudication process.

■ 4. Revise § 303.5 to read as follows:

§ 303.5 FOIA Library.

(a) The public reading room is no longer physically available. The Peace Corps makes information available to the public electronically through the Peace Corps' FOIA Library on its public website at <https://www.peacecorps.gov/about/open-government/>.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the FOIA Library:

(1) All final public opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases that involve the Peace Corps;

(2) Statements of policy and interpretations adopted by the Peace Corps that are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) Copies of frequently requested records, regardless of form or format, with a general index of such records:

(i) Released to any person in response to a public request for records which the Peace Corps determines are likely to become subject to subsequent requests for substantially the same records or

(ii) For which there have been 3 or more requests;

(5) The index required by § 303.6; and

(6) Other records the Peace Corps has determined are of general interest to members of the public in understanding activities of the Peace Corps or in dealing with the Peace Corps in connection with those activities.

(c) Records required by the FOIA to be available in the FOIA Library may be exempt from mandatory disclosure pursuant to section 552(b) of the FOIA. Such records will not be made available in the FOIA Library. Other records maintained in the FOIA Library may be edited by the redaction of information protected under section 552(b) of the FOIA. The extent of the redaction shall be indicated, unless doing so would harm an interest protected by the exemption under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction was made.

(d) Records required by the FOIA to be maintained shall be made available in the Peace Corps' electronic FOIA Library.

(e) Most public electronic records will also be made available to the public on the Peace Corps website at <https://www.peacecorps.gov>.

§ 303.6 [Removed]

■ 5. Remove § 303.6.

§§ 303.7 and 303.8 [Redesignated as §§ 303.6 and 303.7]

■ 6. Redesignate §§ 303.7 and 303.8 as §§ 303.6 and 303.7, respectively.

■ 7. Revise newly redesignated § 303.7 to read as follows:

§ 303.7 Requests for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** or to be made available in the FOIA Library, Peace Corps records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

(b) Requests for records under this section shall be:

(1) Made in writing, shall include the name of the requester, and the envelope, email, and/or the letter shall be clearly marked "Freedom of Information Request." All such requests shall be addressed to the FOIA Officer. Requests by letter shall be directed to Peace Corps FOIA Officer, 1275 First Street NE, Washington, DC 20526. Requests by email shall be directed to FOIA@peacecorps.gov. Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as it is properly identified and will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer.

Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. All paper requests shall be stamped "received" on the date it is received by the FOIA Officer. Electronic requests are deemed to be "received" on the date in which the FOIA Officer acknowledges receipt.

(2) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph (b).

(c) The Peace Corps requires that first-party requesters provide the following information so that the Peace Corps can

protect the personal information found in its files and ensure that records are disclosed only to the proper persons: the requester's full name, current address, citizenship or legal permanent resident alien status, date and place of birth (city, state, and country), and a copy of a photo ID. A first-party request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746 as a substitute for notarization. A requester may request this penalty of perjury statement from the FOIA office to complete for submission.

(d) To facilitate the location of records by the Peace Corps, a requester should try to provide the following kinds of information, if known:

(1) The specific event or action to which the record refers;

(2) The unit or program of the Peace Corps which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, a particular form, a contract, or a report;

(5) Personnel of the Peace Corps who may have prepared or have knowledge of the record; or

(6) Citations to newspapers or publications which have referred to the record.

(e) The Peace Corps is not required to create a record or to perform research to satisfy a request.

(f) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in § 303.16(k).

(g) The Peace Corps will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(h)(1) The FOIA Officer or OIG FOIA Officer, upon request for any records made in accordance with this section, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, as defined in § 303.2, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) If the FOIA Officer determines that a request or portion thereof is for OIG records, the FOIA Officer shall promptly

refer the request or portion thereof to the OIG FOIA Officer and send notice of such action to the requester. In such case, the OIG FOIA Officer shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(i) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (h) of this section, the Peace Corps may ask the requester to narrow the request or agree to an additional delay.

(j) When no determination can be dispatched within the applicable time limit, the FOIA Officer or the OIG FOIA Officer shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Associate Director for the Office of Management or the Inspector General, in accordance with § 303.13. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 303.13. The FOIA Officer or the OIG FOIA Officer may ask the requester to forego an appeal until a determination is made.

(k) After it has been determined that a request will be granted, the responsible official will act with due diligence in providing a prompt response.

(l) Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need as defined in § 303.2.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and received by the Peace Corps pursuant to § 303.7(b).

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need, as defined in § 303.2, that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within 10 business days of its receipt of a request for expedited processing, the FOIA Officer or the OIG FOIA Officer shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

(5) Appeals regarding expedited processing denials shall be made to the Associate Director for the Office of Management, or in the case of a denial by the OIG FOIA Officer of a request for expedited processing, the Inspector General, who shall respond within 10 business days of receipt of the appeal.

■ 8. Add new § 303.8 to read as follows:

§ 303.8 Timing of responses to requests.

(a) *In general.* The Peace Corps ordinarily will respond to requests according to their order of receipt. The response time will commence on the date that the request is received by the Peace Corps' FOIA Officer or by the OIG FOIA Officer.

(b) *Multitrack processing.* The Peace Corps designates a specific track for requests that are granted expedited processing in accordance with the standards set forth in paragraph (e) of this section. The Peace Corps may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the Peace Corps may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. The Peace Corps will advise requesters of the track into which their request falls and, when appropriate, should offer the requesters an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the Peace Corps cannot meet the time limit for processing a request because of unusual circumstances as defined in § 303.2 and the Peace Corps extends the time limit on that basis, the Peace Corps will, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the Peace Corps estimates processing of the request will be completed. Where the extension exceeds 10 working days, the Peace Corps will provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or

modified request. The Peace Corps will make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The Peace Corps FOIA Public Liaison is identified on the agency's FOIA Open Government web page <https://www.peacecorps.gov/about/open-government/foia/> and is available at FOIA@peacecorps.gov. The Peace Corps will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(d) *Aggregating requests.* To address unusual circumstances as defined in § 303.2, the Peace Corps may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Peace Corps will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) The Peace Corps will process requests and appeals on an expedited basis whenever it is determined that they involve a compelling need as defined in § 303.2.

(2) A request for expedited processing of a request for information may be made at any time and submitted to the Peace Corps FOIA Officer or to the OIG FOIA Officer in the case of a request concerning OIG records. When making a request for expedited processing of an administrative appeal, the request should be submitted to the Associate Director for the Office of Management, or in the case of an appeal concerning OIG records, the Inspector General.

(3) A requester who seeks expedited processing will submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, in § 303.2, paragraph (2) of the definition for compelling need, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject may be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, the

Peace Corps may waive the formal certification requirement.

(4) The Peace Corps will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and processed as soon as practicable. If a request for expedited processing is denied, the Peace Corps will act on any appeal of that decision expeditiously.

■ 9. Amend § 303.9 by revising paragraphs (a) introductory text, (a)(5), and paragraph (b) introductory text to read as follows:

§ 303.9 Exemptions for withholding information.

(a) The Peace Corps may withhold information in part or in its entirety using FOIA exemptions listed in 5 U.S.C. 552 (b), when the Initial Denial Authority (IDA) reasonably foresees that the disclosure of such information would cause harm to an interest protected by the exemption or exemptions, or if disclosure is prohibited by law. The Peace Corps will take reasonable steps necessary to segregate and release nonexempt information. The Peace Corps may withhold a requested record from public disclosure only if the record fits within one or more of the following FOIA exemptions:

* * * * *

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Peace Corps, except that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

* * * * *

(b) The IDA may also withhold information applicable under the Privacy Act of 1974, 5 U.S.C. 552a(j) and (k) when the records are managed within a system of records; see 22 CFR part 308.

* * * * *

■ 10. Amend § 303.10 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 303.10 Responsibilities and authorities.

* * * * *

(c) *Authority to grant or deny appeals.* The Associate Director for the Office of Management is authorized to grant or deny appeals under § 303.13(a) through (c) except in the case of appeals from

denials of requests for OIG records. The Inspector General is authorized to grant or deny appeals under § 303.13(a) through (c) from denials of requests for OIG records. Both the Associate Director for the Office of Management and the Inspector General shall follow this part in processing appeals.

* * * * *

§§ 303.13 and 303.14 [Redesignated as § 303.16 and 303.17]

■ 11. Redesignate §§ 303.13 and 303.14 as §§ 303.16 and 303.17, respectively.

§§ 303.11 and 303.12 [Redesignated as § 303.13 and 303.14]

■ 12. Redesignate §§ 303.11 and 303.12 as §§ 303.13 and 303.14, respectively

■ 13. Add new § 303.11 to read as follows:

§ 303.11 Responses to requests.

(a) *In general.* The Peace Corps, to the extent practicable, will communicate with requesters having access to the internet electronically, such as email or web portal.

(b) *Acknowledgments of requests.* The Peace Corps will acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The Peace Corps will include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, the Peace Corps will provide an estimated date by which the Peace Corps expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Peace Corps may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the Peace Corps determines it will grant a request in full or in part, it will notify the requester in writing. The Peace Corps will also inform the requester of any fees charged under § 303.16 and will disclose the requested records to the requester promptly upon payment of any applicable fees. The Peace Corps will inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* If the Peace Corps makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not

reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Markings on released documents.* The Peace Corps will release any reasonably segregable portion of a record after redaction of the exempt portions. The amount of information redacted and the exemption under which the redaction is made shall be indicated on the released portion of the record unless doing so would harm an interest protected by an applicable exemption. The location of the information redacted will also be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) In the event that the Peace Corps identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the Peace Corps will confer with Department of Justice, Office of Information Policy (OIP), prior to application of the exclusion.

(2) The Peace Corps, when invoking an exclusion, should document its consultation with OIP.

■ 14. Revise newly redesignated § 303.12 to read as follows:

§ 303.12 Denials.

(a) A denial of a written request for a record or information that complies with the requirements of § 303.7 shall be in writing and shall include, as applicable:

(1) The name and title or position of the responsible IDA;

(2) The signature of the agency's FOIA Officer, or in the case of denials of requests concerning OIG records, the signature of the Inspector General or designee;

(3) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request;

(4) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by redactions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(5) For any information denied under Exemption 3, the specific statute relied upon to deny the information along with a short description of the statute;

(6) A statement that the requester must appeal no later than 90 days after the date of the denial and along with instructions on how to appeal to the appellate authority. The instructions will include the appellate authority's duty title, the mailing address for the appeal, and instructions on how the requester can appeal electronically; as defined under § 303.13; and

(7) A statement notifying the requester of the assistance available from the Peace Corps' FOIA Public Liaison and the dispute resolution services offered by OGIS.

(b) [Reserved]

■ 15. Revise newly redesignated § 303.13 to read as follows:

§ 303.13 Appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG records, the Inspector General. Examples of adverse determinations are provided in § 303.11(e). Requesters can submit appeals by mail or online in accordance with the following requirements or with those on the Peace Corps' website. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response. The appeal should clearly identify the Peace Corps' determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will consider all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Associate Director of the Office of Management or, in the case of a denial of a request for OIG records, the Inspector General, will take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* The Associate Director of the Office of Management or designee, or in the case

of a denial of a request for OIG records, the Inspector General or designee, will provide the decision on an appeal in writing. A decision that upholds a determination in whole or in part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the dispute resolution services offered by the OGIS of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a decision is remanded or modified on appeal, the Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will notify the requester of that determination in writing. The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the Peace Corps agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When an appeal is required.* Before seeking review by a court of a Peace Corps' adverse determination, a requester generally will first submit a timely administrative appeal.

■ 16. Add new § 303.14 to read as follows:

§ 303.14 Confidential commercial information.

(a) *Designation of confidential commercial information.* A submitter of confidential commercial information as defined in § 303.2 will use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(b) *When notice to submitters is required.* (1) The Peace Corps will promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the Peace

Corps determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Peace Corps has a reason to believe that the requested information may be protected from disclosure under Exemption 4 but has not yet determined whether the information is protected from disclosure.

(2) The notice will either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the Peace Corps may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(c) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The Peace Corps determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, the Peace Corps will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(d) *Opportunity to object to disclosure.* (1) The Peace Corps will specify a reasonable time period within which the submitter may respond to the notice referenced in paragraph (b) of this section.

(2) If a submitter has any objections to disclosure, it should provide the Peace Corps a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter will explain why the information constitutes a trade secret or commercial or financial information that is commercially confidential.

(3) A submitter who fails to respond within the time period specified in the

notice will be considered to have no objection to disclosure of the information. The Peace Corps is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this part may itself be subject to disclosure under the FOIA.

(e) *Analysis of objections.* The Peace Corps will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(f) *Notice of intent to disclose.* Whenever the Peace Corps decides to disclose information over the objection of a submitter, the Peace Corps will provide the submitter written notice, which will include:

- (1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;
- (2) A description of the information to be disclosed or copies of the records as the Peace Corps intends to release them; and
- (3) A specified disclosure date, which will be a reasonable time after the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Peace Corps will promptly notify the submitter.

(h) *Requester notification.* The Peace Corps will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

■ 17. Add § 303.15 to read as follows:

§ 303.15 Preservation of records.

The Peace Corps will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. The Peace Corps will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

■ 18. Revise newly redesignated § 303.16 to read as follows:

§ 303.16 Fees.

(a) *In general.* The Peace Corps will charge for processing requests under the FOIA in accordance with the provisions of this section and with the Guidelines

of the Office of Management and Budget (OMB). For purposes of assessing fees, the FOIA establishes three categories of requesters:

- (1) Commercial use requesters;
- (2) Non-commercial scientific or educational institutions or news media requesters; and
- (3) All other requesters.

(b) *Fee assessment.* Different fees are assessed depending on the requester category and approved by the FOIA Officer. Requesters may seek a fee waiver. The Peace Corps will consider individual requests for fee waivers in accordance with the requirements in paragraph (l) of this section. To resolve any fee issues that arise under this section, Peace Corps may contact a requester for additional information. The Peace Corps will ensure that searches, reviews, and duplications are conducted in the most efficient and the least expensive manner. The Peace Corps ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters will pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the Peace Corps.

(c) *Fee charging considerations.* (1) Whether the request is a commercial use request as defined in § 303.2. The Peace Corps' decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Peace Corps will notify requesters of their placement in this category.

(2) The sum of direct costs as defined in § 303.2.

(3) The cost of duplication as defined in § 303.2.

(4) Whether the requester is an educational institution as defined in § 303.2. A requester in this fee category will show that the request is made in connection with his or her role at the educational institution. The Peace Corps may seek verification from the requester that the request is in furtherance of scholarly research, and the Peace Corps will advise requesters of their placement in this category.

Example 1 to paragraph (c)(4). A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2 to paragraph (c)(4). A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an

institutional request, regardless of whether it was written on institutional stationery.

Example 3 to paragraph (c)(4). A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) Whether the requester is a noncommercial scientific institution as defined in § 303.2. A requester in this category will show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. The Peace Corps will advise requesters of their placement in this category.

(6) Whether the requester is a representative of the news media as defined in § 303.2. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Peace Corps may also consider a requester's past publication record in making this determination. The Peace Corps will advise requesters of their placement in this category.

(7) The cost of the review as defined in § 303.2. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 303.14, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) The cost of the time involved in the search as defined in § 303.2. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(d) *Charging fees.* In responding to FOIA requests, the Peace Corps will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section. Because the fee amounts provided under paragraph (m) of this section already account for the direct costs associated with a given fee type, the Peace Corps will not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The Peace Corps will charge search fees for all other requesters, subject to the restrictions of paragraph (e) of this section. The Peace Corps may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be charged.

(iii) The Peace Corps will charge the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. The Peace Corps will notify the requester of the costs associated with creating such a program, and the requester will agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by the Peace Corps at a Federal records center operated by the National Archives and Records Administration (NARA), agencies will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* The Peace Corps will charge duplication fees to all requesters, subject to the restrictions of paragraph (e) of this section. The Peace Corps will honor a requester's preference for receiving a record in a particular form or format where the Peace Corps can readily reproduce it in the form or format requested. Where photocopies are supplied, the Peace Corps will provide one copy per request at no charge up to 100 pages. For copies of records produced on tapes, disks, or

other media, the Peace Corps will charge the direct costs of producing the copy, including operator time. Where paper documents will be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester will also pay the direct costs associated with scanning those materials. For other forms of duplication, the Peace Corps will charge the direct costs.

(3) *Review.* The Peace Corps will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.*, the review conducted by the Peace Corps to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Peace Corps' re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (d)(1)(ii) of this section.

(e) *Restrictions on charging fees.* (1) When the Peace Corps determines that a requester is an educational institution, non-commercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(2)(i) If the Peace Corps fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (e)(1) of this section, may not charge duplication fees, except as described in (e)(2)(ii) through (iv).

(ii) If the Peace Corps has determined that unusual circumstances as defined in § 303.2 apply and the Peace Corps provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(iii) If the Peace Corps has determined that unusual circumstances as defined in § 303.2 apply and more than 5,000 pages are necessary to respond to the request, the Peace Corps may charge search fees, or, in the case of requesters described in paragraph (e)(1) of this section, may charge duplication fees, if the following steps are taken: the Peace Corps will have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA;

and the Peace Corps will have discussed with the requester via written mail, email, or telephone (or made not less than three good faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Peace Corps may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, the Peace Corps will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25.

(f) *Notice of anticipated fees in excess of \$25.00.* (1) When the Peace Corps determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the Peace Corps will notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Peace Corps will advise the requester accordingly. If the request is not for noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) If the Peace Corps notifies the requester that the actual or estimated fees are in excess of \$25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the

statutory entitlements. The requester will provide the commitment or designation in writing, and will, when applicable, designate an exact dollar amount the requester is willing to pay. The Peace Corps will not accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Peace Corps estimates that the total fee will exceed that amount, the Peace Corps will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Peace Corps will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Peace Corps will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(g) *Charges for other services.* Although not required to provide special services, if the Peace Corps chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(h) *Charging interest.* The Peace Corps may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the Peace Corps. The Peace Corps will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* When the Peace Corps reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Peace Corps may aggregate those requests and charge accordingly. The Peace Corps may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, the Peace Corps will aggregate them only where there is a

reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(j) *Advance payments.* (1) For requests other than those described in paragraph (j)(2) or (j)(3) of this section, the Peace Corps may not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When the Peace Corps determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Peace Corps may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the Peace Corps within 30 calendar days of the billing date, the Peace Corps may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Peace Corps may require that the requester make an advance payment of the full amount of any anticipated fee before the Peace Corps begins to process a new request or continues to process a pending request or any pending appeal. Where the Peace Corps has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Peace Corps requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Peace Corps' fee determination, the request will be closed.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Peace Corps to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Peace Corps will inform the requester of the contact information for that program.

(l) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The Peace Corps will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (l)(2)(i) through (iii) are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request will concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated; and

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records will be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding; and

(B) The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public will be considered. The Peace Corps will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure will not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Peace Corps will consider the following criteria:

(A) The Peace Corps will identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters will be given an opportunity

to provide explanatory information regarding this consideration; and

(B) If there is an identified commercial interest, the Peace Corps will determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (l)(2)(i) and (ii) are satisfied and any commercial interest is not the primary interest furthered by the request. The Peace Corps ordinarily will presume that when a news media requester has satisfied factors of paragraphs (l)(2)(i) and (ii), the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Peace Corps and should address the criteria referenced under paragraph (1) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will pay any costs incurred up to the date the fee waiver request was received.

(5) These fee waiver/reduction provisions are subject to appeal in the same manner as appeals from denial under § 303.13.

(m) *Minimal amount.* No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed the average cost of processing a payment.

(n) *Agreement to pay fees.* Requesters must agree to pay all fees charged for services associated with their requests.

(o) *Charging interest.* Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(p) *Nonpayment of fees.* The Peace Corps is not required to process a request for a requester who has not paid FOIA fees owed to another Federal agency.

(q) *Multiple copies.* The Peace Corps reserves the right to charge for multiple

copies of any document that will be provided to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

■ 19. Amend newly redesignated § 303.17 by revising paragraphs (a)(1) through (6) and (b)(1) through (3) to read as follows:

§ 303.17 Procedures for responding to a subpoena.

(a) * * *

(1) This section sets forth the procedures to be followed in proceedings in which the Peace Corps is not a party, whenever a subpoena, order, or other demand (collectively referred to as a “demand”) of a court or other authority is issued for:

(i) The production or disclosure of any material contained in the files of the Peace Corps;

(ii) The production or disclosure of any information relating to material contained in the files of the Peace Corps;

(iii) The production or disclosure of any information or material acquired by any person while such person was an employee of the Peace Corps as a part of the performance of their official duties or because of their official status, or

(iv) The production of an employee of the Peace Corps for the deposition or an appearance as a witness in a legal action or proceeding.

(2) For purposes of this section, the term “employee of the Peace Corps” includes all officers, employees, volunteers, and trainees of the Peace Corps appointed by, or subject to the supervision, jurisdiction or, control of, the Director of the Peace Corps, including personal services contractors. Also, for purposes of this section, records of the Peace Corps do not include records of the Office of Inspector General.

(3) This section is intended to provide instructions regarding the internal operations of the Peace Corps, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Peace Corps.

(4) This section applies to:

(i) State and local court, administrative and legislative proceedings; and

(ii) Federal court and administrative proceedings.

(5) This section does not apply to:

(i) Congressional requests or subpoenas for testimony or documents; and

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Peace Corps (such as cases arising out of traffic accidents or domestic relations). Any questions regarding whether the appearance relates solely to the employee’s or former employee’s private capacity should be referred to the Office of the General Counsel.

(6) Nothing in this section otherwise permits disclosure of information by the Peace Corps except as is provided by statute or other applicable law.

(b) * * *

(1) No employee or former employee of the Peace Corps shall, in response to a demand of a court or other authority set forth in paragraph (a) of this section produce any material, disclose any information, or appear in any proceeding, described in paragraph (a) of this section without the approval of the General Counsel or designee.

(2) Whenever an employee or former employee of the Peace Corps receives a demand for the production of material or the disclosure of information described in paragraph (a) of this section they shall immediately notify and provide a copy of the demand to the General Counsel or designee. The General Counsel, or designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served, and why the information sought is unavailable by any other means or from any other sources.

(3) The General Counsel, or designee, in consultation with appropriate Peace Corps officials, including the Peace Corps’ FOIA Officer, or designee, and in light of the considerations listed in paragraph (d) of this section, will determine whether the person on whom the demand was served should respond to the demand.

* * * * *

■ 20. Add § 303.18 to read as follows:

§ 303.18 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: November 22, 2023.

James Olin,

FOIA and Privacy Officer.

[FR Doc. 2023–26151 Filed 11–27–23; 8:45 am]

BILLING CODE 6051–01–P

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Part 1000**[245A2100DD/AAKC001030/
A0A501010.999900]**Self-Governance PROGRESS Act
Negotiated Rulemaking Committee;
Notice of Meetings****AGENCY:** Bureau of Indian Affairs,
Interior.**ACTION:** Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee), will hold public meetings to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

DATES: Meetings are open to the public and will be held:

- December 20, 2023;
- January 18, 2024;
- February 8, 2024; and
- February 29, 2024.

ADDRESSES: Send your comments, within 30 days following the meeting, to the Designated Federal Officer, Vickie Hanvey, using the following methods:

- *Preferred method:* Email to comments@bia.gov with “PROGRESS Act” in subject line.
- *Alternate methods:* Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie Hanvey, Office of Self-Governance, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW, Mail Stop 3624, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Vickie Hanvey, Designated Federal Officer, comments@bia.gov, (918) 931-0745. Individuals in the United States who are deaf, blind, 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.

All reasonable accommodation requests are managed on a case-by-case basis. Please make the request, at least seven (7) business days prior to the

meeting, to the Designated Federal Officer.

SUPPLEMENTARY INFORMATION: These meetings will be held under the authority of the PROGRESS Act (Pub. L. 116–180), the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), and the Federal Advisory Committee Act (5 U.S.C. Ch. 10). The Committee is to negotiate and reach consensus on recommendations for a proposed rule that will replace the existing regulations at 25 CFR part 1000. The Committee will be charged with developing proposed regulations for the Secretary’s implementation of the PROGRESS Act’s provisions regarding the Department of the Interior’s (DOI) Self-Governance Program.

The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.*, which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI’s Tribal Self-Governance Program. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The **Federal Register** (87 FR 30256) notice published on May 18, 2022, discussed the issues to be negotiated and the members of the Committee.

Meeting Agenda

These meetings are open to the public. Detailed information about the Committee, including meeting agendas can be accessed at <https://www.bia.gov/service/progress-act>. Topics for these meetings will include Committee priority setting, subcommittee reports, negotiated rulemaking process, schedule and agenda setting for future meetings, Committee caucus, and public comment.

For in-person meetings, members of the public are required to present a valid government-issued photo ID to enter the building; and are subject to security screening, including bag and parcel checks.

Plenary Meeting (Number 10)

- *Meeting date:* December 20, 2023.
- *Meeting time:* Time: 1 to 5 p.m. ET.
- *Meeting location:* Virtual.
- *Virtual link:* https://teams.microsoft.com/l/meetup-join/19%3ameeting_MDg4MGRIMjEtNjU5OS00ZjVhLWI1YjltMjM3OGRkYzViODE1%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a.

Comments: Submit by January 19, 2024.

Comments: Submit by January 19, 2024.

Comments: Submit by January 19, 2024.

Plenary Meeting (Number 11)

- *Meeting date:* January 18, 2024.
- *Meeting time:* 1 to 5 p.m. ET.
- *Meeting location:* Virtual and in-person at the South Penthouse room, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

• *Virtual link:* https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDU3ZGI4MDQtYTYyNi00NTFjLTgyODctODRmZjk1MjBkNzU2%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a.

• *Comments:* Submit by February 17, 2024.

Plenary Meeting (Number 12)

- *Meeting date:* February 8, 2024.
- *Meeting time:* 1 to 5 p.m. ET.
- *Meeting location:* Virtual and in-person at the North Penthouse room, Department of the Interior 1849 C Street NW, Washington, DC 20240.

• *Virtual link:* https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzE3MDA2MjYtOTAwYi00NjMwLTkzMGMtYTcwMDAwZDQ1ZmE3%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a.

• *Comments:* Submit by March 9, 2024.

Plenary Meeting (Number 13)

- *Meeting date:* February 29, 2024.
- *Meeting time:* 1 to 5 p.m. ET.
- *Meeting location:* Virtual and in-person at the North Penthouse room, Department of the Interior 1849 C Street NW, Washington, DC 20240.

• *Virtual link:* https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWQwZjMzNjEtOWQ4Ni00ZDdjLWE3OGUtYjcwYjIhYTE0OTEz%40thread.v2/0?context=%7B%22Tid%22%3A%220693b5ba-4b18-4d7b-9341-f32f400a5494%22%2C%22Oid%22%3A%2213321130-a12b-4290-8bcf-30387057bd7b%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a.

• *Comments:* Submit by March 30, 2024.

Public Comments

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Committee during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Vickie Hanvey listed in the **ADDRESSES** section above.

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.

(Authority: 5 U.S.C. Ch. 10)

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–26124 Filed 11–27–23; 8:45 am]

BILLING CODE 4337–15–P

POSTAL SERVICE

39 CFR Part 111

Electronic Verification System Migrated to USPS Ship

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) in various sections to require the use of

USPS Ship™ (aka Package Platform) for the acceptance and payment of all commercial domestic and international parcel mailings and discontinue the use of the Electronic Verification System (eVS®).

DATES: Submit comments on or before December 28, 2023.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to PCFederalRegister@usps.gov, with a subject line of “eVS Migrated to USPS Ship.” Faxed comments are not accepted.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC, 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (202) 268–8091, Vicki Bosch (202) 268–4978 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Background

The Postal Service™ currently has the following options/channels to pay and enter commercial parcel mailings:

- Click-N-Ship®
- ePostage®
- PC Postage®
- eVS®
- non-eVS (BMEU entered permit imprint)
- USPS Ship

The Postal Service has streamlined, simplified, and improved the payment and acceptance processes for parcels. Most commercial shippers are currently enrolled in eVS for payment and acceptance of their commercial package mailings. eVS has enabled many companies to easily ship parcels with the Postal Service. Over the past 20 years since eVS started, the Postal Service has upgraded equipment to automatically capture package attributes such as weight, dimensions, USPS packaging, zone, and entry. This robust infrastructure has enabled the simplification of verifications that currently require offline and manual processes.

Proposal

The Postal Service is proposing to require the use of USPS Ship for the acceptance and payment of all commercial domestic and international parcel mailings.

USPS Ship combines the attributes captured from scan data and manifested attributes to ensure customers are charged accurate postage. For consolidators, if there are adjustments to inaccurate original postage, those individual package costs can be provided to the mail owners.

USPS Ship is the next generation package platform for payment and acceptance. USPS Ship offers online enrollment, individual package pricing, automated adjustments, online reports, and data feeds via IV–MTR. The automated capture enables individual package attributes to be compared to manifest data to validate accurate postage. Shortpaid (postage due) or overpaid (refunds) will be assessed upon package delivery and applied to the Enterprise Payment Account (EPA) on file. This new platform automates and simplifies the acceptance and validation process.

Requirements to participate in USPS Ship are as follows:

- Customers must enroll in USPS Ship and be assigned a unique MID for use on packages.
- Customers must submit valid rate ingredients for payment for each package within their shipment.
- Customers must upload manifests to USPS using the Parcel Data Exchange or Electronic Interchange (SFTP or AS2) for payment as noted in eVS Pub 205.
- Customers must pay postage through an Enterprise Payment Account.
- Packages must include a Tracking Number that is unique for 120 days.
- Customers must ship the following products:
 - Domestic Products—Priority Mail Express®, Priority Mail®, USPS Ground Advantage™ (formerly First-Class Package® Service), Bound Printed Matter, Media Mail®, Library Mail, USPS Marketing Mail® parcels, USPS Marking Mail Nonprofit parcels, Parcel Select® Destination Entry, USPS Connect™ Local, USPS Connect Local Mail, and USPS Returns®.
 - International Products—Global Express Guaranteed®, Priority Mail Express International®, Priority Mail International®, and First-Class Package International Service®.

Manifest Mailing Operations in USPS Ship

Mailers and shippers who meet program requirements may ship parcels using the following procedure:

1. The mailer/parcel shipper transmits an electronic manifest to the Postal Service detailing all USPS Ship parcels to be deposited into the mailstream on or before the date of mailing.
2. USPS Ship will validate the electronic manifest and calculate postage based on rate ingredients.
3. Postage is charged to the EPA on the day that the manifest was submitted and processed. Transactions and manifest summary information can be accessed through the online reports or data feeds.
4. The mailer/parcel shipper transports and enters the mail at the appropriate origin or destination entry (NDC, SCF, DHub, DDU) Postal Service facility.
5. As parcels are deposited at the origin entry facilities, packages are run across MPE and captured attributes (weight, dimensions, entry, packaging) are transmitted to USPS Ship. The captured attributes are compared to manifested attributes to ensure the correct postage has been paid. If there are discrepancies, shortpaid/overpaid will be applied to the EPA.
6. As parcels are deposited at the DDU facilities, packages are sampled, and the sampled attributes are compared to the manifested attributes. A Statistical Quality Assessment is performed, and additional postage will be charged to the EPA.
7. Assessment details can be accessed through the online reports or data feeds.

Postage Assessments

USPS Ship will collect postage daily based on the electronic manifest(s) received that day from mailers. In addition, postage will be calculated and assessed for the following types of errors when detected:

- *Census Verification* occurs for packages that are automatically captured while packages are processed on Mail Processing Equipment (MPE). The individual package information captured may include the weight, dimensions, USPS packaging, ZIP Code of scan, and destination ZIP Code. The captured information will be compared to the manifest information after the delivery scan for the package. The correct postage will be assessed, additional postage will be charged or refunded to reflect the accurate postage for the individual packages.
- *Misshipped* is included in the Census Verification. The manifest is

matched to a scan and the Destination ZIP Code and Destination Rate Indicator of the is compared to the Mail Direction File (MDF) to determine the correct Dropship location. The ZIP Code of the first scan event is compared to the expected Dropship location indicated in the MDF. If the ZIP Code of the first scan event does not match the expected Dropship location, then a Misshipped error is logged, and additional postage will be charged.

- *Unmanifested packages* are identified by scanned packages without a manifest for payment in USPS Ship.
- *Duplicate packages* are identified by scanned packages with duplicate barcodes without a payment for each package in USPS Ship.
- *Impb noncompliance* is measured using the same evaluation and established thresholds for the month period as previously required by eVS.
- *Presort* is measured by the 24-hour period to meet presort minimums by mail class as previously required by eVS.
- *Statistical Quality Assessment (SQA)* occurs for Parcel Select, Parcel Select Lightweight, Bound Printed Matter, USPS Marketing Mail packages that are entered and claimed at Destination Delivery Unit (DDU) prices. This verification is similar to the Postage Adjustment Factor (PAF), but is limited to DDU entered packages. If the postage for the packages that are sampled at DDU compared to the manifested data, exceeds 1.5% underpayment, the percentage in error will be multiplied by the total postage for the mail class for the month and this calculated additional postage charge will be assessed. Only packages that are prompted for sampling will be part of this verification, any non-prompted samples will be part of the Census Verification.

- *Content Audit* is measured using the same business rules as previously required by eVS.

Postage Payment

Commercial shippers currently entering at a Business Mail Entry Unit (BMEU) with small quantities may use Click-N-Ship or USPS Ship to enter their parcels. The proposed rule would apply as follows:

- Parcel shippers/consolidators and mailers using permit imprint as the payment method and claiming Commercial or NSA prices that are not using Click-N-Ship would be required to use USPS Ship for postage manifesting and payment.
- Parcel shippers/consolidators and mailers who use USPS APIs to create labels and submit their manifest files

will also be required to enroll in USPS Ship.

Postage Payment Schedule

- *Daily*—Postage for manifest files is charged the day of the manifest receipt/processing. The census verification is charged/refunded the day of delivery.
- *Monthly*—Unmanifested, duplicates, Impb, presort, content audit and SQA are assessed monthly and charged on the 15th of the following month.

Retrieving Data

USPS Ship enables customers to view manifest and assessment data by accessing online reports or subscribing to IV-MTR data feeds.

- *Accessing Online Reports*—The Online Dashboard provides summary details for manifests that were charged and package level details for postage adjustments. Customers should complete the following to access the USPS Ship Reports:
 - Login to the BCG
 - Click “Go to Service” button on the USPS Ship Report service within Manage Services menu
 - Click “Summary Dashboard”
 - Monthly Activity Report will be displayed
 - Click “Reports” dropdown menu to view and select from the list of available reports
 - Reports can be filtered, sorted, and exported in Excel and CSV formats
 - Subscribing to IV-MTR Data Feeds—IV-MTR allows customer to customize to select and organize fields to be included, choose frequency, choose file format, and choose delivery location. Customers should complete the following to setup IV-MTR subscriptions:
 - Login to BCG
 - Click “Go to Service” button on the Informed Visibility service within Manage Services Menu
 - Click “Create and Manage Data Feeds”
 - Select Data Feed Type
 - Select File Format
 - Select Server for Data Feed Delivery
 - Select Frequency of Data Feed Delivery
 - Define Data Fields of Data Feed
 - Detailed Instructions for accessing IV-MTR can be found under Applying for Access to Informed Visibility Mail Tracking and Reporting on PostalPro. Detailed instructions for customizing data feeds can be found under ‘Orientation Training for Informed Visibility Mail Tracking and Reporting’ on PostalPro.

eVS Discontinued

Due to the ability to automatically capture package attributes, and the new system infrastructure, the Postal Service is proposing to discontinue eVS.

Proposed Effective Date

The Postal Service is proposing to implement USPS Ship by February 1, 2025. This implementation period would provide mailers with ample time to comply with USPS Ship standards, as well as time to perform testing necessary to ensure satisfactory operation.

We believe the proposed revisions will provide customers with a more efficient mailing experience.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

- 1. The authority citation for part 111 continues to read as follows:

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

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

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

* * * * *

200 Commercial Mail Letters, Flats, and Parcels

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

3.8 Exceptions to Markings

Exceptions are as follows:

* * * * *

[Revise the last sentence of the introductory text of item b to read as follows:]

b. * * * Mail manifested using the USPS Ship system under 705.2.0 must bear the basic marking and the additional marking “USPS Ship” in two places:

* * * * *

6.0 Barcode Placement for Parcels

* * * * *

6.3 Intelligent Mail Barcodes

[Revise the first sentence of 6.3 to read as follows:]

Intelligent Mail barcodes (IMb) do not meet barcode eligibility requirements for parcels and do not qualify for any barcode-related prices for parcels, but one barcode may be included only in the address block on a parcel, except on USPS Ship parcels. * * *

* * * * *

203 Basic Postage Statement, Documentation, and Preparation Standards

1.0 Postage Statements

1.1 Completing Postage Statements

[Revise the first sentence under 1.1 to read as follows:]

Unless manifested using USPS Ship under 705.2.9, any mailing claiming a discount and all permit imprint mailings must be accompanied by a postage statement completed and signed by the mailer (in duplicate if the mailer wants a receipted copy). * * *

* * * * *

2.0 Documentation

2.1 Basic Documentation Standards

[Revise the second sentence of 2.1 to read as follows:]

* * * Supporting documentation (see 3.0) of postage is required for each mailing except for USPS Ship mailings under 705.2.9, or unless the correct price is affixed to each piece or each piece is of identical weight and the pieces are separated by price and when applicable zone (including separation by In-County and Outside-County prices and destination entry for Periodicals) when presented for acceptance. * * *

* * * * *

5.0 Letter and Flat Trays

* * * * *

5.13 Line 3 (Office of Mailing or Mailer Information Line)

[Revise the text of 5.13 to read as follows:]

Line 3 (origin line showing office of mailing or mailer information) must be the bottom line of required information unless the sack/flat tray contains mail manifested using the USPS Ship under 705.2.9. Line 3 must show either the city and state of the entry Post Office or the mailer's name and the city and state of the mailer's location. It is recommended that the mailer's name also appear with the city and state of the entry Post Office. As an alternative to adding a fourth line for USPS Ship mailings as required by 5.6, “USPS Ship” may appear as the first element on Line 3.

* * * * *

6.0 Sacks

* * * * *

6.4 USPS Ship System

[Revise the text of 6.4 to read as follows:]

All sacks containing parcels prepared and identified using the USPS Ship program under 705.2.9 must show “USPS Ship” directly below Line 3 using the same size and lettering used for Line 3. As an option, “USPS Ship” may be placed as the first element on Line 3.

* * * * *

204 Barcode Standards

* * * * *

2.0 Standards for Package and Extra Service Barcodes

2.1 Intelligent Mail Package Barcode

* * * * *

2.1.8 Compliance Quality Thresholds

* * * * *

Exhibit 2.1.8 IMpb Compliance Quality Thresholds

Compliance Categories Compliance Codes Validations Compliance Thresholds

* * * * *

[Revise the fifth bullet under the “Validations” column to read as follows:]

- Customers using USPS Ship must provide the address information before the Arrival at Unit (07) Event Scan and non-USPS Ship customers at the time of mailing.

* * * * *

210 Commercial Mail Priority Mail Express

213 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.2 Determining Single-Piece Weight

[Revise the first sentence of 1.2 to read as follows:]

When determining single-piece weight, express all weights in decimal pounds rounded off to two decimal places (except mailers using USPS Ship). * * *

1.3 Commercial Prices

Priority Mail Express commercial prices are less than Priority Mail Express retail prices (see Notice 123—Price List). These prices are available to:

* * * * *

[Revise the text of item d to read as follows:]

- d. Customers who pay postage with a permit imprint using the USPS Ship system to document and pay postage (see 705.2.9).

* * * * *

214 Postage Payment and Documentation

* * * * *

1.0 Basic Standards for Postage Payment Options

* * * * *

1.2 Commercial Prices

Commercial Priority Mail Express postage may be paid with:

* * * *

[Revise the text of item d to read as follows:]

d. Permit imprint through the USPS Ship system under 705.2.9.

* * * *

220 Commercial Mail Priority Mail**223 Prices and Eligibility****1.0 Prices and Fees**

* * * *

1.3 Cubic**1.3.1 Cubic Eligibility**

* * * *

[Revise the second sentence of item b to read as follows:]

b. Permit imprint customers. * * * Customers are required to use the USPS Ship program or submit an electronic postage statement with a computerized manifest under 705.2.0. * * *

* * * *

1.7 Determining Single-Piece Weight

[Revise the third and fourth sentence in 1.7 to read as follows:]

* * * Except for mailers using USPS Ship, express all single-piece weights in decimal pounds rounded off to two decimal places. Mailers using USPS Ship may round off to four decimals, and USPS Ship will automatically round to the appropriate decimal place. * * *

* * * *

240 Commercial Mail USPS Marketing Mail**243 Prices and Eligibility****1.0 Prices and Fees**

* * * *

1.4 Fees**1.4.1 Presort Mailing Fee**

[Revise the third sentence in 1.4.1 to read as follows:]

* * * For mail manifested using the USPS Ship System under 705.2.9, only one annual mailing fee, paid at the Post Office of account where the permit imprint account is held, is required regardless of the number of Post Offices of mailing. * * *

* * * *

244 Postage Payment and Documentation**1.0 Basic Standards for Postage Payment**

[Revise the third sentence in 1.0 to read as follows:]

* * * Mail manifested using the USPS Ship system under 705.2.9 must be paid with a permit imprint. * * *

* * * *

250 Commercial Mail Parcel Select**253 Prices and Eligibility****1.0 Prices and Fees**

* * * *

1.3 Computing Postage**1.3.1 Determining Single-Piece Weight**

[Revise the third and fourth sentence in 1.3.1 to read as follows:]

* * * Except for mailers using the USPS Ship system or preparing Parcel Select lightweight mailings, when determining single-piece weight for Parcel Select mailpieces, express all weights in decimal pounds rounded off to two decimal places. Mailers using USPS Ship may round off to four decimals, and USPS Ship will automatically round to the appropriate decimal place. * * *

* * * *

254 Postage Payment and Documentation**1.0 Basic Standards for Postage Payment****1.1 Postage Payment Options****1.1.1 Parcel Select Destination Entry**

Parcel Select destination entry postage may be paid as follows:

* * * *

[Revise the first and second sentence of item c to read as follows:]

c. Except for plant-verified drop shipments (see 705.17.0), USPS Ship shipments (see 705.2.9), and metered mail drop shipments (see 705.19.0), the mailer must have a meter license or permit imprint authorization at the destination facility parent Post Office for mailings deposited for entry at a DNDC or ASF, at a DSCF, or at the parent Post Office of a DDU. Except for manifested mail using USPS Ship under 705.2.9, postage and fees are paid to the Post Office that verifies the mailings. * * *

* * * *

2.0 Mailing Documentation**2.1 Completing Postage Statements**

[Revise the first sentence in 2.1 to read as follows:]

All metered and permit imprint mailings of 50 pieces or more, except manifested mail using USPS Ship under 705.2.9, must be accompanied by a postage statement completed and signed by the mailer (in duplicate if the mailer wants a receipted copy). * * *

* * * *

256 Enter and Deposit

* * * *

2.0 Deposit

* * * *

2.5 Mail Separation and Presentation of Destination Entry Mailings

[Revise the second and third sentence in 2.5 to read as follows:]

* * * Mailers may deposit only PVDS and USPS Ship mailings at a destination delivery unit not co-located with a Post Office or other Postal Service facility with a business mail entry unit. If authorized under 705.7.0, mailers may commingle Parcel Select with other approved parcel mail using USPS Ship. * * * Mailers presenting destination entry mailings to the Postal Service must meet the following requirements:

[Revise the last sentence of item a to read as follows:]

a. * * * If USPS Ship is used, include the marking "USPS Ship" on each piece as described in 604.5.0.

* * * *

[Revise the last sentence of items c and d to read as follows:]

c. * * * USPS Ship mailings do not require these forms.

d. * * * For PVDS mailings and USPS Ship mailings, separate mailings for deposit at different destination Postal Service facilities.

* * * *

260 Commercial Mail Bound Printed Matter**263 Prices and Eligibility****1.0 Prices and Fees**

* * * *

1.2 Presorted and Carrier Route Bound Printed Matter

* * * *

1.2.5 Destination Entry Mailing Fee

[Revise the second sentence of 1.2.5 to read as follows:]

* * * For BPM Flats destination entry mail manifested using USPS Ship under 705.2.9, only one annual BPM Flats destination entry mailing fee, paid at the Post Office where the USPS Ship permit imprint account is held, is required regardless of the number of Postal Service facilities where mailings are verified. * * *

* * * *

265 Mail Preparation

* * * *

8.0 Preparing Presorted Parcels

* * * *

8.2 Preparing Irregular Parcels Weighing Less Than 10 Pounds**8.2.1 Required Bundling**

* * * Each physical bundle must contain at least two addressed pieces (except mixed ADC bundles). Bundling also is subject to these conditions:

* * * *

[Revise the text of item c to read as follows:]

c. Mailers must note on the postage statement whether they applied the piece count, weight, or both, except for USPS Ship mailings prepared under 705.2.9.

* * * *

8.2.3 Required Sacking

* * * Sacking also is subject to these conditions:

* * * *

[Revise the text of item c to read as follows:]

c. Mailers must note on the postage statement whether they applied the piece count or weight except for USPS Ship mailings prepared under 705.2.9.

* * * *

8.4 Preparing Machinable Parcels Not Claiming DNDC Prices

8.4.1 Required Sacking

* * * Sacking also is subject to these conditions:

* * * * *

[Revise the text of item c to read as follows:]

c. Mailers must note on the postage statement whether they applied the piece count or weight except for USPS Ship mailings prepared under 705.2.9.

* * * * *

8.5 Preparing Machinable Parcels Claiming DNDC Prices

8.5.1 Required Sacking

* * * Sacking also is subject to these conditions:

* * * * *

[Revise the text of item c to read as follows:]

c. Mailers must note on the postage statement whether they applied the piece count or weight except for USPS Ship mailings prepared under 705.2.9.

* * * * *

266 Enter and Deposit

* * * * *

3.0 Destination Entry

* * * * *

3.2 Minimum Volume

A destination entry price BPM mailing is subject to these minimum volume requirements:

* * * * *

[Revise the first sentence of item f to read as follows:]

f. When Bound Printed Matter presorted parcel mailings are presented together under the USPS Ship system, a mailer may use the total piece count for all line items to all destinations reported within the 24-hour mailing period defined in 705.2.9. * * *

* * * * *

270 Commercial Mail Media Mail and Library Mail

* * * * *

274 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

[Revise the second sentence of 1.0 to read as follows:]

* * * Mail manifested using USPS Ship under 705.2.9 must be paid with a permit imprint. * * *

* * * * *

275 Mail Preparation

* * * * *

6.0 Preparing Media Mail and Library Mail Parcels

* * * * *

6.2 Preparing Machinable Parcels

6.2.1 Required Sacking

* * * Sacking also is subject to these conditions:

* * * * *

[Revise the text of item c to read as follows:]

c. Mailers must note on the postage statement which sacking method was used except for USPS Ship mailings prepared under 705.2.9.

* * * * *

6.3 Preparing Irregular Parcels

6.3.1 Required Bundling

* * * Bundling is also subject to these conditions:

* * * * *

c. Mailers must note on the postage statement which sacking method was used except for USPS Ship mailings prepared under 705.2.9.

* * * * *

6.3.3 Required Sacking

* * * Sacking is also subject to these conditions:

* * * * *

[Revise the text of item c to read as follows:]

c. Mailers must note on the postage statement which sacking method was used except for USPS Ship mailings prepared under 705.2.9.

* * * * *

276 Enter and Deposit

1.0 Verification and Deposit

[Revise the first sentence of 1.0 to read as follows:]

Except for USPS Ship shipments (see 705.2.9) or metered mail drop shipments (see 705.20.0), all presorted mailings must be presented for verification and acceptance at the Post Office where the permit or license is held. * * *

* * * * *

280 Commercial Mail USPS Ground Advantage—Commercial

* * * * *

284 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for USPS Ground Advantage—Commercial

2.1 Permit Imprint Postage

[Revise the second sentence of 2.1 to read as follows:]

* * * All mail manifested using USPS Ship under 705.2.9 must be paid using a permit imprint. * * *

* * * * *

500 Additional Services

* * * * *

507 Mailer Services

* * * * *

3.0 Hold For Pickup

* * * * *

3.2 Basic Information

* * * * *

3.2.2 Basic Eligibility

It is also available with commercial mailings of Priority Mail Express presented under 213.4.2 or 213.4.3, Priority Mail, USPS Ground Advantage—Commercial, Parcel Select Lightweight, and Bound Printed Matter parcels, when:

* * * * *

[Revise the last sentence of item b to read as follows:]

b. * * * If the pieces are not of identical weight, then either the exact postage must be affixed to each piece or postage must be paid with permit imprint using USPS Ship (705.2.9).

* * * * *

508 Recipient Services

* * * * *

7.0 Premium Forwarding Services

* * * * *

7.3 Premium Forwarding Service Commercial

* * * * *

7.3.3 Conditions

* * * PFS-Commercial service is subject to these conditions:

* * * * *

[Revise the text of item b to read as follows:]

b. The annual enrollment fee and applicable Priority Mail Express or Priority Mail postage for each shipment container is paid using an USPS Ship account linked to the Enterprise Payment System (EPS).

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

5.0 Permit Imprint (Indicia)

5.1 General Standards

5.1.1 Definition

[Revise the second sentence of 5.1.1 to read as follows:]

* * * This payment method may be used for postage and extra service fees for Priority Mail Express (“USPS Ship” only), Priority Mail, First-Class Mail, USPS Ground Advantage—Commercial, USPS Marketing Mail, Package Services, and Parcel Select mailpieces. * * *

5.1.2 Minimum Volume

Permit imprint mailings must contain at least 200 pieces or 50 pounds of mail, except:

* * * * *

[Revise the first and second sentence of item g to read as follows:]

g. A mailing containing 50 pieces or 50 pounds of nonpresorted single-piece

domestic mail parcels submitted under the terms of an approved Manifest Mailing System (including USPS Ship) agreement under 705.2.0. Mailers may include any combination of the following products under this provision: Priority Mail Express (USPS Ship only), Priority Mail, USPS Ground Advantage—Commercial parcels, nonpresorted Bound Printed Matter parcels, and single-piece Media Mail and Library Mail parcels. * * *

5.1.5 Application Fee

[Revise the first sentence of 5.1.5 to read as follows:]

An application fee is required only when a permit imprint is used as the payment method for First-Class Mail, USPS Marketing Mail, Bound Printed Matter Flats and international mail, and the mailer does not use USPS Ship. * * *

5.3.6 Priority Mail Express, Priority Mail, First-Class Mail, and USPS Ground Advantage—Commercial Format

A permit imprint indicia on Priority Mail Express, Priority Mail, First-Class Mail, or USPS Ground Advantage—Commercial mailpieces must be formatted as follows:

[Revise the second sentence of item a to read as follows:]

a. * * * If the USPS Ship program is used under 705.2.9, the marking “USPS Ship” must appear directly below the permit number. * * *

5.3.7 USPS Marketing Mail, Parcel Select and Package Services Format

[Revise the second sentence of 5.3.7 to read as follows:]

* * * If USPS Ship is used under 705.2.9, the marking “USPS Ship” must appear directly below the permit number. * * *

5.3.9 Use of a Company Permit Imprint

[Revise the second and third sentence in the introductory text of 5.3.9 to read as follows:]

* * * If a company permit imprint is used for USPS Ship under 705.2.9, the marking “USPS Ship” is placed directly below the name on a separate line. As an option for USPS Ship mail only, “Permit No.” and the permit number used exclusively for USPS Ship may appear on a separate line between the company name and the marking “USPS Ship.” * * *

608 Postal Information and Resources

7.0 Trademarks and Copyrights of the USPS

7.1 USPS Trademarks

[Revise the list of trademarked items under 7.1 by deleting “eVS” and “e-VS”, and add USPS Ship alphabetically.]

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.3 Who May File

A claim may be filed by:

* * * * *

[Revise the text of item e to read as follows:]

e. Only the mailer, for insured or collect on delivery (COD) parcels paid using USPS Ship under 705.2.9.

* * * * *

3.0 Providing Evidence of Insurance and Value

3.1 Evidence of Insurance

* * * Examples of acceptable evidence are:

* * * * *

[Revise the introductory text of item d to read as follows:]

d. For insured mail or COD mail paid using MMS or USPS Ship under 705.2.0, or for insured mail paid using an EPS account for USPS Returns service under 505.3.0, the mailer must use one of the following:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

2.0 Manifest Mailing System

2.1 Description

* * * * *

2.1.2 Eligible Mail

[Revise the second sentence of 2.1.2 to read as follows:]

* * * For Priority Mail Express (USPS Ship only) see 2.9. * * *

* * * * *

2.1.4 USPS Ship System

[Revise the text of 2.1.4 to read as follows:]

Mailers using a MMS when presenting Parcel Select destination entry mailings under 256.2.0 or commingled parcel mailings under 6.0 or 7.0, may document and pay postage using USPS Ship (see 2.9). Business Acceptance Solutions, USPS Headquarters, must approve these systems. Unless authorized by Business Acceptance Solutions, mailers may not commingle USPS Ship mail with non-USPS Ship mail within the same mailing or place USPS Ship mail and non-USPS Ship mail in or on the same mailing container.

* * * * *

2.4 Authorization

2.4.1 Application

The mailer must submit an MMS application and supporting documentation as specified on the application to the postmaster of each Post Office where mailings will be

deposited and under the publications as follows:

* * * * *

[Revise the text of item b to read as follows:]

b. Publication 205, *USPS Ship Technical Guide*, provides the USPS Ship application procedures for mailers. Customers using an Electronic Manifesting Solution for Parcels must also establish a user account and mailer agreement with USPS in the Business Customer Gateway at <https://gateway.usps.com>.

* * * * *

2.4.3 General Requirements for Authorization

General requirements for authorization are as follows:

* * * * *

[Revise the introductory text of item c to read as follows:]

c. For USPS Ship mailings prepared under 2.9, USPS charges USPS Ship mailers for postage due for any underpaid, unmanifested, or mis-shipped destination delivery unit (DDU) parcels at the end of the review period following the monthly mailing period as follows:

* * * * *

[Revise the first sentence of item c2 to read as follows:]

2. *Unmanifested Parcels*. USPS charges USPS Ship mailers for parcels not listed in the mailer's manifest files but identified by USPS processing scans or acceptance and delivery scans as being mailed. * * *

[Revise the first sentence of item c3 to read as follows:]

3. *Mis-Shipped DDU Parcels*. USPS charges USPS Ship mailers the appropriate single-piece price less the original price paid for parcels identified by acceptance scans to be deposited at incorrect destination delivery units. * * *

* * * * *

2.4.5 Approval Authority

Approval authority for manifest mailing systems is as follows:

* * * * *

[Revise the text of item b to read as follows:]

b. The director, Business Acceptance Solutions, USPS Headquarters, approves MMS that produce presorted First-Class Mail (except as noted in 2.4.5a) or USPS Marketing Mail mailings, Package Services or Parcel Select presort mailings, PVDS mailings, or USPS Ship mailings.

* * * * *

[Revise the heading and text of 2.6 to read as follows:]

2.6 USPS Ship System

The USPS Ship program is an electronic manifest mailing system that allows mailers to document and pay postage and extra services fees by transmitting electronic files to the Postal Service without generating paper manifests, postage statements, or clearance documents. Additional information on USPS Ship can be found online and in Publication 205, *USPS Ship Business and*

Technical Guide, available on PostalPro at <https://postalpro.usps.com>.

7.0 Combining Package Services and Parcel Select Parcels for Destination Entry

7.1 Combining Parcels—DSCF and DDU Entry

7.1.2 Basic Standards

Package Services and Parcel Select parcels that qualify as machinable, nonmachinable, and irregular under 201 and meet the following conditions may be combined in 5-digit scheme and 5-digit sacks or 5-digit scheme and 5-digit pallets under these conditions:

[Revise the second sentence of item b to read as follows:]

b. * * * For mailings presented under 7.0, mailers may document and pay postage using USPS Ship under 2.9.

7.2 Combining Parcel Select and Package Services Machinable Parcels for DNDC Entry

7.2.2 Basic Standards

Parcel Select and Package Services parcels must meet the following conditions:

[Revise the second sentence of item d to read as follows:]

d. * * * For mailings presented under 7.0, mailers may document and pay postage using USPS Ship under 2.9.

8.0 Preparing Pallets

8.6 Pallet Labels

8.6.6 Line 3

[Revise the third sentence of the introductory text of 8.6.6 to read as follows:]

* * * Labels on containers of parcels prepared using USPS Ship under 2.9 must show “USPS Ship” either to the left of required line 3 information or directly below line 3 using the same size and lettering used for line 3. * * *

18.0 Priority Mail Express Open and Distribute and Priority Mail Open and Distribute

18.1 Prices and Fees

18.1.6 Postage Statement for Enclosed Mail

[Revise the text of 18.1.6 to read as follows:]

The mailer must provide the correct postage statement for the enclosed mail unless prepared under USPS Ship. If the enclosed mail is zone-priced, the mailer must either provide documentation that details the pieces and postage, by zone for each Priority Mail Express Open and Distribute or Priority

Mail Open and Distribute shipment destination or provide a separate postage statement for each Priority Mail Express Open and Distribute or Priority Mail Open and Distribute shipment destination. The mailer must always present the mailing to the designated USPS acceptance unit for verification of postage and fees. A postage statement is not required for the Priority Mail Express or Priority Mail portion of the Open and Distribute shipment, unless Priority Mail postage is paid by permit imprint not prepared under USPS Ship.

18.5 Preparation

18.5.3 Tags 257 and 267—Priority Mail Express Open and Distribute

[Revise the second sentence of the introductory text of 18.5.3 to read as follows:]

* * * For mailings prepared under USPS Ship, use blue Tag 257—EVS and yellow Tag 267—EVS. * * *

18.5.4 Tags 161 and 190—Priority Mail Open and Distribute

[Revise the second sentence of the introductory text of 18.5.4 to read as follows:]

* * * For mailings prepared under USPS Ship, use green Tag 161—EVS and pink Tag 190—EVS. * * *

18.5.7 Address Label Service Barcode Requirement

[Revise the first sentence in the introductory text of 18.5.7 to read as follows:]

An electronic service barcode must include USS 128 or Intelligent Mail package barcode (IMpb) (USPS Ship approved mailers) symbology for Priority Mail Express Open and Distribute, and the IMpb symbology for Priority Mail Open and Distribute in the address label. * * *

18.6 Enter and Deposit

18.6.3 Postmark and Signing Tags and Labels

[Revise the text of 18.6.3 to read as follows:]

Upon completion of the verification and acceptance of the contents, all Open and Distribute tags and labels must be postmarked and signed in the space provided unless prepared under an authorized USPS Ship manifest mailing system. Open and Distribute USPS Ship tags and labels bear the marking “APPROVED USPS Ship MAILER” in the space normally designated for the postmark and signature.

21.0 Optional Combined Parcel Mailings

21.1 Basic Standards for Combining Parcel Select, Package Services, and USPS Marketing Mail Parcels

21.1.2 Postage Payment

[Revise the last sentence of 21.1.2 to read as follows:]

* * * Mailers may document and pay postage using USPS Ship under 2.9.

Index

E

[Delete the “Electronic Verification System (eVS), 705.2.9” line item.]

U

[Alphabetically under “U” list the following:]

USPS Ship, 705.2.9

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–26160 Filed 11–27–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0660; FRL–11572–01–R4]

Air Plan Approval; FL; Miscellaneous SIP Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (FDEP) on April 1, 2022. The proposed revision corrects definitions, updates, and removes outdated references, clarifies rule applicability in several rules within the Florida SIP, and removes methods to determine visible emissions.

DATES: Comments must be received on or before December 28, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2022–0660 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). 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. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Ms. Bell can be reached via phone number (404) 562-9088 or via electronic mail at bell.tiereny@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 2022, FDEP submitted a SIP revision to EPA regarding Chapter 62–296, Florida Administrative Code (F.A.C.), *Stationary Sources*, of the Florida SIP. In Florida's April 1, 2022, submission, the State is requesting that EPA approve changes to the following rules in the Florida SIP: Rule 62–296.320(4), *General Pollutant Emission Limiting Standards*;¹ Rule 62–296.406, *Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input, New and Existing Emissions Units*; Rule 62–296.602, *Primary Lead-Acid Battery Manufacturing Operations*; Rule 62–296.603, *Secondary Lead Smelting Operations*; Rule 62–296.604, *Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations*; Rule 62–296.700, *Reasonably Available Control Technology (RACT) Particulate Matter*; Rule 62–296.702, *Fossil Fuel Steam Generators*; Rule 62–296.704, *Asphalt Concrete Plants*; Rule 62–296.705, *Phosphate Processing Operations*; Rule 62–296.707, *Electric Arc Furnaces*; Rule 62–296.708, *Sweat or Pot Furnaces*; Rule 62–296.711, *Materials Handling, Sizing, Screening, Crushing and Grinding Operations*; and Rule 62–

296.712, *Miscellaneous Manufacturing Process Operations*.² The April 1, 2022, SIP revision that is the subject of this proposed rulemaking corrects definitions, updates and removes outdated references, and clarifies applicability in these rules, and it removes methods to determine visible emissions in Rules 62–296.320 and 62–296.406. Further discussion of what the State submitted and why EPA is proposing to approve these changes to the Florida SIP is provided in the following section.

II. Analysis of Florida's April 1, 2022, SIP Revision

A. Analysis of Rule 62–296.320

In the April 1, 2022, submission, the State requests that EPA remove a reference to the Ringelmann Chart and revise subparagraph (4) of Rule 62–296.320 to include citations to the Code of Federal Regulations for the applicable EPA test methods—Methods 5, 9 and 17—and state that EPA test methods are adopted and incorporated by reference at Rule 62–204.800, instead of Rule 62–297.401, *Compliance Test Methods*, due to the repeal of Rule 62–297.401.³

The Ringelmann Chart visible emissions evaluation system evolved from the concept developed by Maximilian Ringelmann in the late 1800s, in which a chart with calibrated black grids on a white background was used to measure black smoke emissions from coal-fired boilers. The Ringelmann Chart was adopted by the U.S. Bureau of Mines in the early 1900s and was used extensively in efforts to assess and control emissions. In the early 1950s, the Ringelmann concept was expanded to other colors of smoke by the introduction of the concept of “equivalent opacity.” Equivalent opacity meant that the white smoke was equivalent to a Ringelmann number in its ability to obscure the view of a background. In some States, equivalent opacity is still measured in Ringelmann numbers, whereas in others a 0 to 100 percent scale is used. EPA stopped using Ringelmann numbers in the New Source Performance Standards (NSPS) when the revised EPA Method 9 was

promulgated in 1974.⁴ All NSPS visible emission limits are stated in percent opacity units, although some State regulations still specify the use of the Ringelmann system. EPA Method 9 is based solely on opacity.

EPA conducted extensive field studies on the accuracy and reliability of the Method 9 opacity evaluation technique when the method was revised and repromulgated in response to industry challenges concerning certain NSPS opacity standards and methods. The studies showed that visible emissions can be assessed accurately by properly trained and certified observers. Two central features of Method 9 involve taking opacity readings of plumes at 15-second intervals and averaging 24 consecutive readings (6 minutes) unless some other time is specified in the emission standard (some NSPS specify a 3-minute averaging period). EPA is proposing to approve removal of the reference to the Ringelmann Chart because studies found that Method 9 was more accurate and reliable for an evaluation technique than the use of the Ringelmann numbers, EPA no longer uses Ringelmann numbers in the NSPS, and the State rule continues to use Method 9 for opacity. Thus, removal of the reference to the Ringelmann Chart will not interfere with any applicable requirement concerning attainment or any other applicable Clean Air Act (CAA) requirement.⁵

B. Analysis of Rule 62–296.406

In the April 1, 2022, submission, the State requests that EPA revise Rule 62–296.406, currently titled “*Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input, New and Existing Emissions Units*,” by removing the unnecessary phrases “New and Existing Emissions Units” from the rule title and “new and existing” from the rule text. EPA is proposing to approve these changes because the rule will continue to apply to new and existing emissions units that meet the rule's unchanged applicability criteria.

FDEP is also requesting that EPA approve revisions to Rule 62–296.406(1), which remove references to repealed FDEP Method 9. Subparagraph 296.406(1) requires subject sources to comply with a visible emissions limit of 20 percent opacity. However, the rule

¹ On October 13, 2023, the State submitted a letter to EPA withdrawing its request to revise subsection (3) of Rule 62–296.320. Thus, EPA is not acting on Rule 62–296.320(3). For further information, please see the docket for this proposed rulemaking, which includes Florida's October 13, 2023, withdrawal letter.

² On April 1, 2022, FDEP submitted a number of SIP revisions to Chapter 62–296, *Stationary Sources*. These other SIP revisions not described herein will be acted on through other rulemakings. See also, footnote 1 regarding subparagraph (3) of Rule 62–296.320.

³ Florida repealed Rule 62–297.401, State effective on July 10, 2014. On October 13, 2017, EPA approved the removal of Rule 62–297.401 from Florida's SIP. See 82 FR 47636. Rule 62–204.800 adopts and incorporates by reference Federal rules cited throughout FDEP's air pollution rules.

⁴ For further information regarding EPA's revised Method 9 and opacity, see “Section 3.12 Method 9-Visible Determination of the Opacity of Emissions from Stationary Sources,” available at <https://www3.epa.gov/ttnemc01/qahandbook3/qaiii%201977/qa%20vol%20iii%20-%20aug%201977%20-%20sec%203-12.pdf>.

⁵ See CAA section 110(l).

also allows sources two options for exceeding 20 percent opacity: one six-minute period per hour during which opacity cannot exceed 27 percent, or one two-minute period per hour during which opacity cannot exceed 40 percent. The rule requires that the option selected by the source be specified in the source's construction and operation permits. The SIP revision removes the exception that allows up to 40 percent opacity over a two-minute period per hour but retains the exception that allows up to 27 percent opacity for one six-minute period per hour. The option proposed for deletion, which allows opacity of no more than 40 percent over a two-minute average, stems from, and was consistent with, FDEP Method 9, which measured opacity on a two-minute average; however, Florida removed this method from its State rules on July 10, 2014. The option that is retained, allowing one exceedance per hour of an opacity up to 27 percent over a six-minute average, is consistent with, EPA Method 9, which measures opacity on a six-minute average. While the averaging times and percent opacity allowed in the two exceptions differs, the two exceptions are approximately equivalent on a six-minute average.⁶ Subparagraph 296.406(1) is also revised to add the phrase "shall not exceed"; delete the word "either"; add the word "one" before the word hour; add the word "period" after one-hour; change the word percentile to percent; and delete the provision that provided that the selected exception to the 20 percent opacity requirement (27 percent for a six-minute average per hour or 40 percent for two-minute period per hour) would be specified in a permit. These revisions either remove language to correspond to the removal of the 40 percent opacity exception or clarify rule language. With such revisions, the proposed rule would state: "Visible Emissions—shall not exceed 20 percent opacity, except for one six-minute period per one-hour period, which shall not exceed 27 percent." EPA is proposing to approve these changes because Florida has removed FDEP Method 9 from its State rules, the exception is approximately equivalent to the 27 percent exception that remains in the rule, and the changes will not

interfere with any applicable requirement concerning attainment or any other applicable CAA requirement.

C. Analysis of Rules 62–296.602, .603, and .604

As discussed below, the April 1, 2022, SIP revision contains several changes to Rule 62–296.602, *Primary Lead-Acid Battery Manufacturing Operations*; Rule 62–296.603, *Secondary Lead Smelting Operations*; and Rule 62–296.604, *Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations*.

The April 1, 2022, submission revises Rules 62–296.602(3), 62–296.603(3), and 62–296.604(3) by requiring the use of EPA's air quality models as provided in 40 CFR part 51, Appendix W; adding a citation to 40 CFR part 51, Appendix W; stating that EPA test methods are adopted and incorporated by reference at Rule 62–204.800; and clarifying that the ambient air quality standard for lead is the national standard. EPA is proposing to approve the aforementioned changes because they will not interfere with any applicable requirement concerning attainment or any other applicable CAA requirement.

D. Analysis of Rules 62–296.700, .702, .704, .705, .707, .708, .711, and .712

As discussed below, the April 1, 2022, submission requests several changes to Rule 62–296.700, *Reasonably Available Control Technology (RACT) Particulate Matter*; Rule 62–296.702, *Fossil Fuel Steam Generators*; Rule 62–296.704, *Asphalt Concrete Plants*; Rule 62–296.705, *Phosphate Processing Operations*; Rule 62–296.707, *Electric Arc Furnace*; Rule 62–296.708, *Sweat or Pot Furnaces*; Rule 62–296.711, *Materials Handling, Sizing, Screening, Crushing and Grinding Operations*; and Rule 62–296.712, *Miscellaneous Manufacturing Process Operations*.

The April 1, 2022, submission seeks to clarify Rules 62–296.700(1) and (2) by updating certain rule citations and revising the term "existing emissions unit" to "any emissions unit issued an air permit on or before May 30, 1988," because Florida's PM RACT rules only apply to emission units that have been issued air permits on or before May 30, 1988.⁷ The April 1, 2022 submission

also deletes general language that provided that the rule applied in "a particulate matter air quality maintenance area or in the area of influence of such an area," and instead includes language to clarify what areas of the State are subject to RACT for TSP by specifically identifying those geographic areas. Additionally, the revision moves language from Rule 62–296.700's applicability section at .700(1) that provides an exception for an emissions unit which has received a determination of Best Available Control Technology to Rule 62–296.700's exemptions section at .700(2). These changes to 62–296.700(1) and (2) clarify applicability of the rule. Rules 62–296.702, .704, .705, .707, .708, .711, and .712 are revised to include citations to applicable EPA test methods, as described in 40 CFR part 60, Appendices A–2, A–3, A–4, A–6, A–7, and B, and state that EPA test methods are adopted and incorporated by reference in Rule 62–204.800. In addition, the revisions delete a sentence in Rule 62–296–702(3) stating that EPA Method 5 may be used to demonstrate compliance because this provision already specifies when EPA Method 5 may be used. EPA is proposing to approve these changes as they do not change the applicability of the rule and will not interfere with any applicable requirement concerning attainment or any other applicable CAA requirement.

III. Incorporation by Reference

In this document, 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, and as discussed in Section II of this preamble, EPA is proposing to incorporate by reference Florida Rule 62–296.320(4), *General Pollutant Emission Limiting Standards*, state effective July 10, 2014;⁸ Rule 62–296.406, *Fossil Fuel Steam Generators with Less Than 250 Million Btu Per Hour Heat Input*, State effective November 5, 2020; Rule 62–296.602, *Primary Lead-Acid Battery Manufacturing Operations*, State effective July 10, 2014; Rule 62–296.603,

and the location of PM (TSP) air quality maintenance areas and areas of influence (areas within 50 kilometers outside the boundary of an air quality maintenance area). EPA also clarified in that notice that RACT for existing sources would continue to apply in TSP nonattainment areas, but RACT for new and modified sources was rescinded. That notice addressed Rule 17–2.650, which was later recodified to become Rules 62–296.700 through 62–296.712.

⁸ Portions of Rule 62–296.320 that are not addressed in this proposed rulemaking would remain in the Florida SIP with a State effective March 13, 1996.

⁶ See the March 17, 2023, EPA memorandum to the file re: FL–167–1, April 1, 2022; DEP Method 9, which is included in the docket for this proposed rulemaking. This memorandum memorializes a conversation between EPA and FL DEP during which Florida confirmed that the difference between the two options is negligible since the data points are measured by a human observer in five percent increments.

⁷ On May 19, 1988, Florida submitted revisions to the SIP regarding particulate matter (PM) as part of the implementation of the PM₁₀ standard (PM with an aerodynamic diameter of 10 microns or less). The rules submitted under the May 19, 1988, date was State effective on May 30, 1988. In these revisions, which were approved by EPA on February 1, 1990 (55 FR 3403), EPA approved Florida's changes to its particulate matter SIP that clarify what areas of the State were covered by the PM (total suspended particulates (TSP)) RACT rules

Secondary Lead Smelting Operations, State effective July 10, 2014; Rule 62–296.604, *Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations*, state effective July 10, 2014; Rule 62–296.700, *Reasonably Available Control Technology (RACT) Particulate Matter*, State effective August 14, 2019; Rule 62–296.702, *Fossil Fuel Steam Generators*, State effective July 10, 2014; Rule 62–296.704, *Asphalt Concrete Plants*, State effective July 10, 2014; Rule 62–296.705, *Phosphate Processing Operations*, State effective July 10, 2014; Rule 62–296.707, *Electric Arc Furnace*, State effective July 10, 2014; Rule 62–296.708, *Sweat or Pot Furnaces*, State effective July 10, 2014; Rule 62–296.711, *Materials Handling, Sizing, Screening, Crushing and Grinding Operations*, State effective July 10, 2014; and Rule 62–296.712, *Miscellaneous Manufacturing Process Operations*, State effective July 10, 2014. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

For the reasons discussed above, EPA is proposing to approve the April 1, 2022, Florida SIP revision consisting of amendments to Rules 62–296.320(4), 62–296.406, 62–296.602, 62–296.603, 62–296.604, 62–296.700, 62–296.702, 62–296.704, 62–296.705, 62–296.707, 62–296.708, 62–296.711, and 62–296.712 in the Florida SIP.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this 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 approves 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 EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. 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.” 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 of Florida 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. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this proposed action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this proposed 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: November 21, 2023.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2023–26107 Filed 11–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA–HQ–OLEM–2023–0372; FRL 11026–04–OLEM]

Department of Energy Hanford Mixed Radioactive Waste Land Disposal Restrictions Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to grant a treatability variance from the Land Disposal Restrictions (LDR) treatment standards for the U.S. Department of Energy (DOE) for approximately 2,000 gallons of mixed low-activity waste from the Hanford Site in Washington State. The petitioner demonstrated that treatment of the waste to the specified standard is technically inappropriate, and the treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. If the variance is granted, the waste will be stabilized subject to specified conditions, and disposed at EnergySolutions in Clive, Utah and/or Waste Control Specialists in Andrews County, Texas. The variance would allow DOE, Washington, and EPA to

evaluate the regulatory pathways by which separation, pretreatment, stabilization, and offsite disposal could be implemented for other Hanford mixed low-activity waste.

DATES: Comments must be received on or before December 28, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2023-0372, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bethany Russell, Waste Characterization Branch, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0823; email address: russell.bethany@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Docket

EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2023-0372. All documents in the docket are listed in the <https://www.regulations.gov> index. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the EPA Docket Center. The Public Reading Room for the docket is open from 8:30 a.m. to 4:30 p.m. Eastern, Monday through Friday, excluding holidays. The telephone number for the

Public Reading Room and Docket Center is (202) 566–1744.

B. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2023-0372, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. 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, 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>.

C. Submitting CBI

Do not submit information that you consider to be CBI electronically through <https://www.regulations.gov> or email. Send or deliver information identified as CBI to only the following address: ORCR Document Control Officer, Mail Code 5305-P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Attn: Docket ID No. EPA-HQ-OLEM-2023-0372.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD-ROM or disk that does not contain CBI, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in

40 Code of Federal Regulations (CFR) Part 2.

II. General Information

A. Does this document apply to me?

This action applies only to DOE's Hanford facility located in Richland, Washington.

B. What action is the Agency taking?

On August 2, 2023, the EPA received a petition from the DOE requesting a variance from a treatment standard of the LDR of 40 CFR 268.40 for disposal of approximately 2,000 gallons of hazardous wastes generated from DOE's Test Bed Initiative (TBI). This document proposes to grant DOE's petition for a variance pursuant to 40 CFR 268.44.

C. What is the Agency's authority for taking this action?

Sections 3004(d) through (g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6294(d)–(g), prohibit the land disposal of hazardous wastes unless such wastes meet the LDR treatment standards (or treatment standards) established by EPA (or the Agency). Section 3004(m) of RCRA, 42 U.S.C. 6924(m), requires EPA to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. EPA has established treatment standards for all hazardous wastes.

However, when facilities generate hazardous wastes which cannot be treated to the specified levels, or when it is technically inappropriate for such wastes to undergo the prescribed treatment, they can apply for a variance from a treatment standard.¹ The requirements for a treatment variance are found at 40 CFR 268.44. An applicant for a treatment variance may demonstrate that it is inappropriate to require a waste to be treated to the level or by the method specified as the treatment standard, even though such treatment is technically possible. This is the criterion pertinent to today's action.² The petitioner must also

¹ See 51 FR at 40605–40606 (November 7, 1986); see also 62 FR 64504 (December 5, 1997).

² According to 42 CFR 268.44(a)(2), a petitioner may obtain a variance from an applicable treatment standard if it is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, as applicable here, the petitioner must demonstrate that treatment to the specified level or by the

demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste.

III. Background

A. Hanford Waste Description

Nearly 56 million gallons of radioactive and hazardous waste (mixed waste) were generated from the Hanford Site's role in our nation's defense program during the Manhattan Project and the Cold War.³ A total of 149 single shell tanks (SSTs) were constructed and entered service at Hanford between the 1940s and 1960s to contain this waste. Beginning in the 1960s, an additional 28 double shell tanks (DSTs) were also constructed at Hanford. DST capacity is crucial for retrieval of SST waste. Between the 1940s and the mid-1980s, approximately 240,000 tons of hazardous chemicals were added to Hanford's tanks.⁴

DOE regulates certain radioactive materials, including the radioactive portion of mixed waste at Hanford, pursuant to its self-regulating authority under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011, *et seq.* The Washington State Department of Ecology (ECY) regulates the hazardous portion of the mixed waste as dangerous waste pursuant to the Revised Code of Washington (RCW) Chapter 70A.300 and Washington Administrative Code (WAC) Chapter 173–303, as a State authorized to implement a hazardous waste program under the Resource Conservation and Recovery Act (RCRA).

Under RCRA and RCRA-authorized Washington regulations, mixed wastes are generally subject to the treatment standards in 40 CFR 268.40. Where there is no specific treatment standard set forth for a mixed waste, the standard applicable to the hazardous waste code applies to the mixed waste. For certain mixed wastes, specific treatment standards have been established. Treatment by high-level vitrification (HLVIT) applies to the subcategory of radioactive high-level mixed wastes

generated during the reprocessing of fuel rods and bearing the waste codes D002 and/or D004 through D011.⁵ EPA selected vitrification as the Best Demonstrated Available Technology (BDAT) for this waste, and established HLVIT as the treatment standard, in part because stabilization would not provide treatment of the high-level radioactive portion of the waste, and because the potential health hazards associated with exposure to radioactivity during analysis of this high-level mixed waste precluded setting a concentration-based treatment standard.⁶

B. Description of the Proposed Treatment and Disposal

In 2013, DOE updated its decision to separate tank wastes with low levels of long-lived radionuclides (referred to as low-activity waste or LAW) from other tank waste, and to vitrify some of the LAW at Hanford's Tank Waste Treatment and Immobilization Plant (WTP). The vitrified waste form will be disposed of onsite at Hanford's Integrated Disposal Facility (IDF). The WTP has the design capacity to treat only around 60 percent of the LAW from the Hanford tanks.⁷ For the remaining LAW, DOE did not select a treatment method and found it would be "beneficial to study further the potential cost, safety, and environmental performance of supplemental treatment technologies."⁸ DOE therefore proposed the TBI Demonstration.

DOE describes the TBI Demonstration as: (1) the onsite separation and pretreatment of supernate from Tank SY–101, located in the 200 West Area on the Central Plateau of the Hanford Site to remove the bulk of the key radionuclides from the supernate; (2) transport of the pretreated liquid waste to an offsite treatment facility for treatment using stabilization/solidification (grouting); and (3) disposal of the grouted waste form at a commercial disposal facility outside the State of Washington. Effectuating the TBI Demonstration would allow DOE, Washington, and EPA to evaluate the regulatory pathways by which separation, pretreatment, stabilization (grouting), and offsite disposal could be implemented for other Hanford mixed low-activity waste. Concurrently, DOE is applying for a Research Development & Demonstration (RD&D) Permit from ECY to perform the onsite pretreatment

activities associated with the TBI Demonstration.⁹

On August 2, 2023, DOE submitted to EPA a petition for a treatment variance under 40 CFR 268.44(a)(2) to implement the TBI Demonstration by treating approximately 2,000 gallons of supernate from Tank SY–101.¹⁰ DOE selected Tank SY–101 for the TBI because of, among other reasons, the tank waste chemistry, including low organic concentration.¹¹ Separation and pretreatment would involve filtration of solids, and use of a crystalline silicotitanate ion exchange media to capture and remove key radionuclides (including cesium (Cs-137) and daughter barium (Ba-137m) and strontium (Sr-90)) from the supernate. Tank SY–101 consists of two layers: the supernate, which comprises approximately 81 percent of the tank volume, and an undissolved salt cake layer beneath the supernate.

As requested in the petition and provided in this proposal, the pretreated supernate would be subject to a stabilization treatment method, hereafter referred to as STABL, with verification sampling to ensure the treated waste meets the numerical LDR treatment standards applicable to the waste codes provided in this proposal. The offsite commercial treatment facilities identified in the petition, *EnergySolutions* and *Waste Control Specialists*, would be required to conduct the stabilization treatment in compliance with their RCRA permits, as well as their radioactive material licenses.

DOE anticipates that half of the pretreated liquid would be transported to *EnergySolutions* for grouting and disposal at its commercial facility in Clive, Utah, and half would be transported to *Waste Control Specialists* for grouting and disposal at its Federal Waste Facility (FWF) in Andrews County, Texas.¹² The process totes used to transport the pretreated liquid waste offsite to *EnergySolutions* and *Waste Control Specialists* for treatment would meet all applicable U.S. Department of

specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media). Section 268.44(m) further requires the petitioner to demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste.

³ See Hanford Test Bed Initiative Fact Sheet, July, 2018, <https://www.energy.gov/sites/prod/files/2018/07/f53/Hanford%20Test%20Bed%20Initiative%20Fact%20Sheet%207-12-18.pdf>.

⁴ Government Accountability Office, GAO 22–104365, *Nuclear Waste Disposal: Actions Needed to Enable DOE Decision That Could Save Tens of Billions of Dollars* (2021), at 7.

⁵ See WAC 173–303–140, which incorporates by reference 40 CFR 268 at WAC 173–303–140(2)(a).

⁶ 55 FR 22520, 22627 (June 1, 1990).

⁷ See GAO 22–104365, *Actions Needed to Enable DOE Decision That Could Save Tens of Billions of Dollars* (2021), at 2.

⁸ See 78 FR 75916.

⁹ U.S. Department of Energy, ORP–67633, *2,000-Gallon Test Bed Initiative Demonstration Research, Development, and Demonstration Permit Application*, Revision. 0 (June 8, 2023) (hereinafter, RD&D Permit Application).

¹⁰ U.S. Department of Energy, 23–TF–0023, *Test Bed Initiative Land Disposal Restrictions Variance Petition* (August 1, 2023).

¹¹ U.S. Department of Energy, *Test Bed Initiative at Hanford, Report to Congress* (April 2019), at 7.

¹² See U.S. Department of Energy, *Memorandum: Approval of Exemption of Use of Non-U.S. Department of Energy Facilities for the 2,000-Gallon Test Bed Initiative Demonstration* (June 8, 2023).

Transportation (USDOT) requirements under 49 CFR Subchapter C.

In accordance with DOE Order 435.1 Chg 2(AdminChg), *Radioactive Waste Management* and DOE Manual 435.1–1 Chg 3(LtdChg), *Radioactive Waste Management Manual*, DOE completed a Waste Incidental to Reprocessing (WIR) Evaluation for the 2,000-gallon TBI Demonstration in March 2023.¹³ Based on the WIR Evaluation, DOE determined that the separated, pretreated, and solidified supernate from Tank SY–101 is waste incidental to the reprocessing of spent nuclear fuel, is not high-level waste, and can be managed as a low-level waste.¹⁴

DOE also completed a Final Environmental Assessment (Final EA) for the 2,000-gallon TBI Demonstration in accordance with the National Environmental Policy Act (NEPA), and DOE's NEPA implementation regulations, 10 CFR part 1021.¹⁵ In the Final EA, DOE analyzed the environmental impacts associated with four combinations of facilities for grouting and disposal of the pretreated 2,000 gallons of supernate from Tank SY–101. The EA evaluated potential impacts of the TBI Demonstration to air quality, human health (both from normal operations and accidents or destructive acts), waste management, and transportation. Any proposal to separate, pretreat, stabilize, and dispose of any tank waste other than the TBI supernate from Tank SY–101 would be evaluated in a separate NEPA review. DOE sent the draft EA with a request for input to host States and Tribes as well as States and Tribes that could be affected by the proposed action, as documented in Section 4 of the EA.¹⁶ DOE determined that the four alternatives analyzed for grouting and disposal will not constitute a major Federal action significantly affecting the quality of the human environment

within the meaning of NEPA, and therefore issued a Finding of No Significant Impact (FONSI) on March 16, 2023.¹⁷

IV. Basis for EPA's Proposed Determination

A. EPA's Approach to This Proposed Variance

The regulatory framework and associated requirements of the RCRA LDR standards must be addressed to implement the 2,000-gallon TBI Demonstration and dispose of the grouted waste form at EnergySolutions in Clive, Utah, and/or Waste Control Specialists in Andrews County, Texas. As mentioned above, the LDR standard under RCRA and RCRA-authorized Washington regulations for the subcategory of radioactive high-level mixed wastes generated during the reprocessing of fuel rods and bearing the waste codes D002 and/or D004 through D011 is HLVT. DOE asserts that after Tank SY–101 supernate is processed through TBI, including separation of high- and low-activity waste fractions, pretreatment, and solidification, following a re-classification through a WIR determination, the solidified low-activity waste fraction can be managed and disposed as low-level radioactive waste. Once those steps are completed, DOE believes the HLVT treatment standard does not apply and thus the separated, pretreated mixed waste would not be required to be vitrified. Washington interprets its RCRA-authorized LDR requirements such that the waste designation and all associated LDR treatment standards, including HLVT, have already attached to the tank waste and remain attached to the separated, pretreated low-activity fraction of the tank waste until satisfied. Thus, according to Washington, if the waste is not vitrified, the HLVT standard would need to be removed through some regulatory vehicle, such as a treatment variance, in order for that waste to be grouted instead of vitrified.¹⁸

EPA's decision to propose this treatment variance approval does not resolve DOE and the State's differing interpretations of the LDR requirements, and EPA is not concluding that HLVT does or does not apply to the TBI waste. Rather, EPA proposes to approve this variance to provide a clear regulatory

pathway for the 2,000-gallon TBI to proceed. As documented in a 2021 report by the General Accountability Office,¹⁹ DOE, Washington, and EPA agree that the TBI should proceed, to test the viability of a grouting approach to some of the Hanford tank waste. However, the regulatory disagreement between DOE and Washington remains unresolved. In view of this background—and the importance DOE, Washington and EPA all attach to making progress on the Hanford tank waste mission—EPA proposes to approve a variance clearly allowing the TBI to proceed, on the specific terms and subject to the specific conditions proposed today, regardless of whose interpretation forms the starting point for the variance analysis.

Specifically, EPA proposes to subject the TBI waste to a STABL (stabilization) treatment method, with verification sampling to ensure the treated waste meets the LDR numerical standards, as applicable, for waste codes F001–F005 (limited to constituents associated with spent solvent activities at the Hanford facility); D001–D011, D018, D019, D022, D028–D030, D033–D036, D038–D041, and D043. The waste codes included herein are those identified on the Dangerous Waste Permit Application Part A form for the DST System, Rev. 4 (December 14, 2009), which includes Tank SY–101.²⁰ The codes include listed hazardous wastes bearing organic constituents, and toxic and corrosive characteristic wastes which ordinarily must meet concentration-based treatment standards under Washington's RCRA-authorized program. DOE's petition requests to use STABL to meet the numeric standard, therefore these wastes are included in this variance.

¹⁹ GAO–22–104365.

²⁰ See *Petition*, Table 1. The data provided in Table 1 is derived from the *Final Analytical Report for Tank 241–SY–101 TBI Grab Sampling 2018*, RPP–RPT–61303 Rev. 05 (October 2020). All waste codes that appear on the DST System Part A form are included in this variance, with the exception of F039 (because the DST System has not accepted waste bearing that waste code). The sample result suggests that Tank SY–101 supernate displays only a limited subset of the waste codes listed on the DST System Part A form. See RD&D Permit Application, Sec. 4.1.2 and Table 4–1. DOE explains that Tank SY–101 supernate does not exhibit the characteristics of ignitability (D001) and reactivity (D003) before or after pretreatment. Nonetheless, EPA understands that Washington views the SY–101 waste as bearing all of the codes on the Part A form (except for F039) and is therefore including the codes in the proposed variance, since the facility is regulated under Washington's authorized program. The inclusion of D001 and D003 does not affect the treatment required by the variance, since treatment for underlying hazardous characteristics for these waste codes is accounted for by the treatment required for the corrosivity (D002) and toxicity (D004–D043) characteristics.

¹³ U.S. Department of Energy, DOE/ORP–2022–02, Revision 0, *Final Waste Incidental to Reprocessing Evaluation for the Test Bed Initiative Demonstration* (hereinafter, *Final WIR Evaluation*) (March 2023); see 88 FR 16615 (March 20, 2023). https://www.hanford.gov/files.cfm/WIR%2E80%93_Final_WIR_Evaluation_for_the_TBI1.pdf.

¹⁴ WIR Determination.

¹⁵ U.S. Department of Energy, *Final Environmental Assessment of the Test Bed Initiative Demonstration*, DOE/EA–2086 (March 2023). https://www.energy.gov/sites/default/files/2023-03/ea-2086-test-bed-initiative-hanford-2023-03_0.pdf.

¹⁶ The following tribes and State agencies were notified of the preparation of the EA: Confederated Tribes of the Umatilla Indian Reservation, Nez Perce Tribe, Yakama Nation Tribe, Wanapum Tribe, Tennessee Department of Environment and Conservation, Texas Commission on Environmental Quality, State of Utah Public Lands Policy Coordination Office, Oregon State Department of Energy, Washington State Department of Ecology.

¹⁷ *Finding of No Significant Impact Test Bed Initiative Demonstration Hanford Site, Washington*, DOE/EA–2086 (March 16, 2023). [https://www.hanford.gov/files.cfm/Final_-_230316_-_NEPA_FONSI_for_TBI_\(Digital\).pdf](https://www.hanford.gov/files.cfm/Final_-_230316_-_NEPA_FONSI_for_TBI_(Digital).pdf).

¹⁸ For Washington's statements describing its position, see FFRDC Report 2023, Volume II p. 494–495.

Pursuant to 40 CFR 268.44(a)(2)(i), a variance may be approved if it is technically inappropriate to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard, even though such treatment is technically possible. As with any section 268.44 treatment variance, the petitioner must also show that compliance with the variance will be sufficient to minimize threats to human health and the environment posed by land disposal of the waste.

B. Proposed Technically Inappropriate Determination

In promulgating the Land Disposal Restrictions for Third Third Scheduled Wastes (Third Third Rule) that established the HLWIT treatment standard, EPA expressly recognized the effectiveness of grouting for immobilizing inorganic hazardous constituents in low-level mixed waste:

The Agency believes that for treatment of metals in low-level mixed wastes and for some TRU mixed wastes containing low radioactive components, chemical precipitation will remove the metals in wastewaters, and stabilization technologies will reduce the leachability of the metal constituents in nonwastewater matrices. These are the same technologies that are applicable to nonradioactive wastes containing metals.

DOE submitted data demonstrating the applicability of stabilization as a treatment technology for the low-level waste fractions that are separated from the high-level waste generated during the reprocessing of fuel rods. As used by one particular facility, a stabilization process called grout stabilization involves blending commercially produced cement-based reagents with the liquid low-level waste fraction. The material sets up as a solid mass, immobilizing the waste. The performance data indicate that stabilization provides immobilization of the characteristic metal constituents and radioactive contaminants for this low-level radioactive waste, and that it is possible to stabilize the RCRA hazardous portions to meet the treatment levels for the characteristic metals. . . .

DOE provided information to support that vitrification is an applicable technology for their high-level wastes generated from the reprocessing of fuel rods. Treatment can be accomplished by using either direct vitrification or a more complex treatment process which includes a series of chemical steps that separate the low-level radioactive waste fractions from the high-level radioactive waste. The high-level radioactive portion is then vitrified. When using separation technologies such as precipitation followed by settling or filtration, the bulk of the radioactivity can be incorporated into a high-level liquid waste containing up to 99 percent of the radioactivity of the original irradiated fuel rods. By separating high-level and low-level mixed wastes, the amount of

high-level waste that may require vitrification treatment can be reduced.

[55 FR 2626–2627 (June 1, 1990).]

Tank SY–101 contains both inorganic and organic constituents; however, sampling results from Tank SY–101 supernate²¹ show that the organic constituents in the waste are at least one order of magnitude below the applicable nonwastewater (NWW) concentration-based LDR treatment standards except for 1-butanol (also referred to as n-Butyl alcohol).²² The sample results show that 1-butanol was not detected in the sample, however, the laboratory detection limit (2.78 mg/L) for this constituent is slightly above the NWW concentration-based standard (2.6 mg/kg). Thus, 1-butanol is either below or just slightly above this standard in the pre-treated waste, and EPA is confident that it will meet the LDR standard following treatment, and that grouting is an appropriate treatment technology for this constituent in this waste.

As referenced above, EPA expresses no opinion on whether the waste subject to this proposed variance must be vitrified under ECY's RCRA-authorized LDR regulations. However, EPA believes that, under the facts and circumstances presented in DOE's petition for this waste stream and the terms of this proposed variance, it would be technically inappropriate to require the Tank SY–101 supernate to be treated by vitrification. As explained further below, in view of the efficacy of grout for immobilizing inorganic constituents, the fact that the organics concentrations in the pretreated liquid waste are below (or in the case of 1-butanol, below or just slightly above) the NWW standards, and the protective geologic features of the identified disposal sites, EPA believes that requiring Tank SY–101 supernate to be vitrified would be technically inappropriate. This is because vitrification would require more time to implement, result in additional secondary impacts, and be more costly—outcomes that EPA considers unnecessary and undesirable in view of its proposed determination that grouting under the terms of the proposed variance would minimize threats.

The proposed approval applies only to the 2,000 gallons of separated, pretreated supernate from Tank SY–101. Therefore, these distinctions in impacts and outcomes between grouting and vitrifying the waste are small. That said,

EPA believes they are tangible in proportion to the amount of waste involved, which is also small. Moreover, the TBI Demonstration is intended to test the viability of an approach involving grouting and offsite disposal for other low-activity waste from Hanford. Thus, the TBI could provide the basis for a broader approach under which these distinctions would be more significant.

First, EPA believes grouting the waste, under the terms of the proposed variance, would speed up implementation of retrieval, treatment and disposal. In a peer-reviewed report issued in 2023, the Federally Funded Research and Development Center (FFRDC) recommended grouting and off-site disposal in parallel to vitrification due to the improved execution schedule and probability of successful project completion when compared to all other effective alternatives for waste beyond the capacity of the existing DFLAW.²³ Tank SY–101 is not currently part of the direct-feed system for vitrification. To vitrify LAW from SY–101 would require construction of new infrastructure. Thus, the TBI would allow the 2,000 gallons of TBI waste to be retrieved, treated, and disposed of more quickly than would otherwise be possible. Conducting TBI in parallel to on-site vitrification of LAW from other tanks could provide multiple pathways for disposal of Hanford tank waste and provide the capability to achieve a more rapid reduction in the amount of waste stored, and therefore result in a more rapid reduction in risk to human health and the environment.²⁴ Moreover, DST space in West Area is needed to allow for the receipt of waste retrievals from the aging SSTs for vitrification. In 2021 the Government Accountability Office (GAO) reported that insufficient tank space is the top risk to the Hanford cleanup mission, with a 95 percent chance of running out of DST space to continue retrieval of SST waste.²⁵ The May 2017 GAO report, which discussed the potential reduction in short-term risks and long-term costs from treating a portion of LAW with grout, stated that grouting could reduce the environmental risk posed by leaks from aging tanks by removing waste from such tanks sooner than vitrification would. The availability of DST space, including in SY–101, is thus integral to DOE's cleanup mission at Hanford. Grouting the TBI waste would free up 2,000 gallons of DST space that could be

²¹ See *Petition*, Table 1.

²² Because the final grouted waste form being disposed of will be a nonwastewater, the NWW standards are the relevant treatment standards for this proposed variance.

²³ FFRDC Report 2023, Volume I page 52.

²⁴ See FFRDC Report 2023 page 52.

²⁵ GAO–21–73.

used for waste retrieved from SSTs, allowing for optimized retrieval sequencing to reduce environmental and human health risk more rapidly.²⁶

Again, these distinctions as applied to the 2,000 gallons are small, but if the TBI demonstrates the effectiveness of a regulatory pathway for other Hanford low-activity waste via grouting and offsite disposal, that could substantially facilitate DOE's ability to meet its SST retrieval schedule and allow DOE to complete its cleanup mission in less time than it would if vitrification is required for all of Hanford's low-activity waste.²⁷ Grouting could provide an alternative treatment pathway that would allow 200 West Area tanks to be retrieved, and supernate from those tanks to be treated and disposed of offsite, decades earlier than the baseline approach of vitrification. Given that these tanks are well past their design life and are at risk of leaking, this would help mitigate the environmental risk of this tank waste (and attendant costs) sooner.

Second, vitrification of the 2,000 gallons of Tank SY-101 supernate would result in certain secondary impacts, which are unnecessary and avoidable under these circumstances given the efficacy of grouting, the protective geologic features of the identified disposal sites, and the terms of the proposed variance. When LAW is vitrified, the water present in LAW is not incorporated into the glass matrix as part of the treatment process. The water initially present in the LAW, as well as any water produced as part of the treatment process, must then be recycled back into the vitrification system or managed as a liquid secondary waste, which would contain low levels of radionuclides and hazardous constituents not otherwise immobilized or destroyed by the glass-forming step. In contrast, when pre-treated LAW is grouted instead of vitrified, the water content of the waste is incorporated into the cementitious matrix.

Vitrification also generates secondary waste streams (such as high-efficiency particulate air filters, carbon adsorber beds, spent or failed melters, and melter components), whereas grouting generates minimal secondary wastes.²⁸

Furthermore, vitrification is a high temperature process that generates offgas that requires management and treatment for worker and public protection, whereas grouting takes place at much lower temperatures and is less energy-intensive than vitrification.²⁹

Vitrification of TBI tank waste would also be more costly than grouting to achieve near-term risk reduction. Additional vitrification capability would need to be constructed before the TBI waste and any other low-activity waste from Hanford's 200 West Area could be vitrified. Multiple independent sources estimate the costs of grouting and off-site disposal vs vitrification.³⁰ For example, the 2023 FFRDC Follow-On Report states that grouting would minimize financial demands by reducing mission duration and lifecycle costs and indicates that grouting is clearly executable at benchmark funding levels.³¹ In light of this, EPA believes grouting and offsite disposal of TBI waste in accordance with the terms of this approval would be cheaper than vitrification. Cost savings can also be realized by reducing the amount of waste that needs to be managed in tanks. The GAO reported in 2021 that DOE spent more than \$400 million per year from 2017–2019 maintaining the waste in the tanks.³² Finally, the reduction of waste quantity managed in aging tanks has the potential to reduce cleanups costs associated with waste leaking from the tanks.

EPA recognizes there are differences in reporting on how much time, cost, and secondary impacts would be reduced by grouting some of the Hanford low-activity waste rather than vitrifying it. However, EPA believes there would be savings under all three metrics.

Finally, the characteristics of the two facilities that would be authorized for disposal of the grouted waste form under the proposed variance support EPA's proposed determination that requiring HLVT would be technically inappropriate for the TBI waste as described below.

First, these two facilities feature favorable physical, including geologic, features, as described in section II.C below.³³ These features would help ensure that threats to human health and the environment posed by disposal of

the grouted SY-101 supernate are minimized. EPA's proposed technical inappropriateness determination is dependent on its proposed threat minimization determination.

Second, because the pre-treated LAW will still contain radionuclides, EPA notes that disposal must be in accordance with the Nuclear Regulatory Commission's (NRC) performance objectives at 10 CFR part 61, subpart C for disposal of LLW. The performance objective requirements for licensed MLLW disposal facilities in the Texas Administrative Code and the Utah Administrative Code mirror and are comparable to the NRC's performance objectives, as discussed in detail in the 2,000-gallon TBI Demonstration Final WIR Evaluation.³⁴

For all the reasons above, EPA concludes that requiring treatment by vitrification would be technically inappropriate for this 2,000 gallons of Tank SY-101 supernate in view of the efficacy of grouting, the protective geologic features of the identified disposal sites, and the conditions specified in the proposed variance.

C. Proposed Minimization of Threat Determination

EPA proposes to determine that grouting of the pre-treated, low activity fraction of the Tank SY-101 supernate, under the terms of the proposed variance, would minimize threats to human health and the environment posed by disposal of the waste. The proposed minimization of threat finding is predicated on the TBI waste being treated to the LDR standard of STABL, with verification through samples collected after grouting to demonstrate that the stabilization achieves the NWW LDR concentration-based and Toxicity Characteristic Leaching Procedure (TCLP)-based standards, as applicable, for F001–F005 (limited to constituents associated with spent solvent activities at the Facility); D001–D011, D018, D019, D022, D028–D030, D033–D036, D038–D041, and D043.

The EPA-approved STABL treatment technology is described as “[s]tabilization with the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust) . . .” 40 CFR 268.42. This method includes the grouting technology that DOE requests approval for. As described above, EPA in the Third Third Rule preamble generally concluded that stabilization was an appropriate technology for low-level waste fractions that are separated

²⁶ See FFRDC 2023 page 52.

²⁷ See GAO 22–104365, p. 44–45; GAO, GAO 21–73, *Hanford Cleanup, DOE's Efforts to Close Tank Farms Would Benefit from Clearer Legal Authorities and Communication* (January 2021). See, also, 2023 FFRDC Follow-On Report, Vol. 1, p. 9–11 (finding, for example, that every two years of WTP vitrification operations without LAW supplemental treatment adds one year to the overall mission).

²⁸ See, 2023 FFRDC Follow-On Report, Vol. I, App. B.

²⁹ See, 2023 FFRDC Follow-On Report, Vol. I, p. 3–4.

³⁰ See 2019 FFRDC Report; 2022 GAO report; 2023 FFRDC Follow-On Report.

³¹ GAO–17–306

³² GAO–21–73.

³³ The geology underlying the IDF differs from the geology underlying these two facilities in certain respects, see Section II.C page 14 below.

³⁴ See Final WIR Evaluation, p. 4–2; 5–1.

from the high-level waste generated during the reprocessing of fuel rods. To comply with STABL, the offsite commercial treatment facilities would be required to use the appropriate stabilization methods that meet applicable regulatory requirements in accordance with the facilities' waste permits and radioactive material licenses, as applicable.

Moreover, under the proposed variance, the grouted waste would be required to meet the numerical treatment standards applicable to the waste codes for the subject waste. While confirmation sampling would not typically be conducted for waste subject to the STABL standard, since it is a method-based standard, sampling after treatment at the offsite commercial treatment facilities would be conducted for the purpose of validating treatment performance against the NWW numerical standards at 268.40 and, as applicable, at 268.48.³⁵ EPA determined in promulgating these numerical standards that they minimize threats posed by disposal of hazardous waste bearing the relevant waste codes, as required by RCRA section 3004(m).

Based on the sampling data provided by DOE, EPA fully expects that the numerical treatment standards will be met. All metals other than chromium are below NWW TCLP standards based on their measured total concentrations in Tank SY-101. A previous grouting recipe used by DOE provided a retention factor for chromium which can be used to predict the TCLP concentrations found in the final grouted waste form. This demonstration showed that the chromium TCLP leachate concentration in the grouted waste form would be two to three orders of magnitude less than the NWW TCLP numerical standard.³⁶ While this grout recipe may not be identical to the recipe used in this proposed action, grouting is generally BDAT for metal constituents and is therefore expected to immobilize the chromium and therefore minimize threats.³⁷

As described earlier, the organic wastes are already at least an order of magnitude below the NWW standards, except for 1-butanol, which below or just slightly above the treatment standard. For this reason, targeted organics destruction or removal in addition to grouting is not necessary to minimize threats to health and the environment.

EPA's proposed determination is supported by independent assessments. For example, experts convened by the National Academies of Science in 2016 concluded that both vitrification and grout could effectively treat Hanford low activity waste and be protective of human health.³⁸

Finally, the treatment and disposal facilities that would be authorized by this variance are particularly appropriate for this waste. Most importantly, the grouted waste form will be disposed of at EnergySolutions in Utah and/or Waste Control Specialists in Texas, both of which are commercial facilities that are RCRA-permitted and licensed by the applicable State authorities pursuant to their agreement with the NRC to accept mixed waste in accordance with their Waste Acceptance Criteria. Because the pre-treated LAW will still contain radionuclides, disposal must be in accordance with the NRC performance objectives at 10 CFR part 61, subpart C for disposal of LLW. The performance objective requirements for licensed MLLW disposal facilities in the Texas Administrative Code and the Utah Administrative Code mirror and are comparable to the NRC's performance objectives, as discussed in detail in the 2,000-gallon TBI Demonstration Final WIR Evaluation. Those licensed facilities are subject to regulations and conditions that ensure the protection of public health and safety and the environment.

The disposal facilities were also specifically selected based on their location, geology, hydrogeology, and experience in receiving comparable waste types for disposal. The EnergySolutions facility is located in a

remote area of Utah with low-permeability clay soils immediately under the facility. Any potential for exposures via the groundwater pathway is further reduced due to naturally poor groundwater quality at the site which is extremely saline and exceeds EPA and Utah State drinking water standards for several naturally occurring constituents.³⁹ No domestic water use occurs within 10 km of the facility.⁴⁰ The precipitation levels in the area are low, evaporation is high, and the nearest stream channel is 2 miles east of the facility, thus minimizing the potential for releases via any surface water pathway.⁴¹ All of those characteristics make the site well-suited for the disposal of the TBI waste.

Similarly, the Waste Control Specialists FWF facility is in a physical setting that is naturally protective of human health and the environment. The area receives less than 16 inches of precipitation annually and evapotranspiration exceeds precipitation rates.⁴² There are no perennial streams on or near the site.⁴³ The site sits on top of a 600-ft geologic layer of silts, muds and other low-permeability constituents.⁴⁴ The first continuously saturated zone is 225 ft below ground surface and has extremely low permeability, retaining water from the Pleistocene era.⁴⁵ The water volume is not sufficient to support an individual, and is non-potable.⁴⁶

The geologic features, low infiltration, and no credible pathway to surface water or potable water aquifers at both EnergySolutions in Utah and Waste Control Specialists in Texas provide additional long-term environmental protections for waste that would help ensure that threats to human health and the environment posed by the disposal of the grouted SY-101 supernate are minimized.⁴⁷ Conversely, with respect to geology, Hanford's IDF overlies unconsolidated to semi-consolidated sediments with no intervening natural barrier between the landfill and the underlying aquifer. However, EPA is not making a decision on whether a

³⁵ DOE has requested this confirmation sampling in the context of the 2,000-gallon TBI to support and inform the development of a possible method-based treatment standard for other Hanford tank waste. DOE indicates that it may submit a variance request in the future for other tank waste that may provide a basis to eliminate the need for post-treatment sampling. Today's proposal is limited to the 2,000-gallon TBI, and EPA expresses no view as to the appropriateness of proposals DOE may advance in the future for treatment of other Hanford tank waste.

³⁶ DOE details in their petition: In Tank SY-101 supernate, chromium was detected at 95.8 mg/L. Available data on chromium in relation to DOE's Cast Stone formulation indicate that the retention factor for chromium is between 3.3×10^{-5} and

1.3×10^{-4} (mg Cr/L leachate)/(mg Cr/kg solid), which corresponds to an EPA SW-846 Method 1311 TCLP concentration of between 9.9×10^{-4} and 3.9×10^{-3} (mg Cr/L leachate). In contrast, the NWW treatment standard for chromium is 0.6 (mg Cr/L leachate). Thus, the TCLP leachate concentration for the grouted waste form is expected to be two or three orders of magnitude less than the NWW numerical standard.

³⁷ EPA 402-R-96-014, *Stabilization/Solidification Processes for Mixed Waste*, page 36.

³⁸ GAO-22-104365, *Nuclear Waste Disposal: Actions Needed to Enable DOE Decision That Could Save Tens of Billions of Dollars*, at 50-51.

³⁹ 2023 FFRDC Follow-On Report, Vol. II, p. G-13.

⁴⁰ 2023 FFRDC Follow-On Report, Vol. II, p. G-18.

⁴¹ 2023 FFRDC Follow-On Report, Vol. II, p. G-18.

⁴² 2023 FFRDC Follow-On Report, Vol. II, p. G-33.

⁴³ 2023 FFRDC Follow-On Report, Vol. II, p. G-33.

⁴⁴ 2023 FFRDC Follow-On Report, Vol. II, p. G-27.

⁴⁵ 2023 FFRDC Follow-On Report, Vol. II, p. G-31.

⁴⁶ 2023 FFRDC Follow-On Report, Vol. II, p. G-31.

⁴⁷ 2023 FFRDC Follow-On Report, Vol. I, p. 52.

variance would be appropriate for disposal in landfills other than those evaluated in the petition.

disposal in landfills other than those evaluated in the petition.

TABLE 1—PROPOSED MODIFICATION TO 40 CFR 268.44(o) FOR THE TBI DEMONSTRATION PETITION
WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/L)	Notes
United States Department of Energy (Energy), Richland, WA ¹⁷ .	F001–F005 D001–D011, D018, D019, D022, D028–D030, D033–D036, D038–D041, and D043 ¹⁸ .	NA	For waste codes F001–F005, the constituents are limited to those associated with spent solvent activities at the Facility documented through process knowledge. For constituents, as applicable, associated with D waste codes under the “Waste Code” column, see 40 CFR 268.40.	NA	NA	STABL ^{19 20}	NA.

¹⁷ The STABL treatment standard applies to the separated and pretreated tank waste under the 2,000-gallon TBI Demonstration.

¹⁸ The waste codes included in this column are those identified on the current version of the Dangerous Waste Permit Application Part A form for the Hanford Double Shell Tank System, Rev. 04 (December 14, 2009), except for F039 which has not been accepted into the Double Shell Tanks.

¹⁹ Sampling after treatment will be conducted at the treatment facility for the purpose of assessing the extent of treatment performance against the NWW numerical standards at 268.40 and, as applicable, at 268.48. Waste treated using STABL may not be land disposed until LDR constituents are below the non-wastewater numerical standards at 40 CFR 268.40 and 268.48.

²⁰ Treatment using the STABL treatment method shall be performed, and the treated waste shall be disposed of, at EnergySolutions in Clive, Utah, and/or Waste Control Specialists in Andrews County, Texas.

Barry N. Breen,

*Principal Deputy Assistant Administrator,
Office of Land and Emergency Management.*

[FR Doc. 2023–26123 Filed 11–27–23; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 88, No. 227

Tuesday, November 28, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and 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.

Comments regarding this information collection received by December 28, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Dairy Tariff-Rate Import Quota Licensing Regulation.

OMB Control Number: 0551–0001.

Summary of Collection: The Dairy Tariff-Rate Import Quota regulation (7 CFR 6.20–6.37) governs the administration of the import licensing system applicable to most dairy products subject to tariff-rate quotas (TRQs). The importation of most cheese made from cow's milk and certain noncheese dairy articles (butter, dried milks, and butter substitutes) are subject to TRQs and must be accompanied by an import license issued by the Department to enter at the lower tariff. Importers without licenses may enter these dairy articles, but are required to pay the higher tariff.

Each quota year, applicants for historical, non-historical and designated licenses must certify their eligibility for the following quota year through the online Agricultural Trade License Administration System (ATLAS) platform. The ATLAS application process requires applicants to: (1) certify they are an importer, manufacturer, or exporter of certain dairy products; and (2) certify they meet the eligibility requirements of § 6.23 of the Regulation. Applicants for non-historical licenses must request licenses in descending order of preference for specific products and countries listed on the form.

Need and Use of the Information: The information collected will be used by the Foreign Agricultural Service, Dairy Import Licensing Group, in the administration of the tariff-rate import quota licensing system for certain dairy products and the issuance of licenses in accordance with the Regulation. The Regulation requires records pertaining to an applicant's eligibility to be retained for 5 years after the end of a quota year.

Description of Respondents: Importers and manufacturers of cheese and non-cheese dairy products, and exporters of non-cheese dairy products.

Number of Respondents: 700.

Frequency of Responses: Annually.

Total Burden Hours: 394.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–26164 Filed 11–27–23; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Service Manual 2000 National Forest Resource Management; Chapter 2040 National Forest System Monitoring

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of availability for public comment.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture (USDA), is proposing to establish a new chapter and new direction for all types of monitoring activities across the National Forest System to track conditions and inform evidence-based decision-making and adaptive management.

DATES: Comments must be received in writing by December 28, 2023.

ADDRESSES: Comments may be submitted electronically to <https://cara.fs2c.usda.gov/Public/CommentInput?project=ORMS-3585>. Written comments may be mailed to Mara Alexander, National Adaptive Management Program Lead, Ecosystem Management Coordination, 201 14th Street SW, Washington, DC 20024. All timely received comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at <https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-3585>.

FOR FURTHER INFORMATION CONTACT: Mara Alexander, National Adaptive Management Program Lead, Ecosystem Management Coordination, at 202–597–1245 or by electronic mail to mara.alexander@usda.gov. Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The proposed new Forest Service Manual

Chapter 2040 on National Forest System Monitoring will improve the Agency's ability to make evidence-based decisions, as required by the 2012 Planning Rule and the Foundations for Evidence-Based Policymaking Act of 2018. The proposed directive creates a framework that clearly defines the Forest Service's monitoring principles, what those principles are intended to accomplish, and the roles and responsibilities for leaders at all levels to implement the policy. An analysis of existing agency policy in Forest Service Handbooks and Manuals was conducted to evaluate monitoring requirements to inform the development of a National Forest System monitoring policy.

The Forest Service has determined that the proposed new directive sets forth policy and responsibilities, with the goal of providing current direction applicable to the Forest Service monitoring program. Therefore, the Forest Service is publishing the proposed directive for public comment in accordance with 36 CFR part 216. The Forest Service is seeking public comment on the proposed directive, including the sufficiency of the proposed directive in meeting its stated objectives, ways to enhance the utility and clarity of information within the direction, or ways to streamline processes outlined. The proposed directive location of this new chapter has the potential to change. It is expected that Chapter 2040 will replace Chapter 1940—Inventory, Monitoring, and Assessment Activities which established direction associated solely for land management planning.

Forest Service National Environmental Policy Act procedures exclude from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions" 36 CFR 220.6(d)(2). The Agency's conclusion is that these proposed directives fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

After the public comment period closes, the Forest Service will consider timely comments that are within the scope of the proposed directive in the development of the final directive. A notice of the final directive, including a response to timely comments, will be posted on the Forest Service's web page at <https://www.fs.usda.gov/about-agency/regulations-policies/comment-on-directives>.

Dated: November 9, 2023.

Gregory Smith,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–26161 Filed 11–27–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce-Clearwater National Forests; Idaho; Land Management Plan Revision for the Nez Perce-Clearwater National Forests

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of opportunity to object to the revised land management plan and Regional Forester's list of species of conservation concern for the Nez Perce-Clearwater National Forests.

SUMMARY: The Forest Service is revising the Nez Perce and Clearwater National Forests' 1987 Land and Resource Management Plans. The Forest Service has prepared a final environmental impact statement (EIS) for the revised land management plan and a draft record of decision (ROD).

This notice is to inform the public that the Nez Perce-Clearwater National Forests are initiating a 60-day period where individuals or entities with specific concerns about the revised land management plan and the associated final EIS may file objections for Forest Service review prior to the approval of the revised land management plan. This is also an opportunity to object to the Regional Forester's list of species of conservation concern on the Nez Perce-Clearwater National Forests.

DATES: The publication date of the legal notice in the Nez Perce-Clearwater National Forests' newspaper of record, Lewiston Morning Tribune, initiates the 60-day objection filing period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5)). An electronic scan of the legal notice with the publication date will be posted at <https://www.fs.usda.gov/nezperceclearwater>.

ADDRESSES: The Nez Perce-Clearwater National Forests' revised land management plan, final EIS, draft ROD, and other supporting information will be available for review at: <https://www.fs.usda.gov/nezperceclearwater> and click on Nez Perce-Clearwater Forest Plan Revision. The Nez Perce-Clearwater National Forests' list of species of conservation concern and other supporting information will be available for review at: <http://bit.ly/>

NorthernRegion-SCC. These web addresses include an objection template as an aid to providing the required information. Please be explicit as to whether the objection is for the land management plan or the species of conservation concern.

Objections must be submitted to the Objection Reviewing Officer by one of the following methods:

- *Electronically:* Electronic objections must be submitted to the Objection Reviewing Officer via the objection webform at <https://cara.fs2c.usda.gov/Public/CommentInput?Project=44089>. Electronic submissions must be submitted in a format that is readable with optical character recognition software (e.g., Word, PDF, Rich Text) and be searchable.

- *Regular mail, private carrier, or hand delivery:* Address to the Objection Reviewing Officer, USDA Forest Service, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804. Office hours are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays.

- *Fax:* Objections can be faxed to the Objection Reviewing Officer at (406) 329–3411. The fax coversheet must include a subject line with "Nez Perce-Clearwater Forest Plan Objection" or "Nez Perce-Clearwater Species of Conservation Concern" and should specify the number of pages being submitted.

FOR FURTHER INFORMATION CONTACT: Public and Government Relations Staff Officer Zach Peterson, 1008 Highway 64, Kamiah, Idaho 83536, 208–935–4239. Additional information concerning the draft ROD may be obtained on the internet at the websites listed in the **ADDRESSES** section of this document.

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The decision to approve the revised land management plan for the Nez Perce-Clearwater National Forests and the Regional Forester's identification of species of conservation concern is subject to the objection process identified in 36 CFR part 219 subpart B (219.50 to 219.62). Per 36 CFR 219.53, only individuals and entities who have submitted substantive formal comments related to a plan revision during the opportunities for public comment that are attributable to the objector may file an objection unless the objection

concerns an issue that arose after the opportunities for formal comment.

How To File an Objection

An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan revision or forest plan amendment being objected to and the name and title of the Responsible Official;

(5) A statement of the issues and/or parts of the plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except that the following need not be provided:

a. All or any part of a federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the plan revision comment period.

It is the responsibility of the objector to ensure that the Reviewing Officer receives the objection in a timely manner. The regulations prohibit

extending the length of the objection filing period.

Responsible Official

The Responsible Official who will approve the record of decision for the Nez Perce-Clearwater National Forests revised land management plan is Cheryl Probert, Forest Supervisor for the Nez Perce-Clearwater National Forests, 1008 Highway 64, Kamiah, Idaho 83536, 208-935-4239. The Responsible Official for the identification of the species of conservation concern for the Nez Perce-Clearwater National Forests is Leanne Marten, Northern Region Regional Forester, 26 Fort Missoula, Missoula, MT 59804.

The Regional Forester is the Reviewing Officer for the revised land management since the Forest Supervisor is the Responsible Official (36 CFR 219.56(e)(2)). Objection review of the list of species of conservation concern will be subject to a separate objection process. The Chief of the Forest Service is the Reviewing Officer for the list of species of conservation concern identification as the Regional Forester is the Responsible Official (36 CFR 219.56(e)(2)).

This authority may be delegated to an individual Deputy Chief or Associate Deputy Chief for the National Forest System, consistent with delegations of authority provided in the Forest Service Manual at sections 1235.4 and 1235.5.

Dated: November 14, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023-26162 Filed 11-27-23; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Willamette National Forest is proposing to establish several new recreation fee sites. Recreation fee revenues collected at the new recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the recreation fees that would be charged at the new recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the new recreation fees would be implemented no earlier

than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Willamette National Forest, 3106 Pierce Parkway, Suite D, Springfield, OR 97477.

FOR FURTHER INFORMATION CONTACT: Matt Peterson, Recreation Program Manager, 541-225-6421 or matthew.peterson1@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of new recreation fee sites. In accordance with Forest Service Handbook 2309.13, chapter 30, the Forest Service will publish the proposed new recreation fee sites in local newspapers and other local publications for public comment. Most of the new recreation fee revenues would be spent where they are collected to enhance the visitor experience at the new recreation fee sites.

An expanded amenity recreation fee of \$16 per night and \$6 per extra vehicle would be charged for the Daly Lake, Scott Lake, Harralson Horse Camp, and Skookum Campgrounds. In addition, an expanded amenity recreation fee of \$85 per night would be charged for rental of Marion Forks Guard Station and Gold Lake Cabin.

Expenditures from recreation fee revenues collected at the new recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, these new recreation fees will be reviewed by a Resource Advisory Committee prior to a final decision and implementation. Reservations for Daly Lake, Scott Lake, Harralson Horse Camp, and Skookum Campgrounds, Marion Forks Guard Station, and Gold Lake Cabin could be made online at www.recreation.gov or by calling 877-444-6777. Reservations would cost \$8.00 per reservation.

Dated: November 21, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023-26181 Filed 11-27-23; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Chattahoochee-Oconee National Forests are proposing to establish several new recreation fee sites. Recreation fee revenues collected at the new recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the recreation fees that would be charged at the new recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the new recreation fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: Chattahoochee-Oconee National Forests, 1755 Cleveland Highway, Gainesville, GA 30501.

FOR FURTHER INFORMATION CONTACT: Karen Larsen, Recreation Fee Coordinator, 706–581–0821 or karen.larsen@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of new recreation fee sites. In accordance with Forest Service Handbook 2309.13, chapter 30, the Forest Service will publish the proposed new recreation fee sites in local newspapers and other local publications for public comment. Most of the new recreation fee revenues would be spent where they are collected to enhance the visitor experience at the new recreation fee sites.

An expanded amenity recreation fee of \$10 per night would be charged for the Hickey Gap and Dry Creek Campgrounds. In addition, an expanded amenity recreation fee of \$100 per night would be charged for rental of Morganton Point Cabin. A standard amenity recreation fee of \$5 per day per vehicle would be charged at Woody Gap, Dockery Lake, and Mount Yonah developed recreation sites. The Chattahoochee-Oconee National Forests Annual Pass and the America the Beautiful—the National Parks and Federal Recreational Lands Pass would be honored at these standard amenity recreation fee sites.

Expenditures from recreation fee revenues collected at the new recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, the new recreation fees will be reviewed by a Recreation Resource Advisory Committee (RAC) prior to a final

decision and implementation. Reservations for campgrounds and cabins could be made online at www.recreation.gov or by calling 877–444–6777. Reservations would cost \$8.00 per reservation.

Dated: November 21, 2023.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–26121 Filed 11–27–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice 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 North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 12 p.m. ET on Tuesday, January 30, 2024. The purpose of this meeting is to discuss the Committee's new project on the Child Welfare System as part of the Proposal Stage of their project process.

DATES: Tuesday, January 30, 2024, from 12 p.m.–1:30 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
<https://www.zoomgov.com/join/1614449568>.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 444 9568.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or (434) 515–0204.

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 Liliana Schiller, Support Services Specialist, at 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 Victoria Moreno at vmoreno@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 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, North Carolina 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 lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Committee Discussion: Child Welfare System
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: November 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–26193 Filed 11–27–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee; Cancellation

AGENCY: Commission on Civil Rights.

ACTION: Notice; cancellation of briefing; panel III.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** concerning the panel III briefing of the Arizona Advisory Committee on Monday, November 27, 2023 at 1:00 p.m. mountain standard time. The notice is in the **Federal Register** of Monday, October 30, 2023 in

FR Doc. 2023–23891, in the third column of page 74145 and the first column of page 74146.

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

Dated: November 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–26194 Filed 11–27–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a meeting Thursday, December 7, 2023 at 12:00 p.m. Central Time. The purpose of the meeting is to review and vote on a project proposal regarding right to counsel for the Committee's next civil rights study.

DATES: The meeting will be held on Thursday December 7, 2023 at 12:00 p.m. Central Time.

Web Access (audio/visual): Register at: <https://www.zoomgov.com/j/1600888860?pwd=L0RpVmtRd01oN2FjeFNCa1VqTzNqdz09>

Phone Access (audio only): 833–435–1820, Meeting ID: 160 088 8860

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at mwojnaroski@usccr.gov or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above registration link or call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided. Individuals who are deaf, deafblind, or hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

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 Melissa Wojnaroski at mwojnaroski@usccr.gov.

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

Agenda

- I. Welcome and Roll Call
- II. Discussion: Project proposal (Right to Counsel)
- III. Vote
- IV. Next Steps
- V. Public Comment
- VI. 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 because of the exceptional circumstance of the upcoming expiration of the current Committee appointment term and the resulting timeline under which the Committee must complete its next and final project.

Dated: November 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–26188 Filed 11–27–23; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Thursday, December 13, 2023, at 3:30 p.m. Atlantic Time and 2:30 p.m. Eastern Time. The purpose is to continue discussion on their project on the civil rights impacts of the Insular Cases in Puerto Rico.

DATES: December 13, 2023, Thursday, at 3:30 p.m. Atlantic Time (2:30 p.m. ET):

ADDRESSES: Meeting will be held via Zoom.

Registration Link (Audio/Visual):

<https://tinyurl.com/mukdyf99>

Join by Phone (Audio Only): 1–833–

435–1820 USA Toll Free; Meeting ID: 161 076 7939 #

FOR FURTHER INFORMATION CONTACT:

Email Victoria Moreno, Designated Federal Officer at vmoreno@usccr.gov, or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting will take place in Spanish with English interpretation. 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 ebohor@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 Victoria Moreno at vmoreno@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

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, Puerto Rico 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 ebohor@usccr.gov.

Agenda

1. Welcome & Roll Call
2. Committee Discussion on Project
Regarding the Civil Rights Impacts
of the Insular Cases in Puerto Rico
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: November 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-26191 Filed 11-27-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business 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 New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss draft recommendations in the Committee's draft report on the New York child welfare system and its impact on Black children and families.

DATES: Friday, December 15, 2023, from 1:00 p.m.–3:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
<https://bit.ly/3PbvvdX>.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll Free; Webinar ID: 161 785 2445 #.

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, DFO, at mtrachtenberg@usccr.gov or 1-202-809-9618.

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 Mallory Trachtenberg at mtrachtenberg@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, New York 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. Approval of Minutes
- III. Discussion: Recommendations
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: November 22, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-26192 Filed 11-27-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-580-880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: 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

heavy walled rectangular welded carbon steel pipes and tubes (HWR) from the Republic of Korea (Korea) were not sold at less than normal value during the period of review (POR) September 1, 2021, through August 31, 2022.

DATES: Applicable November 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Rebecca M. Janz, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2972.

SUPPLEMENTARY INFORMATION:**Background**

On July 31, 2023, Commerce published in the **Federal Register** the preliminary results of the 2021–2022 administrative review¹ of the antidumping duty order on heavy walled rectangular welded carbon steel pipes and tubes from the Republic of Korea (Korea).² We invited interested parties to comment on the *Preliminary Results*.³ No interested party submitted comments. Accordingly, the final results of the review remain unchanged from the *Preliminary Results*. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the *Order* are certain heavy walled rectangular welded steel pipes and tubes from Korea.⁴

Final Results of Review

We determine that the following weighted-average dumping margin exists for the period September 1, 2021, through August 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	0.00

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 51773 (July 31, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 FR 62865 (September 13, 2016) (*Order*).

³ See *Preliminary Results*.

⁴ For a complete description of the scope of the *Order*, see the *Preliminary Results* PDM at 2–3.

Disclosure

Because Commerce received no comments on the *Preliminary Results*, we have not modified our analysis, and no decision memorandum accompanies this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, 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 of this review. Because the respondent's weighted-average dumping margin or importer-specific assessment rates are zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate the entries without regard to antidumping duties.⁵ These final results of administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.⁶

For entries of subject merchandise during the POR produced by NEXTEEL Co., Ltd. for which it did not know that the merchandise it sold was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁷

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon

⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8102–03 (February 14, 2012); see also 19 CFR 351.106(c)(2).

⁶ See section 751(a)(2)(C) of the Act.

⁷ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

publication in the **Federal Register** of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the respondent will equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company 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 cash deposit rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, or a previous segment, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.24 percent, the all-others rate established in the less-than-fair-value investigation.⁸ These 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 this review period. 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.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

⁸ See *Order*.

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i) of the Act and 351.221(b)(5).

Dated: November 17, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–26136 Filed 11–27–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–891]

Carbon and Alloy Steel Wire Rod From the Republic of Korea: 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 wire rod (wire rod) from the Republic of Korea (Korea) were not sold in the United States at less than normal value during the period of review (POR), May 1, 2021, through April 30, 2022.

DATES: Applicable November 28, 2023.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, 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) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2023, Commerce published the *Preliminary Results* of this administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act).¹ POSCO/POSCO International Corporation (PIC) is the sole producer and exporter that is subject to this administrative review. Between July and August 2023, we conducted sales verifications of the questionnaire responses in accordance with section 782(i) of the Act.² Following the

¹ See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022*, 88 FR 36277 (June 2, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memoranda, “CEP Sales Verification Report for POSCO International America Corporation” and

Continued

verifications, we invited interested parties to submit case and rebuttal briefs.³ We received no comments from interested parties. Accordingly, no decision memorandum accompanies this **Federal Register** notice.

POSCO filed a hearing request on July 3, 2023, and subsequently withdrew its request on November 9, 2023.⁴ On September 22, 2023, we extended the deadline for the final results to no later than November 29, 2023.⁵ Commerce conducted this review in accordance with section 751(a) of the Act.

Scope of the Order⁶

The scope of the *Order* includes certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, less than 19.00 mm in actual solid cross-sectional diameter. On April 8, 2019, Commerce excluded from the scope of the *Order* grade 1078 and higher tire cord quality wire rod used in the production of tire cord wire.⁷ On June 13, 2019, Commerce excluded from the scope of the *Order* valve spring quality steel products defined as wire rod.⁸ For a complete description of the scope of the *Order*, see *Preliminary Results PDM*.

Changes Since the Preliminary Results

In the *Preliminary Results*, we used the quarterly cost methodology.⁹ While preparing the verification outlines, we found that we did not deploy the methodology properly in the preliminarily margin calculation program. For these final results, we corrected the error in the final margin calculation program, and that correction

did not change the preliminarily weighted-average dumping margin.¹⁰

Final Results of the Review

We determine that the following estimated weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
POSCO/POSCO International Corporation	0.00

Disclosure

We intend to disclose to interested parties the corrected margin calculation program within five days of the publication date of this notice, 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 has determined, 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 of this review.¹¹ Because POSCO's weighted-average dumping margin is zero percent, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's practice, for entries of subject merchandise during the POR produced by POSCO for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate if there is no company-specific rate for the intermediate company(ies) involved in the transaction.¹²

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a

statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for POSCO will be zero; (2) for previously-investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter was not covered in this review or the investigation, but the producer was covered, the cash deposit rate will be the rate established in the most recently completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 41.10 percent, the all-others rate established in the original less-than-fair-value investigation.¹³ 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 this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction 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

We are issuing and publishing these final results in accordance with sections

³ Sales Verification Report for POSCO and POSCO International Corporation," both dated October 27, 2023.

⁴ See Memorandum, "Briefing Schedule," dated October 27, 2023.

⁵ See POSCO's Letters, "Request for Public Hearing," dated July 3, 2023, and "Withdrawal of Request for Public Hearing," dated November 9, 2023.

⁶ Memorandum, "Extension of Deadline for Final Results," dated September 22, 2023.

⁷ See *Carbon and Alloy Steel Wire Rod from Italy, the Republic of Korea, Spain, the Republic of Turkey, and the United Kingdom: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determinations for Spain and the Republic of Turkey*, 83 FR 23417 (May 21, 2018) (*Order*).

⁸ See *Carbon and Alloy Steel Wire Rod from the Republic of Korea and the United Kingdom: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 13888 (April 8, 2019).

⁹ See *Carbon and Alloy Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review*, 84 FR 27582 (June 13, 2019).

¹⁰ See *Preliminary Results PDM* at 16–17.

¹¹ See Memorandum, "Final Calculation Memorandum for POSCO," dated concurrently with this notice.

¹² See *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

¹³ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹³ See *Order*.

751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: November 20, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023-26135 Filed 11-27-23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD494]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the City of Oceanside's Harbor Fishing Pier and Non-Motorized Vessel Launch Improvement Project in Oceanside, California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the City of Oceanside for authorization to take marine mammals incidental to pile driving activities associated with harbor fishing pier and non-motorized vessel launch improvement in Oceanside, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 28, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.clevenstine@noaa.gov. Electronic copies of the

application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for

taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On May 16, 2023, NMFS received a request from the City of Oceanside for an IHA to take marine mammals incidental to construction activities associated with fishing pier and non-motorized vessel improvement in Oceanside Harbor, Oceanside, CA. Following NMFS' review of the application, the City of Oceanside submitted revised versions on July 18 and October 17, 2023. The application was deemed adequate and complete on November 2, 2023. The City of Oceanside's request is for take of seven species of marine mammals by Level B harassment only. Neither the City of Oceanside nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The City of Oceanside proposes to remove and replace the existing public fishing pier and non-motorized vessel launch in Oceanside Harbor, Oceanside,

CA. The purpose of this project is to completely replace the pier and launch dock with the goals of making the pier larger, bringing the pier to current code standards, and relocating the launch dock to improve accessibility. The existing pier is past its design service life and has inadequate load-bearing capabilities. The applicant intends to use vibratory extraction to remove four 16-inch octagonal concrete support piles; vibratory driving to install up to 18 18-inch round plastic-coated steel piles to within 0.61–1.52 meters (m; 2–5 feet (ft)) of required depth; and, potentially, impact driving to complete pile installation depending on observed soil resistance. While not expected to be required based on site geology, 18 10-inch steel piles may be used as temporary guide piles to aid in the installation of the larger 18-inch structural piles.

A maximum of 6 non-consecutive days of piling activities is proposed to occur during the course of construction (5–6 months) from March 2024 through February 2025. The proposed project footprint is approximately 0.0081 square kilometers (km²; 0.0031 square miles (mi²)) with water depths ranging from approximately –6 m (–20 ft) below mean lower low water (MLLW) and 2.4 m (7.8 ft) above MLLW.

Dates and Duration

This IHA would be effective from March 1, 2024, until February 28, 2025. The project is anticipated to occur over a period of 183 days (5–6 months) from March 1, 2024, through February 28, 2025 (excluding work from April 1 through August 31, 2024, to account for the breeding and nesting season of the Endangered Species Act (ESA)-listed California least tern (*Sternula*

antillarum browni)), and in-water pile activity is anticipated to occur for 6 non-consecutive days during that time. The City of Oceanside plans to conduct piling activities during daylight hours, generally limited to between 45 minutes post-sunrise and 45 minutes pre-sunset. Pile removal and installation activities may take place concurrently, where multiple piles are extracted or installed during a day, but not coincidentally. Pile extraction is anticipated to take 1 day and pile installation is anticipated to take 5 days.

Specific Geographic Region

This project would be located at the existing Oceanside Harbor Fishing Pier in Oceanside, CA (Figure 1), with depths ranging from approximately 6 m below to 2.4 m above MLLW.

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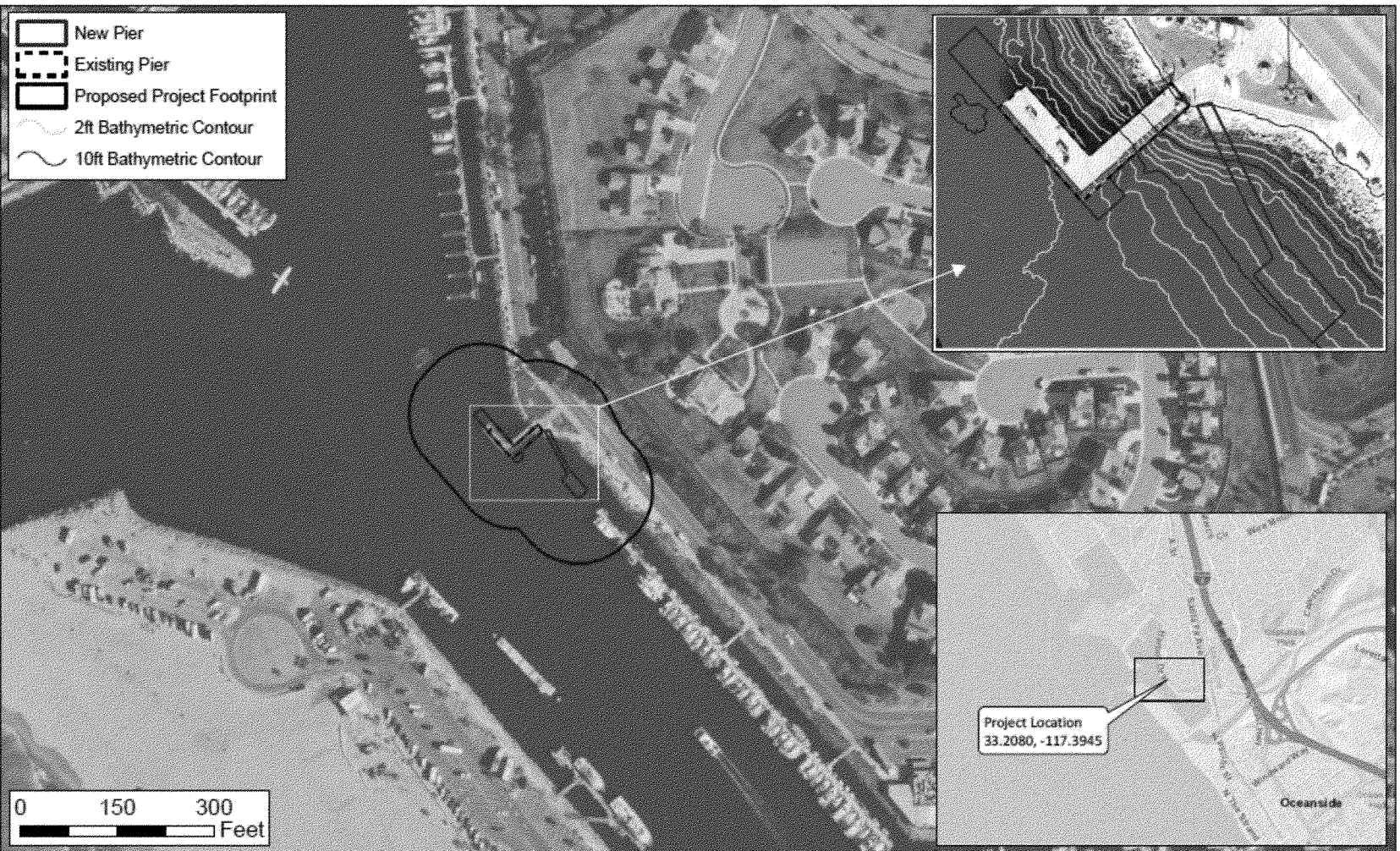


Figure 1 – Map of Proposed Project Area in Oceanside Harbor, California

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Detailed Description of the Specified Activity

would occur in 1 day. Vibratory extraction of up to 18 18-inch round plastic-coated steel pipe piles, with the potential for an additional 18 10-inch

hammer until they are within 0.61–1.52 m of the required depth, at which point the remaining driving will be done with an impact hammer depending on observed sediment resistance. Temporary 10-inch guide piles would only be installed to aid in installation of

structural 18-inch piles if hard sediments are encountered that will deflect pile positioning. All activities may occur with or without high-pressure water jetting.

TABLE 1—PILE EXTRACTION AND INSTALLATION ACTIVITIES

Pile activity	Method	Pile size (inch), material	Piles per day	Duration of activity (days)	Duration of vibratory activity per pile (minutes)	Estimated blows of impact driving per pile (strikes)
Extraction	Vibratory	16, concrete	4	1	25	N/A
Installation	Vibratory	18, steel	4	* 5	25	N/A
Installation	Impact	18, steel	4	* 5	N/A	300
Installation	Vibratory	10, steel	4	N/A	10	N/A

* Vibratory and impact installation of 18-inch steel piles would occur in the same 5 days.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information and we refer the reader to these descriptions instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS'

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific SARs. All values presented in table 2 are the most recent available at the time of publication (including from the final 2022 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 2—MARINE MAMMAL SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i>						
Bottlenose dolphin	<i>Tursiops truncatus</i>	California Coastal	-/-; N	453 (0.06, 346, 2011)	2.7	≥2
Long-beaked common dolphin.	<i>Delphinus delphis capensis</i>	California	-/-; N	83,379 (0.216, 69,636, 2018)	668	≥29.7
Short-beaked common dolphin.	<i>Delphinus delphis delphis</i>	California/Oregon/Wash- ington.	-/-; N	1,056,308 (0.21, 888,971, 2018).	8,889	≥30.5
Pacific white-sided dol- phin.	<i>Lagenorhynchus obliquidens</i>	California	-/-; N	34,999 (0.222, 29,090, 2018)	279	7
Order Carnivora—Pinnipedia						
<i>Family Otariidae (eared seals and sea lions):</i>						

TABLE 2—MARINE MAMMAL SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
California sea lion	<i>Zalophus californianus</i>	U.S.	-/-; N	257,606 (N/A, 233,515, 2015).	14,011	>321
Family Phocidae (earless seals):						
Harbor seal	<i>Phoca vitulina richardii</i>	California	-/-; N	30,968 (0.157, 27,348, 2012)	1,641	42.8
Northern elephant seal ...	<i>Mirounga angustirostris</i>	California Breeding	-/-; N	187,386 (N/A, 85,369, 2013)	5,122	13.7

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>; Committee on Taxonomy (2022)).

² ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports online at: <https://www.nmfs.noaa.gov/pr/sars/>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁴ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all seven species in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Based on previous marine mammal monitoring events near the mouth of Oceanside Harbor (Merkel and Associates, Inc., 2022; Merkel and Associates, Inc., 2023), other marine mammals rarely occur within Oceanside Harbor and any occurrence in the project area would be very rare. While Risso's dolphins (*Grampus griseus*) and gray whales (*Eschrichtius robustus*) have been sighted outside of the harbor and in coastal waters, these species' general spatial occurrence is such that take is not expected to occur as they typically occur more offshore, and they are not discussed further beyond the explanation provided here.

Bottlenose Dolphin

Bottlenose dolphins (California coastal stock) occur in coastal waters within 1 km of shore, primarily between Point Conception, CA, and San Quintin, Mexico (Hansen, 1990, Carretta *et al.*, 1998). California coastal bottlenose dolphins show little site fidelity and likely move within their home range in response to patchy concentrations of nearshore prey (Defran and Weller, 1999, Bearzi *et al.*, 2009). Oceanographic events may influence the distribution and residency patterns of dolphins (Hansen and Defran, 1990, Wells *et al.*, 1990). In southern California, coastal bottlenose dolphins are typically found within 250 m of the shoreline (Hansen and Defran, 1993).

Bottlenose dolphin sightings are not common in Oceanside Harbor but do occur, typically within the outer surge basin of the harbor and, rarely, within the inner harbor.

Common Dolphin (Long-Beaked and Short-Beaked)

Short-beaked common dolphins (California/Oregon/Washington stock) are the most abundant cetacean off of California and are widely distributed between the coast and approximately 556 km offshore. In contrast, long-beaked common dolphins (California stock) are considered a nearshore species and generally occur within 92.6 km of shore. Both stocks may shift their distributions seasonally and annually in response to oceanographic conditions and prey availability (Carretta *et al.*, 2023). Long-beaked common dolphins tend to prefer shallower, warmer waters as compared to the short-beaked common dolphin (Perrin, 2009), yet both stocks appear to be more abundant in coastal waters during warm-water months (Bearzi, 2005).

While there is no occurrence data for common dolphin in Oceanside Harbor, they are rare visitors to the northern portion of San Diego Bay and could be expected to be rare visitors within the outer portion of Oceanside Harbor.

Pacific White-Sided Dolphin

Pacific white-sided dolphins (California stock) are endemic to temperate waters of the North Pacific Ocean, and are the most abundant pelagic species of dolphin in the region (Carretta *et al.*, 2023). Off the U.S. West Coast, Pacific white-sided dolphins occur primarily in shelf and slope waters. Sighting patterns from aerial and shipboard surveys conducted in California, Oregon, and Washington suggest seasonal north-south movements, with animals found primarily off California during colder water months and shifting northward into Oregon and Washington as water temperatures increase in late spring and

summer (Green *et al.*, 1992, Green *et al.*, 1993, Forney and Barlow, 1998, Carretta *et al.*, 2023). Pacific white-sided dolphins are highly social and commonly occur in groups of less than a hundred, although groups of several thousands of individuals have been observed. They often associate with Risso's dolphins and short-beaked common dolphins, and occasionally feed in association with California sea lions and mixed species aggregations of seabirds.

No data of Pacific white-sided dolphin occurrence within Oceanside Harbor exists but, as they do occur in the waters of southern California, they could enter the outer portion of Oceanside Harbor.

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California, Mexico. Habitat use and distribution varies with sex and reproductive stage, and sea lions breed on the offshore islands of southern California, western Baja California, and the Gulf of California from May through July (Heath and Perrin, 2009, Lowry *et al.*, 2017). Adult males may haul out on land to breed and defend territory from mid-May through late July. Adult males and females are known to haul out more often during warm-water months.

California sea lions are commonly seen in the proposed project area and generally in and around Oceanside Harbor on a pinniped haulout float, buoys, rocks, and other structures throughout the harbor (Merkel and Associates, Inc., 2023). Beyond these structures, there are no known natural haulout locations near the proposed action area. Abundance in the proposed project area varies substantially through

time, with variability also being driven by food availability and breeding season movements (*pers. comm.* Oceanside Harbor Department). California sea lions in Oceanside Harbor are typically concentrated around the pinniped float approximately 21 m north of the end of the existing fishing pier in the proposed project area. This structure was installed several years ago to attract sea lions away from docks and boats (see Figure 2–1 in application). The Harbor Department noted that the pinniped float varies from being completely full (approximately 100 animals or more) to completely empty. Prior to in-water activity, the pinniped float would be relocated by the Oceanside Harbor Department when no sea lions or other marine mammals are present to minimize attraction of sea lions to the proposed work area during construction.

California sea lions experienced an Unusual Mortality Event (UME), not correlated to an El Niño event, from 2013–2017 (Carretta *et al.*, 2023). Pup and juvenile age classes experienced high mortality during this time, likely attributed to a lack of prey availability, specifically Pacific sardines (*Sardinops sagax*). California sea lions are also susceptible to the algal neurotoxin domoic acid (Carretta *et al.*, 2023), which is expected to cause future mortalities among California sea lions due to the prevalence of harmful algal blooms within their habitat, as evidenced by recent stranding events along parts of the Southern California coast in summer 2023.

Harbor Seal

Harbor seals are distributed from Baja California, Mexico, to the eastern Aleutian Islands of Alaska (Harvey and Goley, 2011). Harbor seals do not make extensive pelagic migrations but may travel hundreds of kilometers to find food or suitable breeding areas (Harvey and Goley, 2011, Carretta *et al.*, 2023). Seals primarily haul out on remote

mainland and island beaches, reefs, and estuary areas. At haulout sites, they congregate to rest, socialize, breed, and molt. In California, there are approximately 500 haulout sites along the mainland and on offshore islands, including intertidal sandbars, rocky shores, and beaches (Hanan, 1996, Lowry *et al.*, 2008).

Harbor seals are present within Oceanside Harbor, primarily in the outer surge basin and not typically within the inner harbor (Merkel and Associates, Inc., 2023). Harbor seals may haul out on the pinniped float, rocks, buoys, or other structures within the harbor.

Northern Elephant Seal

Northern elephant seals breed and give birth in California and Baja California, mainly on offshore islands during the months of December through March (Stewart and Huber, 1993, Stewart *et al.*, 1994, Carretta *et al.*, 2023). Molting season takes place from March to August. In between the spring/summer molting season and winter breeding season, northern elephant seals migrate north, exhibiting spatial segregation in foraging areas in the Gulf of Alaska, western Aleutian Islands, and central North Pacific Ocean to feeding grounds (Carretta *et al.*, 2023). Northern elephant seal populations in the United States and Mexico have recovered after being hunted to near extinction (Stewart *et al.*, 1994) and undergoing a severe population bottleneck, leading to a loss of genetic diversity, that resulted in the population being reduced to an estimated 10–30 individuals (Hoelzel *et al.*, 2002, Carretta *et al.*, 2023). There are two distinct populations of northern elephant seals, including a breeding population in Baja California, Mexico, and a breeding population on U.S. islands off of California. Northern elephant seals in the region could be from either population (Carretta *et al.*, 2023).

Northern elephant seals rarely occur in the Southern California Bight and are not expected to occur in Oceanside Harbor. However, given the species has been sighted along the southern California coast in recent years, potentially due to the continuing long-term increase in the population of northern elephant seals (Lowry *et al.*, 2020), there is a possibility of occurrence in the project area.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995, Wartok and Ketten, 1999, Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) was retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS
(NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006, Kastelein *et al.*, 2009, Reichmuth *et al.*, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving and vibratory pile driving and removal. The effects of underwater noise from the City of Oceanside's proposed activities have the potential to result in Level B harassment of marine mammals in the project area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise “ambient” or “background” sound—depends not only on the source

levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the proposed project would include vibratory pile extraction and vibratory pile installation, and, potentially, impact pile installation. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986, NIOSH, 1998, NMFS, 2018). Non-impulsive sounds (*e.g.*, machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband, or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995, NIOSH, 1998, NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997).

Two types of hammers would be used on this project, vibratory and, if necessary, impact. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces sound pressure levels (SPLs) 10–20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002,

Carlson *et al.*, 2005). Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive.

The likely or possible impacts of the City of Oceanside's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site close enough to be harassed due to the presence of equipment or personnel would be within the Level B harassment zones from pile removal or driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors are generated by heavy equipment operation during pile driving activities (*i.e.*, impact and vibratory pile driving and removal).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving equipment is the primary means by which marine mammals may be harassed from the City of Oceanside's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts (TS) and behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection. The effects of pile driving and construction noise on marine mammals are dependent on several factors including, but not limited to, sound type (*e.g.*, impulsive vs. non-impulsive), the species, age and sex class (*e.g.*, adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004, Southall *et al.*, 2007). Here we discuss physical auditory effects (threshold shifts)

followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of TS is customarily expressed in dB and TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (e.g., impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (i.e., spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (i.e., how animal uses sound within the frequency band of the signal) (Kastelein *et al.*, 2014b), and the overlap between the animal and the source (e.g., spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB TS approximates PTS onset (see Ward *et al.*, 1958, Ward *et al.*, 1959, Ward, 1960, Kryter *et al.*, 1966, Miller, 1974, Ahroon *et al.*, 1996, Henderson *et al.*, 2008). PTS levels for marine mammals are estimates because there are limited empirical data measuring PTS in marine mammals (e.g., Kastak *et al.*, 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000, Finneran *et al.*, 2000, Finneran *et al.*, 2002). As described in Finneran (2016), marine mammal studies have shown the

amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum} , the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum} , the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory *Masking*, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), Yangtze finless porpoise (*Neophocoena asiakororientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (i.e., tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted seals (*Phoca largha*) and ringed seals (*Pusa hispida*) exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (i.e., a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.*, 2019b, Kastelein *et al.*, 2019a, Kastelein *et al.*, 2020a, Kastelein *et al.*, 2020b). In addition, TTS can accumulate across multiple exposures

but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.*, 2009, Finneran *et al.*, 2010, Kastelein *et al.*, 2014a, Kastelein *et al.*, 2015). This means that TTS predictions based on the total SEL_{cum} will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources.

The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after a 15 minute exposure to 5 dB after a 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.*, 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. Nonetheless, what we considered is the best available science. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Southall *et al.* (2019), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Proposed activities for this project include vibratory pile driving and vibratory pile removal and, potentially, impact pile driving. There would likely be pauses in activities producing the sound during each day and, given these pauses and the fact that many marine mammals would likely be moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Council, 2005, Lusseau and Bejder, 2007, Weilgart, 2007b).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed;

reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haulout time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (e.g., species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (e.g., Richardson *et al.*, 1995, Wartzok *et al.*, 2004, Southall *et al.*, 2007, Weilgart, 2007a, Archer *et al.*, 2010, Southall *et al.*, 2021). Behavioral reactions can vary not only among individuals but also within an individual depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (e.g., whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) as well as Nowacek *et al.* (2007), Ellison *et al.* (2012), and Gomez *et al.* (2016) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001, Nowacek *et al.*, 2004, Madsen *et al.*, 2006, Yazvenko *et al.*, 2007, Melcon *et al.*, 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (e.g., Sivle *et al.*, 2016, Wensveen *et al.*, 2017). A determination of whether foraging disruptions incur fitness consequences would require information on, or

estimates of, the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal (Goldbogen *et al.*, 2013).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Selye, 1950, Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987, Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and “distress” is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996, Hood *et al.*, 1998, Jessop *et al.*, 2003, Krausman *et al.*, 2004, Lankford *et al.*, 2005). Stress responses due to exposure to

anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000, Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced vessel traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales (*Eubalaena glacialis*). These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however, distress is an unlikely result of the proposed project based on observations of marine mammals during previous, similar projects in the region.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The masking of communication signals by anthropogenic noise may be considered as a reduction in the

communication space of animals (e.g., Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (e.g., Miller *et al.*, 2000, Foote *et al.*, 2004, Parks *et al.*, 2007, Di Iorio and Clark, 2010, Holt *et al.*, 2009). Oceanside Harbor is used by commercial and recreational vessels, and background sound levels in the area are already elevated. Due to the transient nature of marine mammals to move and avoid disturbance, masking is not likely to have long-term impacts on marine mammal species within the proposed project area.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from piling activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been “taken” because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further.

Marine Mammal Habitat Effects

The City of Oceanside’s proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water SPLs and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see *Masking* above) and adversely affect

marine mammal prey in the vicinity of the project area (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify the project area where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are expected to be of short duration (6 non-consecutive days) and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed, for example, if high-pressure water jetting is used. In general, turbidity associated with pile driving is localized to an approximately 7.6 m radius around the pile (Everitt *et al.*, 1980). Cetaceans are not expected to be close enough to the pile driving areas to experience effects of turbidity, and any pinnipeds could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat—The area likely impacted by the proposed action is relatively small compared to the total available habitat in the area within and outside the harbor. The proposed project area is highly influenced by anthropogenic activities and provides limited foraging habitat for marine mammals. Furthermore, pile driving and removal at the proposed project site would not obstruct long-term movements or migration of marine mammals.

Avoidance of the immediate area by potential prey (i.e., fish) due to the temporary loss of foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by prey of the disturbed area would still leave significantly large areas of potential foraging habitat in the nearby vicinity, primarily outside the harbor.

In-water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fish, zooplankton, other

marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (Zelick *et al.*, 1999, Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (e.g., feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, several of which are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, Popper and Hastings, 2009). Many studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Pearson *et al.*, 1992, Skalski *et al.*, 1992, Santulli *et al.*, 1999, Fewtrell and McCauley, 2012, Paxton *et al.*, 2017). In response to pile driving, Pacific sardines and northern anchovies (*Engraulis mordax*) may exhibit an immediate startle response to individual strikes but return to “normal” pre-strike behavior following the conclusion of pile driving with no evidence of injury as a result (see NAVFAC, 2014). However, some studies have shown no or slight reaction to impulse sounds (e.g., Wardle *et al.*, 2001, Popper *et al.*, 2005, Jorgenson and Gyselman, 2009, Peña *et al.*, 2013).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012a, Casper *et al.*, 2013) and the greatest potential effect on fish during the proposed project would occur during impact pile driving, if it is required. However, the duration of impact pile driving would be limited to a contingency in the event that vibratory driving does not satisfactorily install the pile depending on observed soil resistance. In-water construction activities would only occur during daylight hours allowing fish to forage and transit the project area at night. Vibratory pile driving may elicit behavioral reactions from fish such as temporary avoidance of the area but is unlikely to cause injuries to fish or have persistent effects on local fish populations. In addition, it should be noted that the area in question is low-quality habitat since it is already developed and experiences anthropogenic noise from vessel traffic.

The most likely impact to fishes from pile driving and removal and construction activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown but a rapid return to normal recruitment, distribution, and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary. Further, it is anticipated that preparation activities for pile driving or removal (*i.e.*, positioning of the hammer) and upon initial startup of devices would cause fish to move away from the affected area where injuries may occur. Therefore, relatively small portions of the proposed project area would be affected for short periods of time, and the potential for effects on fish to occur would be temporary and limited to the duration of sound-generating activities.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small area being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large potential areas for fish and marine mammal foraging in the nearby vicinity. Thus, we conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of "small numbers," and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the acoustic sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.*, shutdown) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine

mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, Southall *et al.*, 2021, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 microPascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any

likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (e.g., conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The City of Oceanside's proposed construction activities includes the use of continuous (vibratory pile removal

and installation) and, potentially, impulsive (impact pile installation) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa are both applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different

types of sources (impulsive or non-impulsive). The City of Oceanside's proposed activity includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in table 4, below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_E,LF,24h$: 183 dB.	Cell 2: $L_E,LF,24h$: 199 dB.
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_E,MF,24h$: 185 dB.	Cell 4: $L_E,MF,24h$: 198 dB.
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_E,HF,24h$: 155 dB.	Cell 6: $L_E,HF,24h$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_E,PW,24h$: 185 dB.	Cell 8: $L_E,PW,24h$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_E,OW,24h$: 203 dB.	Cell 10: $L_E,OW,24h$: 219 dB.

*Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss (TL) coefficient.

Pile driving activities using an impact hammer as well as a vibratory hammer would generate underwater noise that could result in disturbance to marine mammals near the project area. A review of underwater sound measurements for similar projects was

conducted to estimate the near-source sound levels for impact and vibratory pile driving and vibratory extraction. Source levels for proposed removal and installation activities derived from this review are shown in table 5.

TABLE 5—PROJECT SOUND SOURCE LEVELS

Activity	Method	Pile size (inch, material)	Peak SPL dB re 1 μ Pa ¹	RMS SPL dB re 1 μ Pa ¹	SEL dB re 1 μ Pa ¹	Source
Extraction	Vibratory	16, concrete ²	N/A	163	N/A	NAVFAC SW, 2022.
Installation	Vibratory	18, steel	196	158	N/A	Caltrans, 2020.
Installation	Impact	18, steel ³	200	185	175	Caltrans, 2020.
Installation	Vibratory	10, steel ⁴	171	155	N/A	Illingworth and Rodkin, 2007.

Note: All 18-inch round steel piles will be installed using both vibratory and impact driving, therefore, the total number of 18-inch piles proposed for use is 18. Use of 10-inch piles will be as temporary support, and will be driven and removed in the same day as the permanent 18-inch piles.

¹ As measured, or calculated, at 10 m (33 ft).

² Proxy source levels provided by NMFS from Pier 6 Replacement Project, San Diego Bay (NAVFAC SW, 2022).

³ Analysis of pooled reported data provided by NMFS (Caltrans, 2020).

⁴ In the absence of information on vibratory installation of 10-inch round steel piles, source data from 12-inch round steel piles (Illingworth and Rodkin, 2007) was used as a proxy source level.

Level B Harassment Zone—TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions,

current, source and receiver depth, water depth, water chemistry, and bottom composition topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

where:

TL = transmission loss in dB;

B = transmission loss coefficient;

R₁ = the distance of the modeled SPL from the driven pile; and

R₂ = the distance from the driven pile of the

initial measurement. The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, known as practical spreading, which is the most appropriate assumption for the City of Oceanside's proposed activity in the absence of specific modeling and site-specific information. Sound propagation in Oceanside Harbor is limited by physical structures and substantial sound would be confined within the harbor (see Figures 6–1, 6–2 in application). The Level A and Level B harassment isopleths for the City of Oceanside's proposed activities are shown in table 6.

TABLE 6—DISTANCE TO THE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR PROPOSED ACTIVITIES

Activity	Method	Pile size (inch, material)	Level A threshold for MF (m)	Level A threshold for PW (m)	Level A threshold for OW (m)	Level B harassment zone (m)
Extraction	Vibratory	16, concrete	1.2	7.9	0.6	7,356
Installation	Vibratory	18, steel	0.5	3.7	0.3	3,415
Installation	Impact	18, steel	11.7	176.7	12.9	100
Installation	Vibratory	10, steel	0.2	1.3	0.1	2,154

Note: for impact pile driving, the single strike SEL was used to calculate distances to Level A harassment thresholds. Abbreviations: MF = mid-frequency cetaceans, PW = phocid pinnipeds, OW = otariid pinnipeds.

Level A Harassment Zones—The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some

degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources (*i.e.*, vibratory and impact piling), the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported in tables 6 and 7. The isopleths generated

by the User Spreadsheet used the same TL coefficients as the Level B harassment isopleth calculations, as indicated above for each activity type. Inputs used in the User Spreadsheet (*e.g.*, number of piles per day, duration and/or strikes per pile) are presented in table 1. The maximum RMS SPL, SEL, and peak SPL are reported in table 7. The cumulative SEL and peak SPL were used to calculate Level A harassment isopleths for vibratory pile driving and extraction activities, while the single strike SEL value was used to calculate Level A harassment isopleths for impact pile driving activity.

TABLE 7—SOUND LEVELS USED FOR PREDICTING UNDERWATER SOUND IMPACTS

Activity	Method	Pile size (inch, material)	Duration (hours/day)	Peak SPL dB re 1 μ Pa	RMS SPL dB re 1 μ Pa	Single strike SEL dB re 1 μ Pa ² sec
Extraction	Vibratory	16, concrete	1.67	N/A	163	N/A
Installation	Vibratory	18, steel	1.67	196	158	N/A
Installation	Impact	18, steel	0.13	200	185	175
Installation	Vibratory	10, steel	0.67	171	155	N/A

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Bottlenose Dolphin—Bottlenose dolphins can occur at any time of year in the waters around Oceanside Harbor. Based on previous monitoring (Merkel and Associates, Inc., 2022), an average of 6 bottlenose dolphins per day were observed with a maximum of 12 individuals being observed on a single day. This higher peak of 12 individuals was used to calculate Level B harassment for bottlenose dolphin.

Common Dolphin—Common dolphins are generally abundant in the outer coastal waters but are not known to occur regularly in Oceanside Harbor. Based on marine mammal monitoring by NAVFAC SW (2015), during El Niño conditions an average of 8.5 common dolphins per day (rounded to nine per day) were observed in northwest San Diego Bay. This expected daily individual count was used to calculate the take by Level B harassment for common dolphins within Oceanside Harbor as no local data exists.

Pacific White-Sided Dolphin—Pacific white-sided dolphins are commonly seen offshore of southern California but

are not known to occur regularly in Oceanside Harbor. Based on the observations presented by NAVFAC SW (2015), during El Niño conditions an average of 0.3 Pacific white-sided dolphins per day (rounded to one per day) were observed. This expected daily individual count was used to calculate the Level B harassment for Pacific white-sided dolphins.

California Sea Lion—California sea lions are present in Oceanside Harbor year-round and numbers vary considerably. The daily estimate provided by the Oceanside Harbor Department is over 100 individuals. Limited counts from photographs and

spot counts average approximately 50 individuals and are known to be incomplete estimates. Based on the variability in the number of sea lions present in the harbor, an estimate of 100 sea lions per day was used to estimate take.

Harbor Seal—Based on marine mammal monitoring by NAVFAC SW (2015), during El Niño conditions an average of 2.5 harbor seals per day (rounded to three per day) were observed. This expected daily individual count was used to calculate the Level B harassment for harbor seals in Oceanside Harbor.

Northern Elephant Seal—Due to increasing population size of northern elephant seals, presence in the Southern California Bight is considered a reasonable possibility (Carretta *et al.*, 2023). Based on marine mammal monitoring by NAVFAC SW (2015), an average of 0.1 northern elephant seals per day (rounded to one per day) were observed during El Niño conditions. This expected daily individual count was used to calculate the Level B harassment for northern elephant seals in Oceanside Harbor.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the

take that is reasonably likely to occur and proposed for authorization.

No take by Level A harassment is proposed for any species of marine mammal due to the small zone sizes for most taxa, and the low likelihood that an animal would approach during in-water construction or remain within the Level A harassment isopleth long enough to incur PTS during the specified activities. Proposed shutdown zones would encompass the extent of the estimated Level A harassment isopleths (180 m for phocid pinnipeds during impact driving, 15 m for all other species and activities) and are expected to be effective at avoiding Level A harassment for all species. Given the locations of Protected Species Observers (PSOs) described in the Proposed Monitoring and Reporting section, in conjunction with the City of Oceanside's proposed shutdown mitigation measure, NMFS agrees that monitoring and shutdown measures are likely to be successful at avoiding take by Level A harassment.

Incidental take by Level B harassment was estimated for each species by multiplying the expected average number of individuals per day by the number of work days (6 days; table 8). Take estimates for each species were calculated by multiplying the estimated site-specific abundance of each species

by the area of impact where noise levels exceed acoustic thresholds for marine mammals during active each type of piling activity (vibratory removal, vibratory driving, impact driving) and pile size (16 inch concrete, 18 inch steel, 10 inch steel). Estimated daily exposures for each species were based on evaluation of the potential presence of each marine mammal species using historical occurrence from Oceanside Harbor (Merkel and Associates, Inc., 2022; Merkel and Associates, Inc., 2023).

Estimated Take = Expected Average Individuals per Day × Number of Work Days

Due to a paucity of marine mammal occurrence data within Oceanside Harbor, and with the probability of El Niño conditions persisting throughout 2024 (https://www.cpc.ncep.noaa.gov/products/analysis_monitoring/enso_advisory/ensodisc.shtml), four species of marine mammal (common dolphin, Pacific white-sided dolphin, harbor seal, northern elephant seal) that are unlikely to occur within a semi-enclosed harbor environment were included to account for a potential increase in occurrence that has been previously documented for those species under similar climatological conditions (NAVFAC SW, 2015).

TABLE 8—ESTIMATED TAKE BY LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION

Common name	Scientific name	Stock	Expected average individuals per day	Maximum estimated Level B harassment takes	Estimated takes as a percentage of population
Bottlenose dolphin ¹	<i>Tursiops truncatus</i>	California Coastal	12	72	15.9
Common dolphin (long-beaked) ²	<i>Delphinus capensis</i>	California	*9	*54	<1
Common dolphin (short-beaked) ²	<i>Delphinus delphis</i>	California/Oregon/Washington.	*9	*54	<1
Pacific white-sided dolphin ² ..	<i>Lagenorhynchus obliquidens</i>	California/Oregon/Washington—Northern and Southern.	1	6	<1
California sea lion ³	<i>Zalophus californianus</i>	U.S.	100	600	<1
Harbor seal ²	<i>Phoca vitulina richardii</i>	California	3	18	<1
Northern elephant seal ²	<i>Mirounga angustirostris</i>	California breeding	1	6	<1

¹ Average daily counts based on observations during Oceanside Harbor Dredging 2022 Project Monitoring, rounded up to nearest individual count (Merkel and Associates Inc., 2022).

² Average daily counts based on observations during Year 2 of Navy Base Point Loma's Fuel Pier Replacement Project Monitoring, rounded up to nearest individual count (NAVFAC SW, 2015).

³ Reported high estimate of sea lions observed on pinniped float by Oceanside Harbor District staff.

* A total of 54 takes are estimated and may be attributed to either long- or short-beaked common dolphin species.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular

attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and

feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The City of Oceanside must ensure that construction supervisors and crews, the monitoring team, and relevant staff/contractors are trained prior to the start of all piling activities so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Timing Restrictions

All piling activities would be conducted during daylight hours, generally between 45 minutes post-sunrise and 45 minutes pre-sunset. All piling would occur in March 2024 and/or September 2024 through February 2025, when the likelihood of ESA-listed California least tern breeding and nesting in the work area is minimal, as proposed by the City of Oceanside.

Protected Species Observers

The placement of PSOs during all pile driving activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone

would not be visible (e.g., fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs would monitor the full shutdown zones and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre- and Post-Activity Monitoring

Monitoring must take place from 30 minutes prior to initiation of pile driving activities (i.e., pre-clearance monitoring) through 30 minutes post-completion of pile driving. Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for a 30-minute period. If a marine mammal is observed within the shutdown zones listed in table 9, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (i.e., the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures for Impact Driving

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. If impact pile driving is necessary to achieve required tip elevation, City of Oceanside staff and/or contractors would be required to provide an initial set of three strikes

from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Shutdown Zones

The City of Oceanside must establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would be based upon the Level A harassment thresholds for each pile size/type and driving method where applicable, as shown in table 6. During all in-water piling activities, the City of Oceanside has proposed to implement a buffered 15 m shutdown zone, with the exception of a 180 m shutdown zone for phocids during the use of impact pile driving of 18-inch piles. These distances exceed the estimated Level A harassment isopleths described in table 6. Adherence to this expanded shutdown zone will avoid the potential for the take of phocids by Level A harassment during impact pile driving. For pile driving, the radii of the shutdown zones are rounded to the next largest 10 m interval in comparison to the Level A harassment isopleth for each activity type. If a marine mammal is observed entering, or detected within, a shutdown zone during pile driving activity, the activity must be stopped until there is visual confirmation that the animal has left the zone or the animal is not sighted for a period of 15 minutes. Proposed shutdown zones for each activity type are shown in Table 9.

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities would continue and PSOs would document the animal's presence within the estimated harassment zone.

TABLE 9—PROPOSED SHUTDOWN AND HARASSMENT ZONES

Activity	Method	Pile size (inch, material)	Shutdown zone for MF (m)	Shutdown zone for PW (m)	Shutdown zone for OW (m)	Harassment zone (m)
Extraction	Vibratory	16, concrete	15	15	15	7,360
Installation	Vibratory	18, steel	15	15	15	3,420
Installation	Impact	18, steel	15	180	15	100
Installation	Vibratory	10, steel	15	15	15	2,160

Based on our evaluation of the City of Oceanside's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and this IHA. Marine mammal monitoring during pile driving activities would be conducted by two PSOs meeting NMFS' standards and in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- PSOs must be approved by NMFS prior to beginning any activity subject to the IHA.

PSOs should have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The City of Oceanside would have two PSOs stationed at the best possible vantage points in the project area to monitor during all pile driving activities. Monitoring would occur from elevated locations along the shoreline where the entire shutdown zones are visible. PSOs would be equipped with high quality binoculars for monitoring and radios or cell phones for maintaining contact with work crews. Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in-water construction activities. In addition, PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

The City of Oceanside will provide the following reporting as necessary during active pile driving activities:

- The applicant will report any observed injury or mortality as soon as feasible and in accordance with NMFS' standard reporting guidelines. Reports will be made by phone (866-767-6114) and by email (PR.ITP.MonitoringReports@noaa.gov) and will include the following:
 - Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
 - Species identification (if known) or description of the animal(s) involved;
 - Condition of the animal(s) (including carcass condition if the animal is dead);
 - Observed behaviors of the animal(s), if alive;
 - If available, photographs or video footage of the animal(s); and
 - General circumstances under which the animal was discovered;
- An annual report summarizing the prior year's activities will be provided that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of listed marine mammals that may have been incidentally taken during project pile driving, and provides an interpretation of the results and effectiveness of all monitoring tasks. The annual draft report will be provided no later than 90 days following completion of construction activities. Any recommendations made by NMFS will be addressed in the final report, due

after the IHA expires and including a summary of all monitoring activities, prior to acceptance by NMFS. Final reports will follow a standardized format for PSO reporting from activities requiring marine mammal mitigation and monitoring; and

- All PSOs will use a standardized data entry format (see Monitoring Plan).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 2, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Level A harassment is extremely unlikely given the small size of the Level A harassment isopleths and the required mitigation measures designed to minimize the possibility of injury to

marine mammals (see Proposed Mitigation section). No mortality is anticipated given the nature of the activity.

Pile installation and removal activities are likely to result in the Level B harassment of marine mammals that move into the ensonified zone, primarily in the form of disturbance or displacement of marine mammals.

Take would occur within a limited, confined area of each stock’s range. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

No marine mammal stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal occurrences in the area, small shutdown zones, and proposed monitoring make injury takes of marine mammals unlikely. The shutdown zones would be thoroughly monitored before the proposed vibratory pile installation and removal begins, and construction activities would be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals would be detected by trained observers under environmental conditions described for the proposed project. Limiting construction activities to daylight hours would also increase detectability of marine mammals in the area. Therefore, the proposed mitigation and monitoring measures are expected to eliminate the potential for injury and Level A harassment as well as reduce the amount and intensity for Level B behavioral harassment. Furthermore, the pile installation and removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities will occur over the course of 5–6 months. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.*, NAVFAC SW, 2018).

Individual animals, even if taken multiple times, would likely move away from the sound source and be temporarily displaced from the area due to elevated noise level during pile removal. Marine mammals could also experience TTS if they move into the Level B harassment monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and, given the likely levels and duration of exposure to pile driving, any shift of the hearing threshold is expected to recover completely within minutes to hours. While TTS could occur, it is not considered a likely outcome of this activity.

Given the limited number of total predicted exposures, no individual marine mammals of any species, with the possible exception of California sea lions, would be expected to be taken on more than a few days during the construction activities. California sea lions are relatively common in the area, and potential takes would likely involve sea lions loafing on, or in the vicinity of, physical structures or moving through the area en route to foraging areas or structures where they haul out. Relocation of the float where they frequently haul out is expected to reduce both the number of sea lions present in the area during construction and also the likelihood that they may be repeatedly impacted.

The proposed project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated critical habitat within the project area, and the proposed activities would not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily which could impact marine mammals’ foraging opportunities in a limited portion of the foraging range. However, due to the short duration of the proposed activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the

impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment, is anticipated or authorized;
- The specified activities are of a very short duration and associated ensnared areas are very small relative to the overall habitat ranges of both species;
- The project area does not overlap with known BIAs or ESA-designated critical habitat;
- Significant or long-term effects to marine mammal habitat are not anticipated; and
- Proposed mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized is below one-third of the estimated stock abundances for all seven species (see table 8). For all but one species, the proposed take of individuals is less than 1 percent of the abundance of the affected stock (with the exception for bottlenose dolphins at less than 16 percent). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not

the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of Oceanside for conducting pile removal and driving in Oceanside Harbor, Oceanside, CA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction project. We also request comment on the potential renewal of this proposed IHA

as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA); and

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 20, 2023.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2023-26158 Filed 11-27-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD558]

Identifying Aquaculture Opportunity Areas in Alaska

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

ACTION: Notice; request for information.

SUMMARY: NOAA is adding a third webinar-based listening session as part of the process to identify Aquaculture Opportunity Areas (AOAs) in Alaska State waters to help sustainably advance invertebrate (e.g., shellfish, sea cucumber) and seaweed (e.g., macroalgae, kelp) aquaculture, in partnership with the State of Alaska. NOAA requests data, comments, views, information, analysis, or suggestions from the public to support the identification of AOAs in Alaska state waters, including siting parameters that can be used to select potential study areas for further analysis. Please respond to the questions listed in the **SUPPLEMENTARY INFORMATION** section, as appropriate. The addition of this listening session does not extend the comment period, which ends on December 18, 2023.

DATES: Written comments must be received on or before December 18, 2023. An additional webinar-based listening session is scheduled for Alaska: December 11, 2023, 2 p.m. to 4 p.m. (AKST) Alaska.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0113, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and type NOAA–NMFS–2023–0113 in the Search box (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results). Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written information to Jon Kurland, Regional Administrator for Alaska Region NMFS, Attn: Records Office, Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

- **Webinar Links:** Register for the webinar at: <https://noaanmfs-meets.webex.com/webink/register/rf39656052aa6aaae84996d71508b0846>. Additional information can be found at:

<https://www.fisheries.noaa.gov/action/request-information-identifying-aquaculture-opportunity-areas-alaska>.

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. Responses to this request are voluntary. Respondents need not reply to all questions. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All 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).

Please note that the U.S. Government will not pay for any costs that you may incur in responding to this Request for Information (RFI), or for the use of any information contained in the response. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT:

Alicia Bishop, 907–586–7724, nmfs.akr.aoinfo@noaa.gov.

SUPPLEMENTARY INFORMATION: An AOA is a defined geographic area that NOAA has evaluated through both spatial analysis and a programmatic National Environmental Policy Act (NEPA) process and determined to be environmentally, socially, and economically appropriate to support multiple commercial aquaculture operations. On June 1, 2023, NOAA announced the beginning of the process to identify AOAs in partnership with the State of Alaska in Alaska State waters. This is the beginning of a multi-year process in which NOAA and the State of Alaska will work to analyze locations and identify AOAs in Alaska State waters to help sustainably advance invertebrate (e.g., shellfish, sea cucumber) and seaweed (e.g., macroalgae, kelp) aquaculture. NOAA will not consider finfish aquaculture during identification of AOAs in Alaska because it is prohibited by state law.

NOAA has directives to preserve ocean sustainability and facilitate domestic aquaculture in the U.S., including through the National Aquaculture Act of 1980, the NOAA Marine Aquaculture Policy, and the Executive Order 1321, Promoting American Seafood Competitiveness and Economic Growth (May 7, 2020). NOAA has a variety of proven science-based

tools and strategies that can support these directives and help communities thoughtfully consider how and where to sustainably develop aquaculture that will complement wild-capture fisheries, working waterfronts, and our Nation’s seafood processing and distribution infrastructure.

The areas identified as AOAs will have characteristics that are expected to be able to support multiple aquaculture farm sites of varying types; however, all portions of the AOA may not be appropriate for aquaculture or for all types of aquaculture. Identifying AOAs is an opportunity to use the best available science, which includes Indigenous Knowledge, and supports the “triple bottom line” of environmental, economic, and social sustainability. This approach has been refined and utilized widely within states and by other countries with robust, sustainable aquaculture sectors.

The Secretary of Commerce will identify AOAs in consultation with the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency, other appropriate Federal officials, and appropriate Regional Fishery Management Councils, and in coordination with appropriate State and Tribal governments.

NOAA held a 60-day public comment period in 2020 (85 FR 67519, October 23, 2020) to collect input on where in the country to focus the science-based, inclusive process to identify AOAs. During that comment period, NOAA received letters of support from individuals, industry, Alaska Native organizations, state agencies, and the state legislature to begin the process in Alaska State waters.

NOAA cannot conduct spatial modeling on the scale of the entire coast of Alaska, and will narrow down to study areas that will be the focus moving forward. This will be done using a combination of spatial mapping, scientific review, public input gathered through this RFI, and other relevant information. NOAA’s National Centers for Coastal Ocean Science will use public input and the best available data, which includes Indigenous Knowledge, to account for key environmental, economic, social, and cultural considerations to identify areas that may support sustainable aquaculture development. NOAA will then combine those data with input from other State and Federal agencies, Fishery Management Councils, Marine Fisheries Commissions, Alaska Native Tribes and organizations, and the general public to

identify areas that will be considered in more depth through the NEPA process. Through this notice, NOAA is requesting data, comments, views, information, analysis, or suggestions from the public to support the identification of AOAs in Alaska State waters, including siting parameters that can be used to select potential study areas for further analysis. The public input provided in response to this request for information will inform NOAA as it works with Federal, State, and local agencies, appropriate Regional Fishery Management Councils, and in coordination with appropriate Alaska Native Tribes and organizations to identify AOAs. Additional opportunities for public input will be provided during the NEPA process.

NOAA may use the information received through this notice in the NEPA process. The information could inform the development of potential NEPA alternatives, such as different locations, different aquaculture types in each location (e.g., seaweed in one location, shellfish in another location), and different configurations of farm locations or farming gear. NOAA expects to publish a notice of intent (NOI) to prepare a programmatic NEPA document. Public notices announcing the NOI and announcing the availability of a draft NEPA document will provide future opportunities for public comment on the identification of AOAs in Alaska State waters.

AOA identification is a planning process, and does not result in areas permitted for aquaculture. Future aquaculture operations proposed within an AOA would be subject to the same Federal and State permitting and authorization requirements as an aquaculture operation proposed anywhere else and would be required to comply with all applicable Federal and State laws and regulations. Site-specific environmental surveys may be required for the permitting process. Additional NEPA analysis beyond that completed for identification of AOA(s) may be necessary as a part of permitting and authorization processes for individual operations.

Additional information on identifying AOAs in Alaska, including frequently asked questions, is available on NOAA's website at: <https://www.fisheries.noaa.gov/alaska/aquaculture/identifying-aquaculture-opportunity-areas-alaska>.

Request for Information

NOAA requests data, comments, views, information, analysis, or suggestions from the public to support the identification of AOAs in Alaska

state waters, including siting parameters that can be used to select potential study areas for further analysis.

NOAA proposes using the following parameters to select study areas in Alaska State waters:

a. State waters within a 25-mile (40-kilometer) radius of coastal community population centers (based on 2010 census data) as a proxy for needed infrastructure to support aquaculture development in Alaska.

b. State waters that do not regularly experience significant sea ice cover (based on the 10 year aggregate maximum sea ice cover reported by the U.S. National Ice Center).

Figures showing the potential AOA study areas that would result from use of these parameters can be found on the NOAA's National Centers for Coastal Ocean Science Alaska AOA study area website: <https://coastalscience.noaa.gov/news/alaska-aquaculture-opportunity-areas/>.

These parameters are proposed starting points, from which NOAA will select study areas using a combination of spatial mapping approaches, scientific review, public input, Indigenous Knowledge, and any other relevant information.

Specifically, NOAA is soliciting information and feedback on:

1. Are the preliminary parameters (noted above) useful? Are there other parameters NOAA should consider in identifying initial study areas for the aquaculture siting analysis? Are there other distances from population centers/ local infrastructure that should be considered, and why?

2. Are there size limitations NOAA should consider for AOAs in Alaska? How many farms should fit within an AOA? Should the size of AOAs be aligned with state economic development goals for shellfish and seaweed aquaculture?

3. Are there specific locations within Alaska State waters that should be considered or avoided for AOAs? Please be as specific as possible and include latitude and longitude or defining landmarks. Please indicate why such areas should be considered or avoided, for example, favorable biological parameters, water quality (e.g., nutrients or other constituents that might make an area favorable), proximity to infrastructure (e.g., ports, testing or processing facilities, or hatcheries that could supply seed for grow-out), relationship to other planned initiatives, etc.

4. Are there subsistence harvest locations, fishing areas, and other traditionally and culturally important locations or sacred sites that should be

avoided? Is there available spatial data or geographic information system (GIS) layers, or a point of contact for these data or information?

5. Are there specific locations within Alaska State waters where the presence of aquaculture gear may overlap with sensitive habitats or biologically important areas for protected species (e.g., whales, sea otters, sea lions, etc.)?

6. Are there specific locations within Alaska State waters that should be avoided because of concerns about harmful algal blooms (HABs) or impaired water quality?

7. Is there ongoing environmental, economic, or social science research that would assist in the identification of AOAs in Alaska State waters? If so, please describe in as much detail as is available.

8. Is there information that may not be readily available or accessible online that would be useful for AOA planning processes in Alaska State waters? This includes spatial data or GIS layers representing subsistence, environmental, and socioeconomic considerations, or a point of contact for these data, for the following categories:

a. Biophysical/oceanographic (ice cover, temperature, ocean acidification indices, wave climate, currents, bathymetry),

b. Natural resources (minerals, energy resources, fishes and other aquatic organisms, protected species and habitats, marine mammals, kelp beds, eelgrass beds, biodiversity),

c. Social, historical, and cultural resources (cultural and subsistence harvest, community subsistence hunting, subsistence fishing, culturally important sites to encourage or avoid, shipwrecks),

d. Government boundaries,

e. Industry (fishing, energy production, transportation, communication cables),

f. Military,

g. Navigation, and

h. Recreational resources (fishing, hunting, etc.).

9. Are there aquaculture species or gear considerations that may result in optimized growth in Alaska State waters? This might include (but is not limited to): species or aquaculture gear depth thresholds, water current thresholds, temperature thresholds, salinity thresholds, etc. Are there any species or gear not currently being used in Alaska State waters that you would like to see in the future? Do they extend any of these (or other) thresholds? Please be as specific as possible.

10. Is there any additional information NOAA should consider?

When providing input, please specify:

- The question number(s) you are responding to; and
- Whether your comments are related to specific type(s) of aquaculture (macroalgae, invertebrates, or a combination of species).

Responses to this request are voluntary. Respondents need not reply to all questions.

Authority: E.O. 13921.

Dated: November 21, 2023.

Kristine Cherry,

Acting Deputy Director, Office of Aquaculture, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–26128 Filed 11–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Proposal To Find That Indiana Has Satisfied Conditions on Earlier Approval

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and U.S. Environmental Protection Agency.

ACTION: Notice of proposed finding; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) (the Federal agencies) invite public comment on the Federal agencies' proposed finding that Indiana has satisfied all conditions the agencies established as part of their 2008 approval of the state's coastal nonpoint pollution control program (coastal nonpoint program). The Coastal Zone Act Reauthorization Amendments (CZARA) directs states and territories with coastal zone management programs previously approved under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs, which must be submitted to the Federal agencies for approval. Prior to making such a finding, NOAA and the EPA invite public input on the two agencies' rationale for this proposed finding.

DATES: Comments are due by December 28, 2023.

ADDRESSES: Copies of the proposed findings document may be found on www.regulations.gov (search for NOAA–NOS–2022–0018) and NOAA's Coastal

Nonpoint Pollution Control Program website at Comments may be submitted by:

• **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov and Enter NOAA–NOS–2022–0018 in the Search box, then click the “Comment” icon, complete the required fields, and enter or attach your comments.

• **Mail:** Submit written comments to Joelle Gore, Chief, Stewardship Division (N/OCM6), Office for Coastal Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910; phone 202–468–7270; ATTN: Indiana Coastal Nonpoint Program.

Instructions: All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personally identifiable information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. The Federal agencies will accept anonymous comments (enter “N/A” in the required fields you wish to remain anonymous). 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 Federal agencies 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 FURTHER INFORMATION CONTACT:

Allison Castellan, Office for Coastal Management, NOS, NOAA, 202–596–5039, allison.castellan@noaa.gov; or Stephen Feely, U.S. EPA Region 5, Watershed and Wetlands Branch, 312–886–5867, feely.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: Section 6217(a) of the Coastal Zone Act Reauthorization Amendments (CZARA), 12 U.S.C. 1455b(a), requires that each state or territory with a coastal zone management program previously approved under section 306 of the Coastal Zone Management Act must prepare and submit to the Federal agencies a coastal nonpoint pollution control program for approval. Indiana submitted its program to the Federal agencies for approval in 2008 after gaining Federal approval of its coastal zone management plan in 2002. The Federal agencies provided public notice of and invited public comment on their proposal to approve, with conditions, the Indiana program (72 FR 62444). The Federal agencies approved the program

dated January 15, 2008, subject to the conditions specified therein. The Federal agencies now propose to find, and invite public comment on the proposed findings, that Indiana has satisfied the conditions associated with the earlier approval of its coastal nonpoint program.

The proposed findings document for Indiana's program is available at www.regulations.gov (search for NOAA–NOS–2022–0018) and information on the Coastal Nonpoint Program in general is available on the NOAA website at coast.noaa.gov/czm/pollutioncontrol/.

Radhika Fox,

Assistant Administrator Office of Water, Environmental Protection Agency.

Nicole R. LeBoeuf,

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

[FR Doc. 2023–25841 Filed 11–27–23; 8:45 am]

BILLING CODE 3510–08–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0046]

Agency Information Collection Activities; Proposed Extension and Revision of Collection; Comment Request; Consumer Focus Groups and Other Qualitative Studies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of information collection; request for comment.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from persons who may voluntarily participate in consumer focus groups, and revision of that collection. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0136. OMB's most recent extension of approval will expire on January 31, 2024. The Commission will consider all comments received in response to this notice before requesting an extension and revision of this collection of information from OMB.

DATES: Submit comments on the collection of information by January 29, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0046, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://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. The Commission typically does not accept comments submitted by email, except as described below.

Mail/Hand Delivery/Courier/Written Submissions: CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: <http://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-@cpsc.gov.

Docket: For access to the docket to read background documents or comments received, go to: <https://www.regulations.gov>, insert docket number CPSC-2010-0046 into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504-7791, or by email to: pra@cpsc.gov.

SUPPLEMENTARY INFORMATION: CPSC seeks to extend the following currently approved collection of information, and to revise it to include additional forms of qualitative studies:

Title: Focus Groups and Other Qualitative Studies.

OMB Number: 3041-0136.

Type of Review: Extension and revision of collection.

Frequency of Response: On occasion.

Affected Public: Consumers.

Estimated Number of Respondents: CPSC estimates that this collection will involve 2,620 participants, including prospective focus group participants who are screened but ultimately not selected for participation.

Estimated Time per Response: We estimate that the average response time for each participant will be 1.1 hours.

Total Estimated Annual Burden: Based on CPSC's estimates that 2,620 participants will each spend an average of 1.1 hours responding to the collection, CPSC estimates that the total annual burden of this collection is 2,882 hours. The annualized cost to respondents for the information collection is \$124,675.32 (2,882 hours × \$43.26/hr), as estimated from total compensation data available from the U.S. Bureau of Labor Statistics.¹

General Description of Collection: Section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), authorizes the Commission to conduct studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies, and investigations on the safety of consumer products, or test consumer products and develop product safety test methods and testing devices.

To help identify and evaluate product-related incidents, Commission staff invites and obtains direct feedback from consumers on issues related to product safety, such as recall effectiveness, product use, and perceptions regarding safety issues. The information that the CPSC collects from future focus groups—including usability studies and ethnographic studies for consumer products, which are being added to this revised collection—will help inform the Commission's identification and evaluation of consumer products and product use, by providing insight and information into consumer perceptions and usage patterns. In some cases, one-on-one interviews may be conducted as a more in-depth extension of a focus group, or in place of a traditional focus group or study. This information may also assist the Commission in its efforts to support voluntary standards activities and help CPSC identify emerging consumer safety issues requiring additional research. In addition, based on the information obtained, CPSC may be able to provide safety information to the public that is easier to read and understood by a wider range of consumers.

¹ Total hourly compensation for all civilian workers is estimated by the U.S. Bureau of Labor Statistics to be \$43.26: Employer Costs for Employee Compensation, June 2023, Table 1, (https://www.bls.gov/news.release/archives/ecec_09122023.pdf).

Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- whether the estimated burden of the proposed collection of information is accurate;
- whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023-26131 Filed 11-27-23; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice is Given of the Names of Members of the Performance Review Board for the Department of the Air Force

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

ACTION: Meeting notice.

SUMMARY: Notice is given of the names of members of the 2023 Performance Review Board for the Department of the Air Force for board meeting.

DATES: December 8, 2023. Not open to public.

ADDRESSES: Please direct any written comments or requests for information to Ms. Melanie McGuire, Ms. Virginia Reynolds, and Ms. Jacquelyn Salkeld, Department of the Air Force Civilian Senior Executive Management Office, SAF/MRL, 1660 Air Force Pentagon, Washington, DC 20330-1040.

FOR FURTHER INFORMATION CONTACT: Melanie McGuire, Department of the Air Force Civilian Senior Executive Management Office, SAF/MRL, 1660 Air Force Pentagon, Washington, DC 20330-1040. Telephone: 703-695-4555; or via email at melanie.mcguire@us.af.mil.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c) (1-5), the

Department of the Air Force announces the appointment of members to the Air Force's Senior Executive Service Performance Review Board.

Appointments are made by the authorizing official. Each board member shall review and evaluate performance scores provided by the Senior Executive's rater/immediate supervisor. Performance standards must be applied consistently across the Air Force. The board will make final recommendations to the authorizing official relative to the performance of the executive.

The members of the 2023 Performance Review Board for the Air Force are:

1. Honorable Alex Wagner (Chair), Assistant Secretary of the Air Force for Manpower and Reserve Affairs
2. General Duke Richardson (Co-Chair), Commander, Air Force Materiel Command
3. Ms. Gwendolyn DeFilippi, Principal Deputy Assistant Secretary of the Air Force for Manpower and Reserve Affairs
4. Mr. Carlos Rodgers, Principal Deputy Assistant Secretary of the Air Force for Financial Management and Comptroller
5. Major General Stephen Jost, Commander, Joint Enabling Capabilities Command, United States Transportation Command,
6. Mr. Anthony Reardon, Administrative Assistant to the Secretary of the Air Force
7. Ms. Glenda Scheiner, (Acting) Assistant Deputy Chief of Staff for Manpower, Personnel and Services
8. Mr. Edwin Oshiba, Principal Deputy Assistant Secretary of the Air Force for Installations, Environment and Energy
9. Ms. Lorna Estep, Executive Director, Air Force Materiel Command
10. Ms. Darlene Costello, Principal Deputy Assistant Secretary of the Air Force Acquisition, Technology & Logistics
11. Mr. Craig Smith, Principal Deputy General Counsel of the Air Force
12. Mr. Richard Lombardi, Deputy Under Secretary of the Air Force, Management and Chief Management Officer
13. Ms. Katharine Kelley, Deputy Chief of Space Operations for Human Capital, United States Space Force
14. Ms. Shannon McGuire (Legal Advisor), Deputy General Counsel for Fiscal Ethics and Administrative Law
15. Mr. Richard Desmond (Legal Advisor), Associate General Counsel of the Air Force

The following Tier 3 Career SES members will serve as alternates:

1. Mr. Douglas Bennett, Auditor General of the Air Force
2. Ms. Kelli Seybolt, Deputy Under Secretary of the Air Force, International Affairs
3. Mr. William Bailey, Director and Program Executive Officer for the Air Force Rapid Capabilities Office
4. Mr. Daniel Fri, Assistant Deputy Chief of Staff, Logistics, Engineering and Force Support
5. Mr. Thomas Lawhead, Assistant Deputy Chief of Staff, Strategy Integration and

Requirements

6. Ms. Jennifer Miller, Director of Staff, Office of the Secretary of the Air Force
7. Mr. Joseph McDade, Assistant Deputy Chief of Staff for Strategic Plans and Programs

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023-26129 Filed 11-27-23; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense (GC(DoD)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) will occur.

DATES: Tuesday, December 5, 2023—Open to the public from 2:40 p.m. to 4:45 p.m. EST and Wednesday, December 6, 2023—Open to the public from 9:00 a.m. to 2:00 p.m. EST.

ADDRESSES: General Gordon R. Sullivan Conference & Event Center, 2425 Wilson Boulevard, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer (DFO), Dwight Sullivan, 703-695-1055 (voice), dwight.h.sullivan.civ@mail.mil (email). Mailing address is DAC-IPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: <http://dacipad.whs.mil/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces was unable to provide public notification required by 41 CFR 102-3.150(a) concerning its December 5-6, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102-3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the "Federal Advisory Committee Act" or "FACA"), 5 U.S.C. 552b (commonly known as the "Government in the Sunshine Act"), and 41 Code of Federal Regulations (CFR) 102-3.140 and 102-3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act (NDAA) for Fiscal Year 2015 (Pub. L. 113-291), as modified by section 537 of the NDAA for Fiscal Year 2016 (Pub. L. 114-92), Congress tasked the DAC-IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the thirty-second public meeting held by the DAC-IPAD. On Day 1, the DAC-IPAD will deliberate on the draft DAC-IPAD Report on Randomizing Court Martial Panel Member Selection Criteria; will deliberate on the draft Report on Section 549B, FY23 NDAA, regarding Victim Access to Information; will receive an update from the Case Review Subcommittee on the preliminary results of the panel selection data study; will receive a presentation on the current performance metrics proposal for the Offices of Special Trial Counsel; and will receive updates from the Special Projects Subcommittee and the Policy Subcommittee.

Agenda: Day 1: 2:40 p.m.-2:45 p.m. Welcome and Introduction to Public Meeting; 2:45 p.m.-3:45 p.m. DAC-IPAD Deliberations on the Draft DAC-IPAD Report on Randomizing Court-Martial Panel Member Selection; 3:45 p.m.-4:45 p.m. DAC-IPAD Deliberations on the Draft Report on Sec. 549B, FY23 NDAA, regarding Victim Access to Information; 4:45 p.m. Public Meeting Day 1 Adjourned. Day 2: 9:00 a.m.-9:05 a.m. Welcome and Overview of Day 2; 9:05 a.m.-10:25 a.m. Panel Selection Study Update and Discussion; 10:25 a.m.-11:15 a.m. Performance Metrics for the Offices of Special Trial Counsel; 11:15 a.m.-11:30 a.m. Break; 11:30 a.m.-11:45 a.m. Special Projects Subcommittee Update; 11:45 a.m.-12:00 p.m. Policy Subcommittee Update 12:00 p.m.-1:00 p.m. Lunch; 1:00 p.m.-1:30 p.m. Public Comment; 1:30 p.m.-2:00 p.m. Meeting Wrap-Up & Preview of Next Meeting; 2:00 p.m. Public Meeting Day 2 Adjourned.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 and 5 U.S.C. 1009(a)(1), the public or interested organizations may submit

written comments to the DAC-IPAD about its mission and topics pertaining to this public meeting. Written comments must be received by the DAC-IPAD at least five (5) business days prior to the meeting date so that they may be made available to the DAC-IPAD members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC-IPAD at

whs.pentagon.em.mbx.dacipad@mail.mil in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC-IPAD operates under the provisions of the FACA, all written comments will be treated as public documents and will be made available for public inspection.

Written Statements: Pursuant to 41 CFR 102–3.140 and 5 U.S.C. 1009(a)(3), interested persons may submit a written statement to the DAC-IPAD. Individuals submitting a statement must submit their statement no later than 5:00 p.m. EST, Monday, December 4, 2023, to Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), dwight.h.sullivan.civ@mail.mil (Email). If a statement pertaining to a specific topic being discussed at the planned meeting is not received by Monday, December 4, 2023, then it may not be provided to, or considered by, the Committee during the December 5–6, 2023, meeting. The DFO will review all timely submissions with the DAC-IPAD Chair and ensure such submissions are provided to the members of the DAC-IPAD before the meeting. Any comments received by the DAC-IPAD prior to the stated deadline will be posted on the DAC-IPAD website (<http://dacipad.whs.mil/>).

Dated: November 20, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–26108 Filed 11–27–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting; Amendment

AGENCY: Deputy Secretary of Defense, Defense Business Board, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting; amendment.

SUMMARY: On Monday, November 6, 2023, the DoD published a notice announcing a partially closed meeting

of the Defense Business Board (“the Board”) on November 14 and 15, 2023. Subsequent to publication of the notice, DoD is making changes to the meeting agenda. The amended meeting agenda is included in this notice.

DATES: Closed to the public Tuesday, November 14, 2023 from 9:15 a.m. to 11:20 a.m. and from 5:30 p.m. to 7:35 p.m. Open to the public Tuesday, November 14, 2023 from 11:25 a.m. to 12:30 p.m. and from 1:45 p.m. to 4:45 p.m. and on Wednesday, November 15, 2023 from 9 a.m. to 11:35 a.m. All eastern standard time.

ADDRESSES: The open and closed portions of the meeting will be in rooms 1E840 and 4D880 in the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Ms. Cara Allison Marshall, Designated Federal Officer (DFO) of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at cara.l.allisonmarshall.civ@mail.mil; or by phone at 703–614–1834.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”), 5 U.S.C. 552b (commonly known as the “Government in the Sunshine Act”), and 41 CFR 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the DFO, the Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning amendments to its previously approved and announced November 14–15, 2023 meeting agenda. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent, strategic-level, private sector and academic advice and counsel on enterprise-wide business management approaches and best practices for business operations and achieving National Defense goals.

Agenda: The Board will begin in closed session on November 14 from 9:15 a.m. to 11:20 a.m. The DFO will begin the closed session followed by a welcome by Board Chair, Honorable (Hon.) Deborah James. The Board will receive a classified discussion on Managing the Department During International Crises from Hon. Kathleen Hicks, Deputy Secretary of Defense,

followed by a classified overview on Acquiring Capabilities for the United States Space Force (USSF) from Lt Col Raquel Salim, USSF, Program Element Monitor, Space Domain Awareness & Space Control. This briefing will provide an overview of the Space Force mission, organizational structure, leadership, capabilities, and space acquisition. The DFO will adjourn the closed session. The Board will meet in open session November 14 from 11:25 a.m. to 12:30 p.m. The DFO will open the public session followed by a welcome by the Board Chair, Hon. Deborah James. The Board will receive an update on DoD Talent Management from Mr. Brynt Parmeter, Chief Talent Management Officer, and Ms. Angela Cough, Chief Digital and Artificial Intelligence Office Senior Advisor, Digital Workforce Talent & Functional Community Management. After a lunch break, the Board will resume their open session from 1:45 p.m. to 4:45 p.m. The Board Chair will provide remarks, followed by a discussion on Enterprise Digitization: Emerging Technologies and Ecosystem Strategy at the Speed of Artificial Intelligence (AI) from Mr. Ryan McManaus, Founder and CEO of Tectonic. After a short break, the Board will receive a presentation on the Board study, Improving the Business Operations Culture of the Department of Defense from General Larry Spencer (Ret), Chair, Talent Management, Culture, & Diversity Subcommittee, and then the Board will deliberate and vote on the study. The DFO will then adjourn the open session. The Board will reconvene in closed session on November 14 from 5:30 p.m. to 7:35 p.m. The DFO will begin the closed session followed by remarks by Board Chair, Hon. Deborah James and Deputy Secretary, Hon. Kathleen Hicks. Next, the Board will hear a classified update on the United States Army’s Future Development and Joint Integration from GEN Randy George, Chief of Staff of the Army. The DFO will adjourn the closed session. The Board will meet in open session November 15, 2023 from 9 a.m. to 11:35 a.m. The DFO will begin the open session followed by the Chair’s welcome. Next the Board will receive a presentation on the Board’s Space Acquisition study from Ms. Linnie Haynesworth, Chair, Business Operations Advisory Subcommittee, and then the Board will deliberate and vote on the study. After a short break, the Board will have a discussion on reshaping the culture of the Office of the Director of Administration and Management and Office of the Secretary of Defense from Ms. Jennifer C. Walsh,

Performance Improvement Officer and Director of Administration and Management, and Mr. Sajeel Ahmed, Deputy Director of Administration and Management. The DFO will adjourn the open session.

The latest version of the agenda will be available on the Board's website at: <https://dbb.dod.afpims.mil/Meetings/Meeting-November-2023/>.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, it is hereby determined that the November 14–15 meeting of the Board will include classified information and other matters covered by 5 U.S.C. 552b(c)(1) and that, accordingly, portions of the meeting will be closed to the public. This determination is based on the consideration that it is expected that discussions throughout the closed portions will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of these portions of the meeting. To permit these portions of the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the Board's findings and recommendations to the Secretary of Defense and the Deputy Secretary of Defense. Pursuant to 5 U.S.C. 1009(a)(1) and 41 CFR 102–3.140, the portions of the meeting on November 14 from 11:25 a.m. to 12:30 p.m. and from 1:45 p.m. to 4:45 p.m. and on November 15, 2023 from 9 a.m. to 11:35 a.m. are open to the public virtually. Persons desiring to attend the public sessions are required to register. To attend the public sessions, submit your name, affiliation/organization, telephone number, and email contact information to the Board at osd.pentagon.odam.mbx.defense-business-board@mail.mil. Requests to attend the public sessions must be received no later than 12 p.m. on Monday, November 13, 2023. Upon receipt of this information, the Board will provide further instructions for virtually attending the meeting.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and 5 U.S.C. 1009(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or regarding the Board's mission in general. Written comments or statements should be submitted to Ms. Cara Allison Marshall, the DFO, via electronic mail (the preferred mode of submission) at the address listed in the

FOR FURTHER INFORMATION CONTACT section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements submitted in response to the agenda set forth in this notice by noon on Monday, November 13, 2023 to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chair and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: November 22, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–26190 Filed 11–27–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0199]

Agency Information Collection Activities; Comment Request; Certification of Identity and Consent Form

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 29, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0199. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept

comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Arthur Caliguiran, (202) 453–6489.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Certification of Identity and Consent Form.

OMB Control Number: 1894–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 130.

Total Estimated Number of Annual Burden Hours: 65.

Abstract: The collection is necessary under 5 U.S.C. 552a(b) to collect information from individuals requesting

information under the Privacy Act (PA). The Department will use the information to provide documents that are responsive to a Privacy Act or FOIA/Privacy Act request under the Freedom of Information Act.

Dated: November 22, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26173 Filed 11–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0141]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Measures and Methods for the National Reporting System for Adult Education

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 28, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact John LeMaster, (202) 987–0903.

SUPPLEMENTARY INFORMATION: The Department is especially interested in

public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Measures and Methods for the National Reporting System for Adult Education.

OMB Control Number: 1830–0027.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 5,700.

Abstract: The respondents are the 57 states/outlying areas that receive adult education state grant funds under the Adult Education and Family Literacy Act (AEFLA). The information collected is the states’ annual performance report. OCTAE will use the data to ensure that states meet the performance accountability requirements of AEFLA.

Dated: November 22, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26186 Filed 11–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs—Native American Language Program

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

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2024 for Indian Education Discretionary Grants Programs—Native American Language (NAL@ED) program, Assistance Listing Number (ALN) 84.415B. This notice relates to the approved information collection under OMB control number 1810–0731.

DATES:

Applications Available: November 28, 2023.

Deadline for Notice of Intent to Apply: January 17, 2024.

Date of Pre-Application Meeting: December 26, 2023.

Deadline for Transmittal of Applications: March 7, 2024.

Deadline for Intergovernmental Review: May 6, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.

FOR FURTHER INFORMATION CONTACT:

Donna Sabis-Burns, U.S. Department of Education, 400 Maryland Avenue SW, Room 4B116, Washington, DC 20202–6335. Telephone: (202) 213–9014. Email: Donna.Sabis-Burns@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) support schools that use Native American and Alaska Native languages as the primary language of instruction; (2) maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages, as envisioned in the Native American Languages Act of 1990 (25 U.S.C. 2901, *et seq.*); and (3) support the Nation’s First Peoples’ efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

Background: The Department encourages applicants to propose a broad range of activities to achieve these purposes, including activities that are aligned with the Administration’s policy focus areas and with the needs described by Tribal leaders and the education field during the March 17, 2022, Department-sponsored listening session, “Advancing the Interagency Memorandum of Agreement on Native Languages: Promising Practices and

Persistent Barriers.” Specifically, we encourage promoting education equity and adequacy in resources and opportunity for underserved students, including rigorous, engaging, and well-rounded approaches to learning that are inclusive regarding culture and language and prepare students for college, career, and civic life. Activities that support Native American language education and development include implementing inclusive pedagogical practices in professional development programs; using technology to support evidence-based approaches to personalized student learning in the classroom; and increasing the number and diversity of experienced and effective educators, including those from the community they serve.

In addition, the Department intends for the NAL@ED program to have a broad impact in three ways. First, the Department will fund only one high-quality project per Native language under this competition, provided there are enough high-quality applications. This is consistent with the statutory requirement that the Department ensure a diversity of languages are represented to the maximum extent feasible. Second, in addition to soliciting applications from existing Native language instructional programs (Absolute Priority 2), the Department is soliciting applications supporting new Native language instructional programs via Absolute Priority 1. Third, the Department will not exclusively fund applicants from a single State, provided there is a sufficient number of high-quality applications (Program Requirement 3). This approach will help ensure the program has a broad impact by funding projects supporting a variety of Native languages.

Priorities: This competition includes two absolute priorities and two competitive preference priorities. These priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program published in the **Federal Register** on July 14, 2020 (85 FR 42305) (NFP).

Absolute Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet either Absolute Priority 1 or 2.

Note: The Department may create two funding slates—one for applications that meet Absolute Priority 1 and a separate slate for applications that meet Absolute Priority 2. As a result, the Secretary may fund applications out of the overall rank order, but the Department is not bound

to do so. Applicants must clearly identify the specific absolute priority that the proposed project addresses in the project abstract section of the application.

These priorities are:

Absolute Priority 1: Develop and Maintain New Native American Language Programs.

To meet this priority, an applicant must propose to develop and maintain a Native American language instructional program that—

(a) Will support Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will take place in a school; and

(c) Does not augment or replace a program of identical scope that was active within the last three years at the school(s) to be served.

Absolute Priority 2: Expand and Improve Existing Native American Language Programs.

To meet this priority, an applicant must propose to improve and expand a Native American language instructional program that—

(a) Will improve and expand Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will continue to take place in a school; and

(c) Within the past three years has been offered at the school(s) to be served.

Competitive Preference Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 7 points to an application, depending on how well an application meets Competitive Preference Priority 1, and we award an additional 5 points to an application that meets Competitive Preference Priority 2. The maximum number of competitive preference priority points is 12.

These priorities are:

Competitive Preference Priority 1: Support Project Sustainability With Title VI Indian Education Formula Grant Funds. (Up to 7 points).

To meet this priority, an applicant or a partner must receive, or be eligible to receive, a formula grant under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and must commit to use all or part of that formula grant to help sustain this project after the conclusion of the grant period. To meet this priority, an applicant must include in its application—

(a) A statement that indicates the school year in which the entity will begin using title VI formula grant funds to help support this project;

(b) The percentage of the title VI grant that will be used for the project, which must be at least—

(i) 20 percent of the applicant's title VI formula grant (3 points);

(ii) 40 percent of the applicant's title VI formula grant (4 points);

(iii) 60 percent of the applicant's title VI formula grant (5 points);

(iv) 80 percent of the applicant's title VI formula grant (6 points); or

(v) 100 percent of the applicant's title VI formula grant (7 points); and

(c) The timeline for obtaining parent committee input and approval of this action, if necessary.

Competitive Preference Priority 2: Preference for Indian Applicants. (0 or 5 points).

To meet this priority, an application must be submitted by an Indian Tribe, Indian organization, Bureau of Indian Education (BIE)-funded school, or Tribal College or University (TCU) that is eligible to participate in the NAL@ED program. A consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, BIE-funded school, or TCU will also be considered eligible to meet this priority. In order to be considered a consortium application, the application must include the consortium agreement signed by all parties.

Note: The consortium agreement must state that the members designate one member of the group to apply for the grant, detail the activities that each member of the group plans to perform, and bind each member of the group to every statement and assurance made by the applicant in the application (34 CFR 75.128(a) and (b)).

Application Requirements: These application requirements are from section 6133(c) of the ESEA (20 U.S.C. 7453) and from the NFP. For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements.

(1) *General Requirements.* An applicant must include the following information in its application—

(a) A completed information form that includes:

(i) Instructional language. The name of the Native American or Alaska Native language to be used for instruction at the school(s) supported by the eligible entity.

(ii) Students to be served. The number of students to be served by the project and the grade level(s) of targeted students in the proposed project.

(iii) Instructional hours. The number of hours of instruction per week in and through one or more Native American or Alaska Native languages currently being provided to targeted students at such school(s), if any.

(iv) Pre- and post-assessments. Whether a pre- and post-assessment of Native American language proficiency is available and, if not, the percentage of grant funds that will be used for developing such assessment.

(v) Program description. A description of how the eligible entity will support Native American language education and development, and provide professional development for staff, in order to strengthen the overall language and academic goals of the school(s) that will be served by the project; ensure the implementation of rigorous academic content that prepares all students for college and career; and ensure that students progress toward meeting high-level fluency goals in the Native American language.

(vi) Organizational information. For each school included in the project, information regarding the school's organizational governance or affiliations, including information about the school's governing entity (such as a local educational agency (LEA), Tribal educational agency or department, charter organization, private organization, or other governing entity); the school's accreditation status; any partnerships with institutions of higher education (IHEs); and any indigenous language schooling and research cooperatives.

(b) An assurance that for each school to be included in the project—

(i) The school is engaged in meeting State or Tribally designated long-term goals for students, as may be required by applicable Federal, State, or Tribal law;

(ii) The school provides assessments of students using the Native American or Alaska Native language of instruction, where possible;

(iii) The qualifications of all instructional and leadership personnel at such school are sufficient to deliver high-quality education through the

Native American or Alaska Native language used in the school; and

(iv) The school will collect and report to the public data relative to student achievement and, if appropriate, rates of high school graduation, career readiness, and enrollment in postsecondary education or workforce development programs, of students who are enrolled in the school's programs.

(2) *Memorandum of Agreement.* Any applicant that proposes to work with a partner to carry out the proposed project must include a signed and dated memorandum of agreement that describes the roles and responsibilities of each partner to participate in the grant, including—

(a) A description of how each partner will implement the project according to the timelines described in the grant application;

(b) The roles and responsibilities of each partner related to ensuring the data necessary to report on the Government Performance and Results Act (GPRA) indicators;¹ and

(c) The roles and responsibilities of each partner related to ensuring that Native American language instructors can be recruited, retained, and trained, as appropriate, in a timely manner.

This memorandum of agreement must be signed no more than four months prior to the application deadline (*i.e.*, the agreement must be signed within the four months prior to the application deadline).

(3) *Applicant Engagement with Indian Tribes and Tribal Organizations.* All non-Tribal applicants must engage with appropriate officials from Tribe(s) located in the area served by the project, or with a local Tribal organization, prior to submission of an application. The engagement must provide for the opportunity for officials from Tribes or Tribal organizations to meaningfully and substantively contribute to the application. Non-Tribal applicants must submit evidence of either Tribal engagement or a letter of support from one or more Tribes or Tribal organizations. This evidence can be part of the memorandum of agreement required by Application Requirement 2 or can be uploaded as a separate attachment.

Note: If an applicant is an affected LEA that is subject to ESEA section 8538, then the LEA is required to consult with appropriate officials from Tribe(s) or Tribal organizations

¹ The Department notes that such reporting will be required in connection with the performance measurement requirements under 34 CFR 75.110, rather than indicators under GPRA. For further information, see section 4 (Performance Measures) under VI. Award Administration Information.

approved by the Tribes located in the area served by the LEA prior to its submission of an application, on the contents of the application as required under ESEA section 8538. Affected LEAs are those that have 50 percent or more of their student enrollment made up of Native American students or received an Indian education formula grant under title VI of the ESEA in the previous fiscal year that exceeds \$40,000. (ESEA sec. 8538)

(4) *Certification.* An applicant that is an LEA (including a public charter school that is an LEA under State law), a school operated by the BIE, or a nontribal for-profit or nonprofit organization must submit a certification from an entity described in application requirement (4)(a), containing the assurances described in application requirement (4)(b).

(a) The certification must be from one of the following entities, on whose land the school or program is located, or that is an entity served by the school, or whose members (as defined by that entity) are served by the school:

(i) A federally recognized Indian Tribe or Tribal organization.

(ii) A TCU.

(iii) An Alaska Native Regional Corporation or an Alaska Native nonprofit organization.

(iv) A Native Hawaiian organization.

(b) The certification must state that—

(i) The school or applicant organization has the capacity to provide education primarily through a Native American or an Alaska Native language; and

(ii) There are sufficient speakers of the target language at the school or available to be hired by the school or applicant organization.

Program Requirements: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, grantees must adhere to the following program requirements:

(1) *Native American Language Proficiency Assessment.* Grantees must administer pre- and post-assessments of Native American language proficiency to participating students. This Native American language assessment may be any relevant tool that measures student Native American language proficiency, such as oral, written, or project-based assessments, and formative or summative assessments.

(2) *Diversity of Languages.* To ensure a diversity of languages as required by statute, the Department will not fund more than one project in any competition year that proposes to use the same Native American language, assuming there are enough high-quality

applications. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund more than one project with the same Native American language.

(3) *Geographic Distribution.* To ensure geographic diversity, assuming there are enough high-quality applications, the Department will not exclusively fund projects that all propose to serve students in the same State in any competition year. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund only applications that propose to provide services in one State.

(4) *ISDEAA Statutory Hiring Preference:*

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant. (25 U.S.C. 5307(b))

(b) For purposes of this section, an Indian is a member of any federally recognized Indian Tribe.

Definitions: The definitions of “Indian organization (or Tribal organization)” and “Tribe” are from the NFP. The definitions of “Native American,” “Native American language,” and “Tribal college or university” are from the ESEA. The specific sections of the ESEA are included in parentheses.

Indian organization (or Tribal organization) means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, bylaws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any IHE or TCU; and

(6) Is not an agency of State or local government.

Native American means:

(1) “Indian” as defined in section 6151(3) of the ESEA (20 U.S.C. 7491(3)), which includes individuals who are Alaska Natives and members of federally recognized or State recognized Tribes;

(2) Native Hawaiian; or

(3) Native American Pacific Islander. (ESEA secs. 6151(3) and 8101(34))

Native American language means the historical, traditional languages spoken by Native Americans. (ESEA sec. 8101(34))

Tribal college or university means an institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801, *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). (ESEA sec. 6133 and section 316 of the Higher Education Act of 1965, as amended)

Tribe means either a federally recognized Tribe or a State-recognized Tribe.

Program Authority: 20 U.S.C. 7453.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration requested \$12,365,000 for Indian Education National Activities

for FY 2024, of which we intend to use an estimated \$2,400,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2024 and subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: \$300,000–\$400,000.

Estimated Average Size of Awards: \$350,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities, either alone or in a consortium, that have a plan to develop and maintain, or to improve and expand, programs that support the entity's use of a Native American or Alaska Native language as the primary language of instruction in one or more elementary or secondary schools (or both) are eligible under this program:

(a) An Indian Tribe.

(b) A Tribal College or University (TCU).

(c) A Tribal education agency.

(d) An LEA, including a public charter school that is an LEA under State law.

(e) A school operated by the Bureau of Indian Education (BIE).

(f) An Alaska Native Regional Corporation (as described in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g))).

(g) A private, Tribal, or Alaska Native nonprofit organization.

(h) A non-Tribal for-profit organization.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

c. *Administrative Cost Limitation:* Under ESEA section 6133(g), no more than five percent of funds awarded for a grant under this program may be used for administrative purposes. Note that, since fiscal year 2020, Congress has included language in appropriations

acts to clarify that the statutory 5 percent limit does not include indirect costs. In the event such language is not included in the FY 2024 appropriations act, the Department will work with successful applicants to make budget adjustments to align with administrative cost restrictions, if necessary.

3. *Other:* Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC, during each year of the project period. This meeting may be held virtually if conditions warrant such a format.

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>, which contain requirements and information on how to submit an application.

2. Submission of Proprietary

Information: Given the types of projects that may be proposed in applications for this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public by posting them on our website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372

is in the application package for this competition.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative. An application will not be disqualified if it exceeds the recommended page limit.

5. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line "Intent to Apply," and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria.* The selection criteria for this competition are from the NFP and 34 CFR 75.210. The source of each selection criterion, and the maximum possible score for addressing each criterion and subcriterion, is included in parentheses. The maximum possible score for addressing all of the criteria in this section is 100 points.

In evaluating an application, the Secretary considers the following criteria:

(a) *Quality of the project design (32 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (9 points) (34 CFR 75.210(c)(2)(i))

(2) The extent to which the project design will ensure that students' progress toward grade-level and developmentally appropriate fluency in the Native American language. (6 points) (NFP)

(3) The extent to which the proposed project will incorporate parent engagement and participation in Native American language instruction. (6 points) (NFP)

(4) The quality of the approach to developing and administering pre- and post-assessments of student Native American language proficiency, including consultation with individuals with assessment expertise, as needed. (6 points) (NFP)

(5) The extent to which the performance feedback and continuous improvement are integral to the design of the proposed project. (5 points) (34 CFR 75.210 (c)(2)(xxii))

(b) *Quality of project services (29 points).* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(1) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (1 point) (34 CFR 75.210(d)(2))

(2) The quality of the plan for supporting grade-level and developmentally appropriate instruction in a Native American language by providing instruction of or through the Native American language. (11 points) (NFP)

(3) The extent to which the project will provide professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language proficiency and academic goals of the school(s) that will be served by the project, including

cultural competence training for all staff in the school(s). (10 points) (NFP)

(4) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (4 points) (34 CFR 75.210(d)(3)(ix))

(5) The extent to which the percentage of the school day that instruction will be provided in the Native American language is ambitious and is reasonable for the grade level and population served. (3 points) (NFP)

(c) *Quality of project personnel (16 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (1 point) (NFP)

(2) The extent to which teachers of the Native American language who are identified as staff for this project have teaching experience and are fluent in the Native American language. (9 points) (NFP)

(3) The qualifications, including relevant training and experience, of key project personnel. (6 points) (34 CFR 75.210(e)(3)(ii))

(d) *Adequacy of resources (10 points).*

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

(1) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (6 points) (34 CFR 75.210(f)(2)(iv))

(2) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (4 points) (34 CFR 75.210(f)(2)(vi))

(e) *Quality of the management plan (13 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (8 points) (34 CFR 75.210(g)(2)(i))

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (5 points) (34 CFR 75.210(g)(2)(iv))

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management (SAM). You may review and comment on any information about yourself that a

Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The

GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* For the purpose of Department reporting under 34 CFR 75.110, we have established the following performance measures for the NAL@ED program:

(a) The number and percentage of students who attain proficiency in a Native language as determined by each grantee through pre- and post-assessments of Native language proficiency;

(b) The number and percentage of participating students who make progress in learning a Native language, as determined by each grantee, through pre- and post-assessments of Native language proficiency;

(c) The number and percentage of participating students who show an improvement in academic outcomes, as measured by academic assessments or other indicators; and

(d) The difference between the average daily attendance of participating students and the average daily attendance of all students in the comparison group (*e.g.*, school, LEA, Tribe, or other).

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to carefully consider these measures in conceptualizing the approach to, and evaluation for, its

proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotope, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority To Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023-26216 Filed 11-27-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0157]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2020/25 Beginning Postsecondary Students (BPS:20/25) Field Test

AGENCY: National Center for Educational Sciences (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before December 28, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245-6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner;

(3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2020/25 Beginning Postsecondary Students (BPS:20/25) Field Test.

OMB Control Number: 1850–0631.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 6,927.

Total Estimated Number of Annual Burden Hours: 1,279.

Abstract: The 2020/25 Beginning Postsecondary Students Full-Scale (BPS:20/25) is conducted by the National Center for Education Statistics, part of the Institute of Education Sciences, within the Department of Education, and is part of the Beginning Postsecondary Students Longitudinal Study data collection program at <https://nces.ed.gov/surveys/bps/>. BPS is designed to follow a cohort of students who enroll in postsecondary education for the first time during the same academic year, irrespective of the date of high school completion. The study collects data on students' persistence in and completion of postsecondary education programs; their transition to employment; demographic characteristics; and changes over time in their goals, marital status, income, and debt, among other indicators. Data from BPS are used to help researchers and policymakers better understand how financial aid influences persistence and completion, what percentages of students complete various degree programs, what are the early employment and wage outcomes for certificate and degree attainers, and why students leave school.

The BPS:20/25 field test will include approximately 3,280 students who first began in the 2018–19 academic year. BPS:20/25 will be a nationally-representative sample of approximately 34,240 students who were first-time beginning students during the 2019–20 academic year. These students will be asked to complete a survey and administrative data will also be collected for them. Administrative data matching will be conducted with sources including the National Student Loan Data System (NSLDS), containing Federal loan and grant files; the Central

Processing System (CPS), which houses and processes data contained in the Free Application for Federal Student Aid (FAFSA) forms; the National Student Clearinghouse (NSC) which provides enrollment and degree verification; vendors of national undergraduate, graduate, and professional student admission tests; and possible other administrative data sources such as the Veterans Benefits Administration (VBA). These data will be obtained through file matching/downloading.

This submission is designed to adequately justify the need for and overall practical utility of the full study, presenting the overarching plan for all phases of the data collection and providing as much detail about the measures to be used as is available at the time of this submission. As part of this submission, NCES will publish a notice in the **Federal Register** allowing first a 60- and then a 30-day public comment period. Field test materials, procedures, and results will inform the full-scale study. After completion of the field test, NCES will publish a notice in the **Federal Register** allowing an additional 30-day public comment period on the final details and materials of the BPS:20/25 full-scale study.

Dated: November 22, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–26215 Filed 11–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0198]

Agency Information Collection Activities; Comment Request; Privacy Act Request Form

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 29, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2023–SCC–0198. Comments submitted

in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Arthur Caliguiran, (202) 453–6489.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Privacy Act Request Form.

OMB Control Number: 1894–NEW.

Type of Review: New ICR.

Respondents/Affected Public:

Individuals or households.

Total Estimated Number of Annual Responses: 130.

Total Estimated Number of Annual Burden Hours: 65.

Abstract: The collection is necessary under 5 U.S.C. 552a(b) to collect information from individuals requesting information under the Privacy Act (PA). The Department will use the information to provide documents that are responsive to a Privacy Act or FOIA/Privacy Act request under the Freedom of Information Act.

Dated: November 22, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-26172 Filed 11-27-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 4, 2024; 6 p.m.–8 p.m. EST.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, OH 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Federal Coordinator, by phone: (740) 897-3737 or email: greg.simonton@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Presentation
- Administrative Activities

• Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5 p.m. EST on Friday, December 29, 2023, will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5 p.m. EST on Friday, January 12, 2024. Please submit comments to Greg Simonton at the aforementioned email address. Please put “Public Comment” in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the telephone number listed above.

Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Portsmouth, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Greg Simonton, Federal Coordinator, U.S. Department of Energy, Portsmouth/Paducah Project Office, P.O. Box 700, Piketon, OH 45661, Email: greg.simonton@pppo.gov or by Phone: (740) 897-3737, Minutes will also be available at the following website: <https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials>.

Signed in Washington, DC, on November 21, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023-26142 Filed 11-27-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24-33-000.

Applicants: Pleasant Valley Solar LLC.

Description: Pleasant Valley Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/21/23.

Accession Number: 20231121-5011.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: EG24-34-000.

Applicants: Flat Ridge 4 Wind, LLC.
Description: Flat Ridge 4 Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/21/23.

Accession Number: 20231121-5118.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: EG24-35-000.

Applicants: Flat Ridge 4 Wind Holdings LLC.

Description: Flat Ridge 4 Wind Holdings LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/21/23.

Accession Number: 20231121-5119.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: EG24-36-000.

Applicants: Flat Ridge 5 Wind Energy LLC.

Description: Flat Ridge 5 Wind Energy LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/21/23.

Accession Number: 20231121-5121.

Comment Date: 5 p.m. ET 12/12/23.

Docket Numbers: EG24-37-000.

Applicants: Flat Ridge 5 Wind Energy Holdings LLC.

Description: Flat Ridge 5 Wind Energy Holdings LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/21/23.

Accession Number: 20231121-5124.

Comment Date: 5 p.m. ET 12/12/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23-57-006.

Applicants: Lee County Generating Station, LLC v. PJM Interconnection, L.L.C.

Description: Joint Request of PJM & Lee County Generating Station, LLC for Further Waiver of Tariff Provisions.

Filed Date: 11/17/23.

Accession Number: 20231117-5263.

Comment Date: 5 p.m. ET 12/8/23.
Docket Numbers: EL24–25–000.
Applicants: City of Tacoma, Department of Public Utilities, Light Division v. California Independent System Operator Corporation.
Description: Complaint of the City of Tacoma, Department of Public Utilities, Light Division v. California Independent System Operator Corporation.
Filed Date: 11/21/23.
Accession Number: 20231121–5116.
Comment Date: 5 p.m. ET 12/11/23.
 Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER22–2584–000.
Applicants: Greeley Energy Facility, LLC.
Description: Supplement to August 1, 2022, Greeley Energy Facility, LLC submits tariff filing, Notice of Change in Status.
Filed Date: 11/20/23.
Accession Number: 20231120–5226.
Comment Date: 5 p.m. ET 12/11/23.
Docket Numbers: ER23–1783–002.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO Compliance Filing re: Order 676–J NAESB/WEQ Standards to be effective 2/1/2024.
Filed Date: 11/21/23.
Accession Number: 20231121–5161.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER23–2947–001.
Applicants: Midcontinent Independent System Operator, Inc., Montana-Dakota Utilities Co.
Description: Tariff Amendment: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): 2023–11–21_Amendment MDU Depreciation Rates related to Retail Rates to be effective 12/31/9998.
Filed Date: 11/21/23.
Accession Number: 20231121–5040.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–26–001.
Applicants: East Point Energy Center, LLC.
Description: Tariff Amendment: Amendment to Market-Based Rate Authorization Request (ER24–26) to be effective 1/18/2024.
Filed Date: 11/21/23.
Accession Number: 20231121–5134.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–451–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4082; Queue No. AD2–112 to be effective 1/22/2024.
Filed Date: 11/21/23.

Accession Number: 20231121–5001.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–452–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2825R11 KMEA and Evergy Kansas Central Meter Agent Agreement to be effective 12/1/2023.
Filed Date: 11/21/23.
Accession Number: 20231121–5009.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–453–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 6225; Queue Nos. AA1–111/AB1–092 et al to be effective 1/22/2024.
Filed Date: 11/21/23.
Accession Number: 20231121–5026.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–454–000.
Applicants: Mountain Top Energy LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 11/22/2023.
Filed Date: 11/21/23.
Accession Number: 20231121–5055.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–455–000.
Applicants: Electree LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 11/22/2023.
Filed Date: 11/21/23.
Accession Number: 20231121–5057.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–456–000.
Applicants: Navajo Tribal Utility Authority.
Description: Petition for Waiver of Navajo Tribal Utility Authority.
Filed Date: 11/20/23.
Accession Number: 20231120–5219.
Comment Date: 5 p.m. ET 11/27/23.
Docket Numbers: ER24–457–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: GPCo 2023 PBOP Filing to be effective 1/1/2023.
Filed Date: 11/21/23.
Accession Number: 20231121–5123.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–458–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5159; Queue No. AB2–040 to be effective 1/22/2024.
Filed Date: 11/21/23.
Accession Number: 20231121–5125.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–459–000.
Applicants: Mississippi Power Company.

Description: § 205(d) Rate Filing: MPCo PBOP 2023 Filing to be effective 1/1/2023.
Filed Date: 11/21/23.
Accession Number: 20231121–5127.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–460–000.
Applicants: Southern Electric Generating Company.
Description: § 205(d) Rate Filing: SEGCo 2023 PBOP Filing to be effective 1/1/2023.
Filed Date: 11/21/23.
Accession Number: 20231121–5129.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–461–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Peak Market Activity Credit Requirement Enhancements to be effective 1/22/2024.
Filed Date: 11/21/23.
Accession Number: 20231121–5135.
Comment Date: 5 p.m. ET 12/12/23.
Docket Numbers: ER24–462–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Proposal to Establish a Fifth Cost of New Entry Area to be effective 1/22/2024.
Filed Date: 11/21/23.
Accession Number: 20231121–5144.
Comment Date: 5 p.m. ET 12/12/23.
 The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.
 Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.
 eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.
 The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and

assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: November 21, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-26168 Filed 11-27-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24-164-000.

Applicants: Carolina Gas

Transmission, LLC.

Description: § 4(d) Rate Filing: CGT-2023 Section 4 General Rate Case to be effective 1/1/2024.

Filed Date: 11/21/23.

Accession Number: 20231121-5002.

Comment Date: 5 p.m. ET 12/4/23.

Docket Numbers: RP24-165-000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming—Carolina Market Link—PEG to be effective 1/1/2024.

Filed Date: 11/21/23.

Accession Number: 20231121-5072.

Comment Date: 5 p.m. ET 12/4/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24-142-001.

Applicants: NEXUS Gas Transmission, LLC.

Description: Tariff Amendment: Negotiated Rates—DTE Gas 860003 Amendment eff 12-1-23 to be effective 12/1/2023.

Filed Date: 11/21/23.

Accession Number: 20231121-5064.

Comment Date: 5 p.m. ET 12/4/23.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR

385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: November 21, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-26167 Filed 11-27-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3442-029]

City of Nashua, New Hampshire; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* P-3442-029.

c. *Date filed:* July 30, 2021.

d. *Applicant:* City of Nashua (Nashua).

e. *Name of Project:* Mine Falls Hydroelectric Project.

f. *Location:* The existing project is located on the Nashua River in Hillsborough County, New Hampshire. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* James W. Donchess, Mayor, City of Nashua, 229

Main Street, P.O. Box 2019, Nashua, NH 03060; (603) 589-3260; or email at NasuaMayor@nashuanh.gov.

i. *FERC Contact:* Khatoon Melick, (202) 502-8433, or email at khatoon.melick@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FERC.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/Quick.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Mine Falls Hydroelectric Project (P-3442-029).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *The existing project consists of:* (1) A 242-acre impoundment with a normal storage volume of 1,970 acre-feet and a normal headpond elevation of 158.76 feet (NAVD 88); (2) a rock filled concrete cap, variable in height dam with an approximately 132-foot-long spillway at a permanent crest elevation of 154.66 feet, and nominal 4.0-foot-high wooden flashboards maintaining a

normal headpond elevation of 158.76 feet; (3) a 22-foot-wide and 170-foot-long reinforced concrete power canal located between the right bank of the Nashua River and the single flood sluice gate; (4) two 12.5-foot-long wooden stoplog bays located immediately upstream of the intake to the right of the concrete capped spillway (viewed facing downstream) with a 10-foot-wide gate and a short spillway section above the gate; (5) a 40-foot-wide, 20-foot-high intake structure with steel trash rack with two square-to-round transition openings that feed the two penstocks that terminate at the two turbines; (6) two 64-foot-long, 104-inch-diameter steel penstocks between the intake and turbine units; (7) a 44-foot-long, 44-foot-wide multi-level reinforced concrete powerhouse containing two 1,500 kilowatt turbine-generator units; (8) an approximately 22-foot-wide, 1,100-foot-long tailrace that is a channel cut into the Nashua River bedrock downstream of the powerhouse that returns water back into the Nashua River; (9) a 278-foot-long bypassed reach extending from the spillway crest and stoplog bays to the downstream of the powerhouse at the tailrace, bypassing 20 cubic feet per second (cfs) of water for environmental flows; (10) an upstream fish passage; (11) a 610-foot-long, 34.5-kilovolt underground transmission line connects the generator transformer to the interconnect point; and (12) appurtenant facilities. The estimated gross head of the project is 38 feet. The powerplant has a maximum nameplate capacity of 3 megawatts. The project generates an annual average of 12,563 megawatt-hours.

Nashua proposes to continue to operate the project in a run-of-river mode with no storage or flood control capacity. The project operates within a

flow range of 180 cfs (150 cfs minimum hydraulic capacity to start a single turbine, plus 20 cfs minimum flow release at the dam into the bypassed reach and a 10 cfs flow routed through the Mill Pond gatehouse to the Mill Pond and canal) and 1,100 cfs (maximum hydraulic capacity of the plant—two turbines combined) or a river flow of 1,130 cfs. Any flow above the maximum hydraulic capacity of the turbines plus minimum flows and Mill Pond diversion is spilled over the dam spillway and through the overflow section of the flood sluice gate.

m. A copy of the application can be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

You may also register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS",

"RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions	January 2024.
Licensee's Reply to REA Comments	March 2024.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: November 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-26165 Filed 11-27-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17-486-000]

National Fuel Gas Supply Corporation; Notice of Request for Extension of Time

Take notice that on November 16, 2023, National Fuel Gas Supply Corporation (National Fuel) requested that the Federal Energy Regulatory

Commission (Commission) grant an extension of time, until December 1, 2024, to finalize testing of Well 7451 as ordered in the January 2018 Order. As authorized in the January 2018 Order (Order).¹ The Order required National Fuel to complete testing of Well 7451 within three years of the date of the Order.

On February 4, 2021, the Commission granted National Fuel an extension of

¹ *National Fuel Gas Supply Corporation*, 162 FERC ¶ 62,063 (2018).

time, until December 1, 2023, to complete testing.²

As of May 19, 2023, National Fuel is no longer testing Well 7451 by withdrawing gas from the well. National Fuel does not intend to undertake any further withdrawals from the well. Currently, National Fuel is working to finalize its report on Well 7451 and anticipates that the report will be finalized by December 1, 2024, due to the complexity of the data and modeling involved in evaluating data National Fuel has collected and reported to the Commission in its quarterly Beech Hill reports.³

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on National Fuel's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,⁴ the Commission will aim to issue an order acting on the request within 45 days.⁵ The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.⁶ The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act

(NEPA).⁷ At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.⁸ The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on December 6, 2023.

⁷ Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

⁸ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

Dated: November 21, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-26166 Filed 11-27-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0067; FRL-10578-10-OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses (October 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before December 28, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0067, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566-2427, email address: RDfRNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

² *National Fuel Gas Supply Corporation*, Docket No. 17-486-000, Letter Order Granting Extension.

³ See, *National Fuel's Quarterly Reports* for its Beech Hill Storage Field, beginning with its first quarterly report filed on July 31, 2017 and continuing to its most recent report filed on November 16, 2020 covering the period April 1, 2020 through June 30, 2020, in CP14-501, et al.

⁴ Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

⁵ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

⁶ *Id.* at P 40.

pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.epa.gov/regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *EPA Registration Numbers:* 241–245 and 241–418. *Docket ID number:* EPA–HQ–OPP–2023–0308. *Applicant:* BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Pendimethalin. *Product type:* Herbicide. *Proposed use:* Fresh and dried fig. *Contact:* RD.

2. *File Symbols:* 70506–AGN and 70506–AGR. *Docket ID number:* EPA–HQ–OPP–2023–0459. *Applicant:* UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.

Product names: UPL Glufosinate-P-ammonium Technical and KFD–581–01 Herbicide Product. *Active ingredient:* Herbicide—L-Glufosinate Ammonium at 92.46% (UPL Glufosinate-P-ammonium Technical) and 23.86% (KFD–581–01 Herbicide Product) *Proposed uses:* Almond, hulls; beet, sugar, molasses; beet, sugar, roots; bushberry subgroup 13B; canola, meal; canola, seed; cattle, fat; cattle, meat; cattle, meat byproducts; corn, field forage; corn, field, grain; corn, field, stover; corn, sweet, forage; corn, sweet, kernels plus cob with husks removed; corn, sweet, stover; cotton, gin byproducts; cotton, undelinted seed; egg; citrus fruit, crop group 10–10; pome fruit, crop group 11–10; stone fruit, crop group 12–12; goat, fat; goat, meat; goat, meat byproducts; grain aspirated fractions; grape; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; tree nut, crop group 14–12; olive; potato; potato, chips; potato granules/flakes; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, meat; sheep, meat byproducts; soybean; soybean, hulls. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 14, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023–26163 Filed 11–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11568–01–OW]

Request for Nominations for the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations of candidates to the Environmental Financial Advisory Board.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointment to the Environmental Financial Advisory Board (the Board or EFAB). The Board provides advice to EPA on ways to lower the costs of, and increase investments in, environmental and public health protection. Appointments will be made by the Administrator and will be announced in June 2024.

DATES: Nominations should be submitted in time to arrive no later than December 31, 2023.

ADDRESSES: Nominations should be sent via email to efab@epa.gov.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the nomination process may contact Tara Johnson via telephone/voicemail at (202) 809–7368 or email to efab@epa.gov. General information concerning the EFAB is available at www.epa.gov/waterfinancecenter/efab.

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., app. 2, to provide advice and recommendations to EPA on innovative approaches to financing environmental programs, projects, and activities. The Board was established in 1989 to provide advice and recommendations to EPA. Since inception, the Board has advised the EPA on a wide-ranging set of issues including but not limited to the following:

- Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement wherever possible;
- Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;
- Identifying approaches specifically targeted to small community financing;
- Assessing government strategies for implementing public-private partnerships, including privatization, operations and maintenance issues, and other alternative financing mechanisms;
- Improving governmental principles of accounting and disclosure standards to help improve the sustainability of environmental programs;
- Increasing the capacity of state and local governments to carry out their respective environmental programs under current Federal laws;
- Increasing the total investment in environmental protection and stewardship of public and private environmental resources to help ease the environmental financing challenge facing our nation; and
- Developing innovative investment models and market-based approaches that increase the long-term resiliency of infrastructure.

The Board's recent work has included:

- Options for the development of the Greenhouse Gas Reduction Fund authorized under the Inflation Reduction Act; and
- Recommendations for catalyzing pollution prevention finance, enhancing

the agency's approach to encourage increased Opportunity Zone funds investment alongside existing EPA funding tools, and improving the availability of public and private sources of funding for stormwater infrastructure.

The Board meets either in-person or virtually two times each calendar year (two days per meeting) at different locations within the continental United States. In addition to the bi-annual meetings, additional virtual meetings may be held during the year to ensure timely completion of the Board's work. Board members typically contribute approximately 3 to 8 hours per month to the activities of the Board. This includes participation on one or more of the Board's active workgroups. Members serve on the Board without compensation; however, Board members may receive travel and per diem allowances where appropriate and in accordance with Federal travel regulations.

Members are appointed to represent the perspective of specific organizations, associations, or groups of persons (Representative members), or to provide their individual expertise (Special Government Employee, or SGE, members). Candidates invited to serve as SGE members will be asked to submit the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as an SGE member and private interests and activities, or the appearance of a loss of impartiality as defined by Federal regulation. The form may be viewed at <https://www.epa.gov/waterfinancecenter/efab>, but this form should not be submitted as part of a nomination.

Experience and Expertise Sought for the EFAB: The Board seeks to maintain diverse representation across all workforce sectors (state/local/tribal government, business (industry and finance), and nonprofit organizations) and geographic regions of the United States. Nominees should demonstrate experience in environmental finance and/or reducing the cost of financing environmental protection in various environmental media (e.g., air, energy, land, and water). Experience and expertise sought include, but are not limited to, the following areas: commercial banking; environmental and financial resiliency; environmental financing including sector-specific experience; environmental justice;

environmental, social, and corporate governance; environmental equity financing; Federal investments in environmental financing; green banking; infrastructure financing; insurance markets; local utility management and finance; public-public and public-private partnerships; regulators; resource conservation; sustainable community partnerships; and sustainable economies.

In accordance with Executive Order 14035 (June 25, 2021) and consistent with law, EPA values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its Federal advisory committees. EPA's Federal advisory committees strive to have a workforce that reflects the diversity of the American people. Nominee qualifications will be assessed under the mandates of the FACA, which requires that committees be balanced in terms of the points of view represented and the functions to be performed; for the Board, this balance includes diversity across a broad range of constituencies, sectors, and groups. In addition to this notice, other sources may be utilized in the solicitation of nominees.

How to Submit Nominations: Any interested person or organization may nominate qualified person(s) to be considered for appointment to the EFAB. Individuals may self-nominate. Nominations should be submitted via email to efab@epa.gov. Nominations should include the following information: Contact information for the person making the nomination; contact information for the nominee (if different), including full name and title, business mailing address, telephone, and email address; the specific areas of experience or expertise of the nominee; the nominee's curriculum vitae or resume; and a biographical sketch of the nominee indicating current position and recent service on other Federal advisory committees or national professional organizations. A supporting letter of endorsement is encouraged, but not required.

Evaluation Criteria: The following criteria will be used to evaluate nominees: Residence in the United States; professional knowledge of, and experience with, environmental financing activities; senior-level experience that fills a gap in Board representation or brings a new and relevant dimension to its deliberations; demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies; and willingness to serve a two or three-year term as an active and

contributing member, with possible reappointment to a second term.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2023-26096 Filed 11-27-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2023-0268; FRL [10613-01-OW]

Draft National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and request for public comment.

SUMMARY: All ten Environmental Protection Agency (EPA) Regions are proposing for public comment the draft 2026 National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP)—the draft 2026 PGP. The draft 2026 PGP covers point source discharges from the application of pesticides to waters of the United States. Once finalized, the draft 2026 PGP will replace the existing permit, the 2021 PGP, which was issued for a five-year term in the **Federal Register** on October 31, 2021, and expires October 31, 2026, at midnight. The draft 2026 PGP largely has the same conditions and requirements as EPA's previously issued PGPs, and would authorize certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA proposes to issue this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority. EPA solicits public comment on all aspects of the draft 2026 PGP. This **Federal Register** document describes the draft 2026 PGP in general and seeks comment as described in Section III.C of this document. The Fact Sheet accompanying the permit contains supporting documentation. EPA encourages the public to read the Fact Sheet to better understand the draft 2026 PGP.

DATES: Written comments on the draft 2026 PGP must be received by January 12, 2024.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2023-0268, by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OW–2023–0268. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Contact the appropriate EPA Regional

office listed in Section I.D of this document, email PGP@epa.gov, or contact Lauren Mosesso, EPA Headquarters, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–1012; email address: mosesso.lauren@epa.gov. Electronic versions of the draft 2026 PGP and Fact Sheet are also available on EPA's NPDES website at <https://www.epa.gov/npdes/pesticide-permitting>.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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 - B. Public Participation
 - C. Finalizing the Draft 2026 PGP
 - D. Who are the EPA regional contacts for this draft permit?
- II. Background
- III. Scope and Applicability
 - A. Geographic Coverage
 - B. Categories of Pesticide Use-Patterns Covered
 - C. Summary of the Permit and Changes From the 2021 PGP

IV. Cost Impacts of the Draft 2026 PGP

V. Statutory and Executive Orders Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review
- B. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All
- C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

I. General Information

A. Does this action apply to me?

You may be affected by this action if you apply pesticides under the use patterns in section III.B of this document that result in a discharge to waters of the United States in one of the geographic areas identified in section III.A of this document. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THE DRAFT 2026 PGP

Category	NAICS	Examples of potentially affected entities
Agricultural entities—General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products.	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation.	Operating irrigation systems.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these). Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	923120 Administration of Public Health Programs.	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
	924110 Administration of Air and Water Resource and Solid Waste Management Programs.	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	924120 Administration of Conservation Programs.	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

B. Public Participation

1. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2023-0268, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> 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. 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). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

2. Will public hearings be held on this action?

EPA has not scheduled any public hearings to receive public comment concerning the draft 2026 PGP. However, interested persons may request a public hearing concerning the draft 2026 PGP pursuant to 40 CFR 124.12. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the draft 2026 PGP. If EPA decides to hold a public hearing, a public notice of the date, time, and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the draft 2026 PGP at any such public hearing.

C. Finalizing the Draft 2026 PGP

EPA intends to issue a final 2026 PGP on or prior to December 17, 2024, a

condition of the Settlement Agreement in *Center for Biological Diversity v. EPA and FWS*, No. 21–71306 (9th Cir.). The final 2026 PGP will be issued after all public comments received during the public comment period have been considered and any appropriate changes are made to the draft 2026 PGP. EPA will include its response to significant comments received in the docket as part of the final permit decision. Once the final 2026 PGP becomes effective on October 31, 2026, eligible Operators may seek authorization under the new PGP as outlined in the permit. To ensure uninterrupted permit coverage from the 2021 PGP to the 2026 PGP, Operators who are required to submit a Notice of Intent (NOI) must submit their NOI for coverage under the new permit prior to discharge as outlined in the permit (e.g., no later than 10 or 30 days before discharge). See Part 1.2.4 of the draft 2026 PGP.

D. Who are the EPA regional contacts for this draft permit?

For EPA Region 1, contact George Papadopoulos at tel.: (617) 918–1579; or email at papadopoulos.george@epa.gov.

For EPA Region 2, contact Sergio Bosques at tel.: (787) 977–5838 or bosques.sergio@epa.gov.

For EPA Region 3, contact Carissa Moncavage at tel.: (215) 814–5798; or email at moncavage.carissa@epa.gov.

For EPA Region 4, contact Sam Sampath at tel.: (404) 562–9229; or email at sampath.sam@epa.gov.

For EPA Region 5, contact John Colletti at tel.: (312) 886–6106; or email at colletti.john@epa.gov.

For EPA Region 6, contact William F. Cooper at tel.: (214) 665–6443 or email at cooper.williamf@epa.gov.

For EPA Region 7, contact Alex Owutaka at tel.: (913) 551–7584 or email at owutaka.alex@epa.gov.

For EPA Region 8, contact Margaret Kennedy at tel.: (303) 312–6644 or email at kennedy.margaret@epa.gov.

For EPA Region 9, contact Prasad Gullapalli at tel.: (415) 972–3406 or email at gullapalli.prasad@epa.gov.

For EPA Region 10, contact Bilin Basu at tel.: (206) 553–0029 or email at basu.bilin@epa.gov.

II. Background

Section 301(a) of the CWA provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines “discharge of a pollutant” as “(A) any addition of any pollutant to navigable waters from any point source and (B) any addition of any pollutant to the

waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. 1362(12). A “point source” is any “discernible, confined and discrete conveyance” but does not include “agricultural stormwater discharges and return flows from irrigated agriculture.” 1362(14). The term “pollutant” includes among other things “garbage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. 1362(6).

A person may discharge a pollutant without violating the Section 301 prohibition by obtaining authorization to discharge (referred to herein as “coverage”) under a Section 402 NPDES permit (33 U.S.C. 1342). Under Section 402(a), EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding Section 1311(a)” upon meeting certain conditions required by the Act.

EPA issued the first Pesticide General Permit (“2011 PGP”) on October 31, 2011, in response to the United States Sixth Circuit Court of Appeals ruling vacating EPA’s 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). EPA developed the PGP to control point source discharges of biological pesticides and chemical pesticides that leave a residue into waters of the United States. The PGP provides coverage for certain point source discharges of pollutants to waters of the United States in areas where EPA is the permitting authority. In 2016, EPA issued the second PGP (“2016 PGP”) and, in 2021, issued the third PGP (“2021 PGP”). In October 2021, the Center for Biological Diversity filed a petition in the U.S. Court of Appeals for the Ninth Circuit challenging EPA’s issuance of the 2021 PGP. The petition alleged that EPA failed to comply with the CWA in issuing the 2021 PGP, and that EPA and the U.S. Fish and Wildlife Service (FWS) failed to comply with the Endangered Species Act (ESA) in issuing the 2021 PGP. A Settlement Agreement in *Center for Biological Diversity v. EPA and FWS*, No. 21–71306 (9th Cir.) was finalized on July 25, 2023. The settlement agreement committed EPA (1) to initiate formal ESA consultation on the draft 2026 PGP by February 1, 2024; (2) to propose certain revisions to the monitoring and recordkeeping provisions for public comment when proposing the draft 2026 PGP; and (3) to issue the 2026 PGP on or before December 17, 2024.

III. Scope and Applicability

A. Geographic Coverage

EPA provides permit coverage for classes of point source discharges of pollutants that occur in areas where EPA is the NPDES permitting authority. The geographic coverage of the draft 2026 PGP is listed in Appendix C of the permit.

B. Categories of Pesticide Use-Patterns Covered

The draft 2026 PGP has largely the same requirements and conditions as the 2021 PGP and regulates the same discharges of pollutants to waters of the United States from the application of (1) biological pesticides, and (2) chemical pesticides that leave a residue. The draft 2026 PGP applies to the following same pesticide use patterns:

- Mosquito and Other Flying Insect Pest Control
- Weed and Algae Pest Control
- Animal Pest Control
- Forest Canopy Pest Control

The scope of activities encompassed by these pesticide use patterns is described in greater detail in Part III.1.1 of the Fact Sheet for the draft 2026 PGP.

C. Summary of the Permit and Changes From the 2021 PGP

Once effective, the final 2026 PGP will replace the 2021 PGP, which became effective for a five-year term on October 31, 2021 (86 FR 51665), and expires October 31, 2026, at midnight. The draft 2026 PGP is largely similar to the 2021 PGP, and is structured in the same nine parts: (1) Coverage Under This Permit, (2) Technology-Based Effluent Limitations, (3) Water Quality-Based Effluent Limitations, (4) Monitoring, (5) Pesticide Discharge Management Plan, (6) Corrective Action, (7) Recordkeeping and Annual Reporting, (8) EPA Contact Information and Mailing Addresses, and (9) Permit Conditions Applicable to Specific States (including Territories) and Indian Country. Additionally, as with the 2021 PGP, the draft 2026 PGP includes nine appendices with additional conditions and guidance for permittees: (A) Definitions, Abbreviations, and Acronyms, (B) Standard Permit Conditions, (C) Areas Covered, (D) Notice of Intent (NOI) form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation Worksheet (PDEW), (G) Annual Reporting Template, (H) Adverse Incident Report Template, and (I) Endangered Species Procedures.

The following is a summary of the draft 2026 PGP's proposed requirements:

- The PGP defines “Operator” (*i.e.*, the entity required to obtain NPDES permit coverage for discharges) to include any (a) *Applicator* who performs the application of pesticides or has day-to-day control of the application of pesticides that results in a discharge to waters of the United States, or (b) *Decision-maker* who controls any decision to apply pesticides that results in a discharge to waters of the United States. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

- All Applicators are required to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest, maintain pesticide application equipment in proper operating condition, control discharges as necessary to meet applicable water quality standards, and monitor for and report any adverse incidents.

- All Decision-makers are required, to the extent not determined by the Applicator, to minimize pesticide discharges by using only the amount of pesticide and frequency of pesticide application necessary to control the target pest. All Decision-makers are also required to control discharges as necessary to meet applicable water quality standards and monitor for and report any adverse incidents.

- Certain Decision-makers are required also to submit an NOI to obtain authorization to discharge and to implement pest management options to reduce the discharge of pesticides to waters of the United States. These Decision-makers are: agencies for which pest management for land resource stewardship is an integral part of the organization's operations; entities with a specific responsibility to control pests (*e.g.*, mosquito and weed control districts); local governments or other entities that apply pesticides in excess of specified annual treatment area thresholds; and entities that discharge pesticides to Tier 3 waters (Outstanding National Resource Waters, 40 CFR 131.12(a)(3)) or to waters of the United States containing Fish and Wildlife Service (FWS) Listed Resources of Concern and/or National Marine Fisheries Service (NMFS) Listed Resources of Concern.

- Within this group, certain large Decision-makers (any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified in 13 CFR 121.201) must also develop a Pesticide Discharge Management Plan (PDMP), submit

annual reports, and maintain detailed records. Whereas certain small Decision-makers (any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified in 13 CFR 121.201) are required to complete a pesticide discharge evaluation worksheet for each pesticide application (in lieu of the more comprehensive PDMP), an annual report, and detailed recordkeeping.

- Deadlines for submittal of an NOI to be covered, if required, are provided in Part 1.2.3, Table 1–2, of the draft 2026 PGP.

EPA encourages the public to review and comment on all aspects and provisions in the draft 2026 PGP. The draft 2026 PGP is largely similar to the 2021 PGP but includes the changes listed below. See Part III of the draft 2026 PGP fact sheet for further discussion.

(1) Adds Part 4.3, Documentation of Visual Monitoring, to reiterate the requirement to record visual monitoring as required under the Recordkeeping portions of the permit Parts 7.2, 7.3, and 7.4;

(2) Adds Part 4.4, Additional Monitoring, to emphasize additional monitoring could be required by EPA to ensure compliance with PGP;

(3) Requires Decision-makers to submit Pesticide Discharge Management Plan (PDMP) with NOI submission (Part 5);

(4) Updates PDMP contents to include visual monitoring procedures (Part 5);

(5) Adds that if visual monitoring was performed, the record must include the date, time, and location (Part 7);

(6) Requires Decision-makers to submit visual monitoring records with an Annual Report (Part 7);

(7) Adds a field for NAICS Code on the Notice of Intent form (Appendix D);

(8) Adds a field for latitude and longitude of the Pest Management Area on the Notice of Intent form (Appendix D);

(9) Adds the terms “Fish and Wildlife Service Listed Resources of Concern” and “Lands of Exclusive Federal Jurisdiction” to Appendix A, Definitions and Acronyms;

(10) Updates Appendix C, Areas Covered, to add permit numbers for other areas of Indian Country and Lands of Exclusive Federal Jurisdiction.

(11) Adds the term, “Fish and Wildlife Service (FWS) Listed Resources of Concern” where the permit already includes the term, “National Marine Fisheries Service (NMFS) Listed Resources of Concern” to reflect proposed permit changes to address

listed species and designated critical habitats under the jurisdiction of FWS;

(12) Notes in Part 1.1.2.4 that aerial image of the pest management area(s) may not be needed if EPA's geospatial mapping tool is available to provide supporting documentation when selecting ESA eligibility Criterion A;

(13) Directs Decision-makers who are required to submit an NOI to include activities resulting in a discharge to waters of the United States containing FWS Listed Resources of Concern on the NOI (Part 1.2.2), and updates the NOI form to reflect this change (Appendix D);

(14) Updates Appendix I, Endangered Species Procedures, to clarify the procedures with a worksheet format to guide Operators through the ESA eligibility criteria.

IV. Cost Impacts of the Draft 2026 PGP

Based on the cost analyses performed for EPA's previously issued PGPs, EPA expects the costs that covered entities, including small businesses, will bear to comply with this permit will be minimal. Since the draft 2026 PGP is largely similar to the 2021 PGP, EPA projects that the proposed changes will have minimal incremental cost impacts on regulated entities. Copies of EPA's economic analyses and cost impact analyses for EPA's previously issued PGPs are available in the docket for this permit. See Appendix D of the draft 2026 PGP Fact Sheet for further discussion of the potential incremental costs of the draft 2026 PGP.

V. Statutory and Executive Orders Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

The draft 2026 PGP is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

EPA believes that the human health and environmental conditions that exist prior to this action is not likely to result in disproportionate and adverse effects on communities with EJ concerns. As part of the general permit development process, EPA reviews available information to evaluate whether issuance of a permit could affect

overburdened communities. The information supporting this Executive Order review is contained in Appendix E of the draft 2026 PGP Fact Sheet.

C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA directly implements the NPDES Program, including the 2026 PGP when it is finalized, in Indian Country; therefore, in compliance with EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with tribal officials early in the process to provide tribes an opportunity to have meaningful and timely input into the renewal of the PGP. To gain an understanding of, and where necessary, to address tribal implications of the draft 2026 PGP, EPA conducted the following activities:

- *August 22, 2023*—EPA emailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP. The initiation letter was also posted on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov/>.

- *September 19 and 21, 2023*—EPA held two informational webinars open to all tribal representatives and reserved the last part of each webinar for official consultation comments. Eighteen tribal representatives participated in the webinar. No official comments were received during the webinar. The presentation was posted on the tribal portal website at <http://tcots.epa.gov>.

EPA received one comment from tribes and tribal organizations during the consultation and coordination period. Records of the tribal informational webinar and a consultation summary are included in the docket for this proposed action (Docket ID No. EPA-HQ-OW-2023-0268). EPA has considered the comment received in the proposal. The Agency specifically solicits additional comment on this proposed permit during the public comment period. EPA also notes that as part of the finalization of this proposed permit, the Agency will complete the Clean Water Act section 401 certification procedures with all authorized tribes where this permit will apply.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

David W. Cash,

Regional Administrator, EPA Region 1.

Christine Ash,

Acting Director, Water Division, EPA Region 2.

Carmen R. Guerrero-Pérez,

Director, Caribbean Environmental Protection Division, EPA Region 2.

Catherine Libertz,

Director, Water Division, EPA Region 3.

Christopher Thomas,

Acting Director, Water Division, EPA Region 4.

Tera L. Fong,

Director, Water Division, EPA Region 5.

Dzung Kim Ngo Kidd,

Acting Director, Water Division, EPA Region 6.

Dana Skelley,

Acting Director, Water Division, EPA Region 7.

Darcy O'Connor,

Director, Water Division, EPA Region 8.

Tomás Torres,

Director, Water Division, EPA Region 9.

Michael J. Szerlog,

Acting Director, Water Division, EPA Region 10.

[FR Doc. 2023-26146 Filed 11-27-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0070; FRL-10841-10-OCSPP]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients October 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before December 28, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0070, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting

comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Anne Overstreet, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566-2425, email address: BPPDFRNotices@epa.gov; or Charles Smith, Registration Division (RD) (7505T), main telephone number: (202) 566-2427, email address: RDPRNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (<https://www.epa.gov/pesticide-registration/public-participation-process-registration-actions>).

New Active Ingredients

File Symbols: 70506-AGN and 70506-AGR. *Docket ID number:* EPA-HQ-OPP-2023-0459. *Applicant:* UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Product names:* UPL Glufosinate-P-ammonium Technical and KFD-581-01 Herbicide Product. *Active ingredient:* Herbicide—L-Glufosinate Ammonium at 92.46% (UPL Glufosinate-P-ammonium Technical) and 23.86% (KFD-581-01 Herbicide Product). *Proposed uses:* Almond, hulls; beet, sugar, molasses; beet, sugar, roots; bushberry subgroup 13B; canola, meal; canola, seed; cattle, fat; cattle, meat; cattle, meat byproducts; corn, field forage; corn, field, grain; corn, field, stover; corn, sweet, forage; corn, sweet, kernels plus cob with husks removed; corn, sweet, stover; cotton, gin byproducts; cotton, undelinted seed; egg; citrus fruit, crop group 10-10; pome fruit, crop group 11-10; stone fruit, crop group 12-12; goat, fat; goat, meat; goat, meat byproducts; grain aspirated fractions; grape; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; milk; tree nut, crop group 14-12; olive; potato; potato, chips; potato granules/flakes; poultry, fat; poultry, meat; poultry, meat byproducts; sheep, fat; sheep, meat; sheep, meat byproducts; soybean; soybean, hulls. *Contact:* RD.

File Symbols: 7969-UIO, 7969-UOO, and 7969-LNN. *Docket ID number:* EPA-HQ-OPP-2020-0250. *Applicant:* BASF Corporation Agricultural Solutions, 26 Davis Drive; P.O. Box 13528, Research Triangle Park, NC 27709. *Product names:* L-Glufosinate-ammonium Technical Product, L-Glufosinate-ammonium Manufacturing-Use Product and BASF L-Glufosinate-ammonium 211. *Active ingredient:* Herbicide—L-Glufosinate-ammonium at 89.6% L-Glufosinate-ammonium Technical Product); 50% (L-Glufosinate-ammonium Manufacturing-Use Product); and 18.7% (BASF L-Glufosinate-ammonium 211). *Proposed uses:* Canola; corn, field; corn, sweet; cotton; and soybean. *Contact:* RD.

File Symbol: 92643-R. *Docket ID number:* EPA-HQ-OPP-2023-0542. *Applicant:* Verily Life Sciences, LLC, 269 East Grand Avenue, South San Francisco, CA 94080. *Product name:* DAB Males. *Active ingredient:* *Wolbachia pipientis* wAlbB strain contained in live adult *Aedes aegypti* males. *Proposed use:* Microbial Insecticide. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 13, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023-26182 Filed 11-27-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2023-0287; FRL-11530-01-OW]

Proposed Information Collection Request; Comment Request; Textile Mills Industry Data Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "U.S. Environmental Protection Agency Textile Mills Industry Data Collection" (EPA ICR No. 2798.01, OMB Control No. 2040-NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before January 29, 2024.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OW-2023-0287, online using www.regulations.gov (our preferred method), by email to OW-Docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Shriner, Engineering and Analysis Division, Office of Science and Technology, (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-566-1076; email address: Shriner.Paul@epa.gov.

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 et seq), EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through

the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under the Clean Water Act (CWA), the EPA develops effluent limitations guidelines (ELGs) to limit pollutants discharged from industrial point source categories. The EPA initially promulgated the Textiles Mills ELGs in 1974 (39 FR 24736, July 5, 1974) and amended the regulations in 1977 (42 FR 26979, May 26, 1977) and 1982 (47 FR 38810, September 2, 1982). Textiles mills receive and prepare fibers, transforming these materials into yarn, thread or webbing. Other mills convert yarns and webbing into fabric or related products and finish these materials. Many textile mills produce a final consumer product such as thread, yarn, fabric, hosiery, sheets, towels, and carpet. The current regulation covers wastewater discharges from textile mills which perform one or more of the following operations and discharge process wastewater directly to surface waters or indirectly to surface waters through publicly owned treatment works (POTWs): wool scouring, wool finishing, yarn and unfinished fabric manufacturing, woven fabric finishing, knit fabric finishing, carpet finishing, and nonwoven textile products of wool, cotton, synthetics, or blends of such fabrics.

In the Preliminary Study of the Textiles Industry (July 1996), the EPA presented an industry profile of establishments engaged in the manufacture of textile products. Approximately 35 to 50 percent were engaged in wet processing (dyeing, finishing, printing and coating), and at least 90 percent of these facilities discharge their process wastewater to POTWs. When compared with 1980 data, the industry in 1993 averaged 22 percent less water per pound of fiber processed as a result of water conservation programs implemented by textile facilities.

In the Preliminary Effluent Guidelines Program Plan 15 (86 FR 51155, September 2021), based on information and data the EPA collected for the Preliminary Multi-Industry Per- and Polyfluoroalkyl Substances (PFAS) Study, the EPA determined that PFAS

have been and continue to be used by textile and carpet manufacturers, a subset of facilities regulated under the Textile Mills ELGs. The EPA's review of PFAS use and discharge by the textile mills point source category is largely based on publicly available information and literature. Based on a small number of sample results, EPA determined that PFAS, including legacy long-chain PFAS, are present in wastewater discharges from some textile mills to POTWs. Most textile mills are not monitoring for PFAS, nor are they required to do so. Therefore, the EPA expects that textile mills may be discharging PFAS to POTWs or surface waters even when the textile mill no longer uses PFAS in their process.

As announced in the Effluent Guidelines Program Plan 15 (88 FR 6258, January 31, 2023), the EPA is continuing to evaluate the available data on types and concentrations of PFAS in wastewater discharged from textile mills. As indicated above there is limited publicly available data on textile mills, including potential use and discharge of PFAS, fluoropolymers, and fluorotelomers. The EPA has also reviewed information on textile mills from Environmental Compliance History Online (ECHO), the Integrated Compliance Information System (ICIS), as well as data collected from several state environmental agencies. However, very few of these data sources include PFAS monitoring data. None of these data sources define a complete population of textile mills in the United States, nor do they provide detailed information on specific facility operations including any recent phase out of PFAS usage.

Therefore, a questionnaire for the textile mills industry is necessary for the EPA to determine if the current regulations remain appropriate and, if warranted, to develop and propose new regulations. If new regulations are deemed to be warranted, the questionnaire is essential for the EPA to complete the detailed technical analysis necessary for the rulemaking. The EPA has identified and compiled mailing addresses for approximately 2,200 textile manufacturing facilities in the United States. A subsequent wastewater sampling program will require a subset of approximately 20 textile manufacturing facilities that completed the questionnaire to also collect wastewater samples and submit them to an EPA-contracted laboratory. Wastewater sampling data are critical for characterizing the wastewater generated and discharged by textile manufacturing facilities, as well as evaluating the effectiveness of pollution

control practices and technologies to reduce or eliminate PFAS in discharges. The EPA will use these characterization data to estimate current pollutant mass loads and achievable load reductions for available technologies for the industry and to determine if the ELGs warrant revision. Additional objectives of the questionnaire and sampling will be to confirm the current population of textile mills, confirm which mills still use PFAS in their processes, as well as gather facility-specific information and data relevant to generation and discharge of PFAS-containing wastewater by the industry.

Confidential Business Information (CBI) may be collected. In accordance with 40 CFR part 2, subpart B, section 2.203, the survey informs respondents of their right to claim information as confidential. Each survey provides instructions for claiming confidentiality and informs respondents of the terms and rules governing the protection of CBI under the Clean Water Act and 40 CFR 2.203(b). Survey respondents are requested to mark any claimed confidential responses as CBI. EPA and its contractors will follow EAD's existing procedures to protect data labeled as CBI.

Form Numbers: None.

Respondents/affected entities: Up to 2,200 textile mills in the U.S. will receive the questionnaire and no more than 20 facilities will be asked to conduct specific wastewater sampling.

Respondent's obligation to respond: Mandatory (Clean Water Act Section 308) (citing authority).

Estimated number of respondents: Up to 2,200 (total).

Frequency of response: One-time data collection.

Total estimated respondent burden: 30,008 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated respondent cost: \$1,339,982 one-time cost.

Changes in Estimates: This is a new data collection request and is a one-time temporary increase to the agency's burden.

Deborah Nagle,

Director, Office of Science and Technology,
Office of Water.

[FR Doc. 2023-26139 Filed 11-27-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2023-0071; FRL-11556-01-OCSP]

Pesticide Experimental Use Permit; Receipt of Application; Comment Request (October 2023)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 524-EUP-RR1 from Bayer U.S. Crop Science LLC requesting an experimental use permit (EUP) for the MON 95275, Stack Combinations with MON 94804 and Registered Insect-Protected Corn Traits and Controls. The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before December 28, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2023-0071, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Anne Overstreet, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566-2425, email address: BPPDFRNotices@epa.gov. The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not

attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Experimental Use Permit

Experimental Use Permit Number: 524-EUP-RR1. **Docket ID Number:** EPA-HQ-OPP-2023-0523. **Submitter:** Bayer U.S. Crop Science LLC, Regulatory Affairs Seeds & Traits, 700 Chesterfield Parkway, West Chesterfield, Missouri 63017. **Pesticide Chemical:** MON 95275, Stack Combinations with MON 94804 and Registered Insect-Protected Corn Traits and Controls. **Summary of Request:** Bayer CropScience LP is proposing to use 5.011 lbs. of active ingredient in 257,100 lbs. of formulated seeds over 4,285 acres from 2024 to 2025 as a plant-incorporated protectant for field corn. Proposed testing will include the following states and U.S. territories: AL, AR, CA, CO, FL, GA, HI, IA, IL, IN, KS, LA, MI, MN, MO, MS, NC, NE, ND, OH, PA, PR, SC, SD, TN, TX, WA, and WI to generate data to fulfill the requirements for Section 3 product registration under FIFRA. **Contact:** BPPD.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 14, 2023.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2023-26093 Filed 11-27-23; 8:45 am]

BILLING CODE 6560-50-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 28, 2023.

A. Federal Reserve Bank of San Francisco: (Joseph Cuenco, Assistant Vice President) Formations, Transactions & Enforcement, 101 Market Street, San Francisco, California 94105. Comments can also be sent electronically to: sf.fisc.comments.applications@sffrb.org.

1. **Central Valley Community Bancorp, Fresno, California;** to acquire Community West Bancshares, and thereby indirectly acquire Community West Bank National Association, both of Goleta, California.

Board of Governors of the Federal Reserve System.

Yao-Chin Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-26200 Filed 11-27-23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at

<https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than December 13, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414.

Comments can also be sent electronically to

Comments.applications@chi.frb.org:

1. **JFG Control, LP, IPJ 2012 JFG Trust, as general partner, and Helen P. Johnson-Leipold, as trustee, all of Racine, Wisconsin;** to join the Johnson Family Control Group, a group acting in concert, to acquire voting shares of Johnson Financial Group, Inc., and thereby indirectly acquire voting shares of Johnson Bank, both of Racine, Wisconsin.

2. **Kenneth F. Whitmore GST Exempt Marital Trust, Lynn Whitmore as trustee, Lynn Whitmore, Scott Whitmore, and Cynthia Alvarez, all of Clarinda, Iowa;** to join the Whitmore Family Control Group, a group acting in concert, to retain voting shares of Whitmore Company and thereby indirectly retain voting shares of PCSB Bank, both of Clarinda, Iowa.

Board of Governors of the Federal Reserve System.

Yao-Chin Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-26204 Filed 11-27-23; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM**Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 13, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414.

Comments can also be sent electronically to

Comments.applications@chi.frb.org:

1. *Ohnward Bancshares, Maquoketa, Iowa*: to engage de novo in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Yao-Chin Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26203 Filed 11–27–23; 8:45 am]

BILLING CODE 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)). If the proposal also involves the acquisition or retention of a nonbanking company, the review also includes whether the nonbanking activity complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 28, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street, NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org.

1. *Gulf Atlantic Financial Corporation, Tallahassee, Florida*; to become a bank holding company by acquiring of Gulf Atlantic Bank, Key West, Florida.

B. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 N Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to Comments.applications@dal.frb.org.

1. *The Adam Corporation/Group and TAC Financial Corporation, both of College Station, Texas*; to become bank holding companies by acquiring Adam Bank Group, Inc., and thereby indirectly acquiring American Momentum Bank, both of College Station, Texas.

In addition, The Adam Corporation/Group and TAC Financial Corporation, to engage in agency transactional services for customer investments pursuant to section 225.28(b)(7) of the Board's Regulation Y through its subsidiary Globetech Securities, LLC, Clifton Park, New York.

C. Federal Reserve Bank of Cleveland (Nadine M. Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio

44101–2566. Comments can also be sent electronically to

Comments.applications@clev.frb.org.

1. *Nextier, Inc., Kittanning, Pennsylvania*; to acquire Mars Bancorp, Inc., and thereby indirectly acquire Mars Bank, both of Mars, Pennsylvania.

Board of Governors of the Federal Reserve System.

Yao-Chin Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26197 Filed 11–27–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 13, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org.

1. *Katie P. Cheramie-Daigle, Thibodaux, Louisiana, and Charles A. Crocket, Jr., Lafayette, Louisiana*; to join the Cheramie Family Control Group, a group acting in concert, to acquire voting shares of SBT Bancshares, Inc., and thereby indirectly acquire voting

shares of State Bank and Trust, both of Golden Meadow, Louisiana.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to KCApplicationComments@kc.frb.org.

1. *Park G.P., Inc., North Kansas City, Missouri, and David Leland Johnson and Sandra Lee Castetter, Kansas City, Missouri*; to become members of the Johnson/Castetter Family Group, a group acting in concert, to retain voting shares of CCSB Financial Corp., and thereby indirectly retain voting shares of Clay County Savings Bank, both of Liberty, Missouri.

C. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to Comments.applications@dal.frb.org.

1. *Margaret Long, Christine Long, and Don Long, Jr., all of Montague, Texas*; to form the Long Family Control Group, a group acting in concert, to retain voting shares of Sanger Bancshares, Inc., and thereby indirectly retain voting shares of Sanger Bank, both of Sanger, Texas.

Board of Governors of the Federal Reserve System.

Yao-Chin Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–26195 Filed 11–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001; Docket No. 2023–0053; Sequence No. 10]

Submission for OMB Review; Certain Federal Acquisition Regulation Part 28 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement regarding certain Federal Acquisition Regulation (FAR) part 28 requirements.

DATES: Submit comments on or before December 28, 2023.

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

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or zenaida.delgado@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control No. 9000–0001, Certain Federal Acquisition Regulation Part 28 Requirements, Standard Forms (SF) 24, 25, 25–A, 25–B, 28, 34, 35, 273, 274, 275, 1414, 1415, 1416, and 1418.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. by FAR part. This consolidation is expected to improve industry’s ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the extension of OMB Control No. 9000–0001 and combines it with the previously approved information collections under OMB Control No. 9000–0045, with the new title “Certain Federal Acquisition Regulation Part 28 Requirements”. Upon approval of this consolidated information collection, OMB Control No. 9000–0045 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0001.

This clearance covers the information that offerors or contractors must submit to comply with the following FAR requirements:

- FAR 52.228–1, Bid Guarantee. This provision (or clause) requires offerors or contractors to furnish a bid guarantee in the proper form and amount when a performance bond or a performance and payment bond is also required. (SF 24, Bid Bond; SF 34, Annual Bid Bond).
- FAR 52.228–2, Additional Bond Security. This clause requires

contractors to furnish additional bond security under certain circumstances. This clause is used both for construction and other than construction contracts. (SF 1414 Consent of Surety and SF 1415, Consent of Surety and Increase of Penalty).

- FAR 52.228–13, Alternative Payment Protections. This clause requires contractors to submit one of the payment protections listed in the clause by the contracting officer, in construction contracts greater than \$35,000 but not exceeding \$150,000.

- FAR 52.228–14, Irrevocable Letter of Credit. This clause requires offerors or contractors to provide certain information when they intend to use an irrevocable letter of credit (ILC) in lieu of a required bid bond, or to secure other types of required bonds such as performance and payment bonds. This clause is required in solicitations and contracts when a bid guarantee, or performance bond, or performance and payment bonds are required.

- FAR 52.228–15, Performance and Payment Bonds—Construction. This clause requires contractors to provide performance and payment bonds in construction contracts exceeding \$150,000 (SF 25, Performance Bond; SF 25–A, Payment Bond; SF 25–B, Continuation Sheet (for SF’s 24, 25, and 25–A); SF 273, Reinsurance Agreement for a Bonds Statute Performance Bond; SF 274, Reinsurance Agreement for a Bonds Statute Payment Bond).

- FAR 52.228–16, Performance and Payment Bonds—Other Than Construction. This clause requires contractors to furnish performance and payment bonds for other than construction contracts exceeding the simplified acquisition threshold only in certain circumstances. (SF 35, Annual Performance Bond; SF 275, Reinsurance Agreement in Favor of the United States; SF 1416, Payment Bond for Other Than Construction Contracts; SF 1418, Performance Bond for Other Than Construction Contracts).

- Standard Form (SF) 28, Affidavit of Individual Surety. This form is used by all executive agencies, including DoD, to obtain information from individuals wishing to serve as sureties to Government bonds. Offerors and contractors may use an individual surety as security for bonds required under a solicitation or contract for supplies or services (including construction). It is an elective decision on the part of the offeror or contractor to use individual sureties instead of other available sources of surety or sureties for Government bonds.

The Government retains the bid guarantees, bonds, or alternative

payment protections until the contractor's obligation is fulfilled. The contracting officer uses the information on the SF 28 to determine the acceptability of individuals proposed as sureties.

C. Annual Burden

Respondents: 14,259.
Total Annual Responses: 14,269.
Total Burden Hours: 14,255.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 88 FR 64433, on September 19, 2023. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 9000-0001, Certain Federal Acquisition Regulation Part 28 Requirements.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023-26176 Filed 11-27-23; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0037; Docket No. 2023-0053; Sequence No. 9]

Submission for OMB Review; Presolicitation Notice and Response

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement regarding presolicitation notice and response.

DATES: Submit comments on or before December 28, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to

www.reginfo.gov/public/do/PRAMain.

Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Zenaida Delgado, Procurement Analyst, at telephone 202-969-7207, or zenaida.delgado@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000-0037, Presolicitation Notice and Response.

B. Need and Uses

This clearance covers the information that offerors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements:

- FAR 14.205. For sealed bidding, presolicitation notices briefly describe requirements and provide other essential information to enable potential bidders to determine whether they have an interest in the invitation and if appropriate, respond by communicating their interest in receiving the invitation for bid.

- FAR 15.201(c). For contracting by negotiation, presolicitation notices provide a means of early exchanges of information about future acquisitions between Government and industry, to which potential offerors may respond with feedback concerning acquisition strategy, terms and conditions, and any other concerns or questions.

- FAR 36.213-2. For construction contracts, presolicitation notices are required for construction requirements in excess of the simplified acquisition threshold to communicate essential information on the requirements, to which potential bidders may respond by communicating their interest in receiving the invitation for bid.

Presolicitation notices are used by the Government to inform, and, where specified, solicit a response from potential offerors or bidders. The primary purposes of the notices are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

The contracting officer will use the information as follows:

- For sealed bidding, to include interested bidders in the distribution of the invitations for bids; and
- For contracting by negotiation, to consider the industry feedback in shaping the acquisition strategy.

C. Annual Burden

Respondents: 143,218.
Total Annual Responses: 429,654.

Total Burden Hours: 34,372.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 88 FR 64434, on September 19, 2023. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control No. 9000-0037, Presolicitation Notice and Response.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2023-26177 Filed 11-27-23; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC-2023-0093]

Reporting of Pregnancy Success Rates From Assisted Reproductive Technology (ART) Programs; Proposed Modifications to Data Collection Fields and Data Validation Procedures; Request for Comment

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain comment on and review of proposed modifications to data collection fields for reporting of pregnancy success rates from assisted reproductive technology (ART) programs and proposed modifications to data validation procedures. This reporting is required by the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA).

DATES: Written comments must be received on or before January 29, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2023-0093 by either of the methods listed below.

Do not submit comments by email. CDC does not accept comments by email.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S107–2, Atlanta, Georgia 30341; Attention: Assisted Reproductive Technology Surveillance and Research Team.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to <http://regulations.gov>, including any personal information provided. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Mithi Sunderam, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S107–2, Atlanta, Georgia 30341; Telephone: 1–800–232–4636; Email: ARTinfo@cdc.gov.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. In addition, CDC invites comments specifically on the following modifications to (1) data collection fields for reporting of pregnancy success rates from assisted reproductive technology (ART) programs; and (2) data validation procedures regarding the following proposals in this document:

- CDC proposal to remove the requirement for clinics to report dosage information for fertility medications including Clomiphene, Letrozole, and long-acting FSH.
- CDC proposal to remove the requirement for clinics to report information on research cycle study type.
- CDC proposal to add the requirement for clinics to report date of cryopreservation for fresh embryos.
- CDC proposal not to pursue targeted validation of clinics and identification of major data discrepancies.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on <https://www.regulations.gov>. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that

identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. Do not submit comments by email. CDC does not accept comments by email.

Background

On August 26, 2015, HHS/CDC published a notice in the **Federal Register** (80 FR 51811) announcing the overall reporting requirements of the National ART Surveillance System. This notice described who shall report to HHS/CDC the process for reporting by each ART program; the data to be reported; the process for external validation of clinic data; and the contents of the published reports. CDC has obtained approval from the Office of Management and Budget under the Paperwork Reduction Act to collect this information which is needed to determine the annual pregnancy success rates for each clinic that provides ART services. This data collection is approved under OMB Control Number 0920–0556, expiration date: December 31, 2024. CDC subsequently published a notice in the **Federal Register** on clarifications and modifications on December 15, 2016 (81 FR 90854), and a notice on clarifications and corrections on November 5, 2019 (84 FR 59625). In 2021, CDC published a notice in the **Federal Register** (86 FR 20496) on changes to data validation of ART clinics. Subsequently, CDC published a notice in the **Federal Register** on June 10, 2022 (87 FR 35555) that added data collection fields and modified reporting requirements. The purpose of the subject notice is to (1) update data collection fields to reflect changes in ART practice that may impact pregnancy success rates; and (2) update the ART data validation process. This notice provides opportunity for public review and comment for the proposed modifications to data collection fields and data validation procedures.

Proposed Modifications to Data Collection Fields

CDC is currently collecting information on Clomiphene dosage, Letrozole dosage, and other oral medication dosage (80 FR 51811; Section III “What to Report”: F “Stimulation and Retrieval”). Clomiphene and Letrozole are established treatment options for ovulation induction and may be

administered based on patient diagnostics to increase the chances of ovulation and pregnancy. Other oral medications such as insulin-sensitizing agents may be used in specific groups of patients. Therefore, it is important to monitor the type of medication used, and CDC will continue to collect information on whether Clomiphene, Letrozole or other oral medication were used. However, dosage regimens for these medications follow established guidelines and are less likely to show variability in how they are administered. Given these treatment protocols, collection of these data can be streamlined. In addition, CDC is currently collecting dosage information on long-acting follicle stimulating hormone (FSH) medication. Since this medication is no longer used in ART practice, CDC proposes discontinuing the collection of information on this medication. Therefore, CDC proposes to remove the requirement for ART clinics to report associated dosage information related to (1) Clomiphene, Letrozole, or other oral medication; and (2) long-acting FSH. Deletion: Clomiphene dosage (Total mgs), Letrozole dosage (Total mgs), other oral medication dosage, long-acting FSH (Total mgs).

CDC is currently collecting information on the type of research cycle performed by ART clinics (80 FR 51811; Section III “What to Report”: G “Laboratory Information”). Only a small number of research cycles are reported to CDC each year (*i.e.*, 10 cycles in reporting year 2019, 7 cycles in reporting year 2020, and 0 cycles in reporting year 2021). CDC will continue to collect information on whether a cycle can be classified as a research cycle. CDC proposes to remove the requirement for clinics to report the research cycle study type, as only a small number of research cycles are performed each year. Deletion: Research cycle study type—if the cycle was a research cycle. This deletion will apply to all data fields for research study types: Device study, Protocol study, Pharmaceutical study, Laboratory technique, Other research.

CDC is currently collecting information on fresh and frozen-embryo transfer procedures (80 FR 51811; Section III “What to Report”: H “Transfer Information”). Embryo stage at the time of transfer is an important predictor of pregnancy success rates. For fresh-embryo transfer procedures, embryo stage can be determined by calculating the difference between the date of transfer and the date of oocyte retrieval. Both dates are currently collected. However, if fresh embryos were cryopreserved instead of being

utilized for a fresh transfer, the date of cryopreservation is not currently collected. In recent years, frozen-embryo transfers have become more prevalent as they may improve pregnancy success rates in certain groups of ART patients. For frozen-embryo transfers, the date at which fresh embryos were cryopreserved (with the date of oocyte retrieval) can be used to determine the stage of the embryo at the time of cryopreservation, which is an important predictor of ART success. Therefore, CDC proposes to add the date of fresh-embryo cryopreservation to the currently collected information as it will allow classification of embryo stage for frozen-embryo transfers and improve the reporting of factors that impact ART success rates. Addition: Date fresh embryos were cryopreserved—this date is to be reported for all frozen-embryo transfers.

Proposed Modifications to Data Validation Procedures

Pursuant to the previous FRN notice (86 FR 20496), CDC proposed to conduct targeted validation of ART clinics to better capture systematic reporting errors by assessing certain reporting characteristics that may predict erroneously inflated ART success rates. In addition, CDC proposed to remove a clinic's reported success rates from the annual ART reports if major data discrepancies were identified. Identifying major data discrepancies would require the review of a larger number of clinic records at select clinics, thereby increasing data collection burden for clinics. Given the additional burden, CDC will not pursue implementation of targeted validation of ART clinics and identification of major discrepancies during data validation. CDC will continue to calculate discrepancy rates for key variables and provide feedback to clinics to improve the reporting of data used to report success rates as described in the FRN notice (80 FR 51811). In addition, CDC will continue removing a clinic's reported success rates from annual ART reports if the clinic was selected for annual ART data validation but declined to participate as described in the FRN notice (86 FR 20496).

Tiffany Brown,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2023-26137 Filed 11-27-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-102 and CMS-105]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 29, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: __, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-102 and CMS-105—CLIA Budget Workload Reports and Supporting Regulations in 42 CFR 493.1-.2001

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* CLIA Budget Workload Reports and Supporting Regulations in 42 CFR 493.1-.2001; *Use:* The Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100-578 were enacted on October 31, 1988. Provisions of this law mandated by Congress require entities (with few exceptions) that test human specimens be subject to Federal regulation and have in effect a certificate issued by the Department of Health and Human Services. CLIA mandates that fees must be paid by each laboratory to obtain or renew a certificate and for the cost of

compliance determination if applicable. The certificate issuance fees will be set by CMS at levels sufficient to recover the full costs of administering the operational provisions of CLIA, including approval and monitoring of proficiency testing programs and accrediting bodies and implementing Federal requirements. Fees will also be collected by CMS to cover the costs of inspecting non-accredited laboratories and validating accrediting laboratories based on the lab's volume and scope of testing. Currently, CMS contracts with 50 State agencies to conduct surveys of all participating health care facilities. As part of their contract, CMS reimburses the State agencies for the reasonable cost of conducting surveys. This information collection gathers the information necessary to reimburse State agencies for a reasonable cost. *Form Number:* CMS-102 and CMS-105 (OMB control number: 0938-0599); *Frequency:* Yearly/Quarterly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 34. (For policy questions regarding this collection contact Eric Powell at 312-886-0791).

Dated: November 22, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023-26201 Filed 11-27-23; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-4597]

Agency Information Collection Activities; Proposed Collection; Comment Request; Shortages Data Collections

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice

solicits comments on information collections associated with Shortages Data Collections and with notifications to FDA of an interruption or permanent discontinuance in manufacturing of certain medical devices as required by the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Either electronic or written comments on the collection of information must be submitted by January 29, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as

well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2023-N-4597 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Shortages Data Collections." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three

White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Shortages Data Collections

OMB Control Number 0910–0491—Extension

Under section 1003(d)(2) of the FD&C Act (21 U.S.C. 393(d)(2)), the Commissioner of Food and Drugs is authorized to implement general powers (including conducting research) to carry out effectively the mission of FDA. After the events of September 11, 2001, and as part of broader counterterrorism and emergency preparedness activities, FDA’s Center for Devices and Radiological Health (CDRH) began developing operational plans and interventions that would enable CDRH to anticipate and respond to medical device shortages that might arise in the context of federally declared disasters/

emergencies or regulatory actions. In particular, CDRH identified the need to acquire and maintain detailed data on domestic inventory, manufacturing capabilities, distribution plans, and raw material constraints for medical devices that would be in high demand and/or would be vulnerable to shortages in specific disaster/emergency situations or following specific regulatory actions. Such data could support prospective risk assessment, help inform risk mitigation strategies, support real-time decision making by the Department of Health and Human Services (HHS) during actual emergencies or emergency preparedness exercises, and mitigate or prevent harm to the public health.

This voluntary data collection process consists of outreach to firms that have been identified as producing or distributing medical devices that may be considered essential to the response effort. In this initial outreach, the intent and goals of the data collection effort will be described, and the specific data request made. Data are collected, using the least burdensome methods, in a structured manner to answer specific questions. After the initial outreach, we will request updates to the information periodically to keep the data current and accurate. Additional followup correspondence may occasionally be needed to verify/validate data, confirm receipt of followup correspondence(s), and/or request additional details to further inform FDA’s public health response.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136) was enacted on March 27, 2020. Section 3121 of the CARES Act amended the FD&C Act by adding section 506J to the FD&C Act (21 U.S.C. 356j). Section 506J of the FD&C Act provides FDA with new authorities intended to help prevent or mitigate medical device shortages by requiring medical device manufacturers to inform FDA about changes in device manufacturing that could potentially lead to a device shortage. Apprised with that information, section 506J of the FD&C Act authorizes FDA to take several actions that may help to mitigate or avoid supply disruptions.

Section 506J of the FD&C Act requires manufacturers of certain devices,¹ to

¹ Under section 506J of the FD&C Act, manufacturers of the following devices must notify FDA of an interruption or permanent discontinuance in manufacturing:

- Devices that are critical to public health during a public health emergency, including those that are life-supporting, life-sustaining, or intended for use in emergency medical care or during surgery; or
- Devices for which FDA determines information on potential meaningful supply disruptions is

needed during a public health emergency. See section 506J(a)(1), (2) of the FD&C Act.

notify FDA “of a permanent discontinuance in the manufacture of the device” or “an interruption of the manufacture of the device that is likely to lead to a meaningful disruption in supply of that device in the United States” during or in advance of a declared public health emergency, and the reason for such discontinuance or interruption.² Section 506J of the FD&C Act requires FDA to take action based on that information, including (1) publicly posting a list of devices it determines to be in shortage, (2) publicly posting the reasons for the shortage, and (3) issuing letters to manufacturers that fail to comply with the notification requirements of section 506J of the FD&C Act.

On December 29, 2022, the Prepare for and Respond to Existing Viruses, Emerging New Threats, and Pandemics Act was signed into law as part of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) (hereafter referred to as the “FY 2023 Omnibus”). Section 2514(c) of the fiscal year (FY) 2023 Omnibus directed FDA to issue or revise guidance regarding requirements under section 506J of the FD&C Act and include a list of each device product code for which a manufacturer of such device is required to notify FDA in accordance with section 506J. Section 2514 of the FY 2023 Omnibus amended section 506J of the FD&C Act to add section 506J(h), “Additional Notifications” and directed FDA to issue guidance “to facilitate voluntary notifications.”

In the **Federal Register** of November 17, 2023 (88 FR 80310), FDA announced the availability of the final guidance entitled “Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the FD&C Act”³ and the draft guidance entitled “Select Updates for the 506J Guidance: 506J Device List and Additional Notifications.”⁴ The final guidance, “Notifying FDA of a Permanent Discontinuance or Interruption in Manufacturing of a Device Under Section 506J of the FD&C Act” (hereafter referred to as the “506J Guidance”) assists stakeholders in the Agency’s implementation of section 506J. This guidance serves as the baseline for information about notifications under section 506J during or in advance of any public health emergency (PHE). FDA provides additional clarification on who is

needed during a public health emergency. See section 506J(a)(1), (2) of the FD&C Act.

² See section 506J(a) of the FD&C Act.

³ <https://www.fda.gov/media/155245/download>.

⁴ <https://www.fda.gov/media/173800/download>.

required to notify FDA, when such notifications are required, what information FDA expects manufacturers to include in such notifications, and how to submit notifications. Additionally, FDA describes how FDA determines that a device is in shortage and additional actions FDA may take to help prevent or mitigate a potential device shortage.

In the draft guidance “Select Updates for the 506J Guidance: 506J Device List and Additional Notifications,” FDA proposes updates to the 506J Guidance. Specifically, FDA has developed a list of devices, by FDA product code, for which a manufacturer of such devices is required to notify FDA in accordance with section 506J (hereafter referred to as the “506J Device List”). The 506J Device List is based on the requirements

under section 506J(a) of the FD&C Act. In section 2514 of the FY 2023 Omnibus, Congress directed FDA to issue guidance on the requirements under section 506J and to include “a list of each device product code for which a manufacturer of such device is required to notify the Secretary in accordance with section 506J.” Thus, manufacturers of a device on the 506J Device List must notify FDA in accordance with 506J for each such device. For more information, manufacturers should see the 506J Device List web page, available at <https://www.fda.gov/medical-devices/medical-device-supply-chain-and-shortages/506j-device-list>. Additionally, consistent with section 506J(h), FDA is proposing to clarify for stakeholders that manufacturers may submit, and FDA

may receive, voluntary notifications regarding supply chain issues at any time, unrelated to the declaration or potential declaration of a PHE.

The guidance documents include additional voluntary items that manufacturers could provide the Agency, including additional information about device manufacturing and supply, and updates to initial notifications.

Respondents may notify FDA about an interruption or permanent discontinuance in device manufacturing (506J notification) on our website at <https://fda-cdrh.my.salesforce-sites.com/shortages/>.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Shortages outreach data collection	1,000	4	4,000	1	4,000
Information collection under section 506J	8,400	1	8,400	0.25 (15 minutes)	2,100
Additional voluntary collections related to section 506J	8,400	1	8,400	0.25 (15 minutes)	2,100
Total			20,800		8,200

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

I. Shortages Outreach Data Collection

FDA bases these estimates on our recent experience and informal direct contact with respondents. We estimate up to 1,000 manufacturers, distributors, healthcare systems, healthcare providers, group purchasing organizations, and sterilizers for which there may be targeted outreach because their devices may be essential to the response effort. This targeted outreach will be conducted periodically either to obtain primary data or to verify/validate updated data (although additional outreach may be undertaken as needed). The data being requested represent common data elements that respondents monitor and track as part of routine business operations and, therefore, are readily available. It is anticipated that for most respondents, the estimated time to fulfill CDRH’s data request will not exceed 1 hour per request, or 4 hours per year.

II. Information Collection Under Section 506J of the FD&C Act and Related Voluntary Collections

Based on current registration and listing data (approved under OMB control number 0910–0625), we estimate the number of respondents that will submit a notification under section 506J of the FD&C Act to be approximately 20 percent of currently

registered manufacturers. Data from our Registration and Listing system indicate that there are approximately 42,000 unique FDA Establishment Identification registered manufacturers. Therefore, we estimate 8,400 respondents per year. We believe that the burden, including the provision of required information under section 506J of the FD&C Act, as well as additional voluntary information (including additional issues that may impact the availability of the device, such as information about critical suppliers, potential mitigations, production capacity and market share, and notification updates), is minimal and such information is readily available to respondents. Therefore, we estimate the burden of this information collection to be 15 minutes or less per notification.

Since the last OMB approval, we have updated the Number of Respondents and Average Burden per Response for the Shortages Outreach Data Collection element based on our recent experience with the information collection and informal direct contact with respondents. The updates result in an adjustment of an additional 3,000 hours and 2,000 responses annually.

Dated: November 22, 2023.

Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2023–26199 Filed 11–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–2101]

Determination of Regulatory Review Period for Purposes of Patent Extension; Korsuva

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Korsuva and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2022-E-2101 for “Determination of Regulatory Review Period for Purposes of Patent Extension; KORSUVA.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Korsuva (difelikefalin acetate). Korsuva is indicated for the treatment of moderate-to-severe pruritus associated with chronic kidney disease in adults undergoing hemodialysis. Subsequent to this approval, the USPTO received a patent term restoration application for Korsuva (U.S. Patent No. 7,402,564) from Cara Therapeutics, Inc., and the USPTO requested FDA’s assistance in determining the patent’s eligibility for patent term restoration. In a letter dated September 28, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Korsuva represented the first permitted

commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Korsuva is 4,625 days. Of this time, 4,381 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 26, 2008. The applicant claims January 16, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 26, 2008, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 23, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Korsuva (NDA 214916) was initially submitted on December 23, 2020.

3. *The date the application was approved:* August 23, 2021. FDA has verified the applicant's claim that NDA 214916 was approved on August 23, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,827 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition

has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26106 Filed 11–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2188 and FDA–2022–E–2189]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tavneos

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Tavneos and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until

11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2188 and FDA–2022–E–2189 for “Determination of Regulatory Review Period for Purposes of Patent Extension; TAVNEOS.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to

regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product Tavneos (avacopan). Tavneos is indicated as an adjunctive treatment of adult patients with severe active anti-neutrophil cytoplasmic autoantibody-associated vasculitis (granulomatosis with polyangiitis and microscopic polyangiitis) in combination with standard therapy including glucocorticoids. Tavneos does not eliminate glucocorticoid use. Subsequent to this approval, the USPTO received patent term restoration applications for Tavneos (U.S. Patent Nos. 8,445,515 and 8,906,938) from ChemoCentryx, Inc., and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Tavneos represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Tavneos is 2,642 days. Of this time, 2,184 days occurred during the testing phase of the regulatory review period, while 458 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 16, 2014. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on July 16, 2014.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 7, 2020. FDA has verified the applicant’s claim that the new drug application (NDA) for Tavneos (NDA 214487) was initially submitted on July 7, 2020.

3. *The date the application was approved:* October 7, 2021. FDA has verified the applicant’s claim that NDA 214487 was approved on October 7, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,476 days or 1,549 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26099 Filed 11–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2022–E–2178 and FDA–2022–E–2179]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cosela

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Cosela and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to [https://](https://www.regulations.gov)

www.regulations.gov will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2022–E–2178 and FDA–2022–E–2179 for “Determination of Regulatory Review Period for Purposes of Patent Extension; COSELA.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the

claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an

application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Cosela (trilaciclib), which is indicated to decrease the incidence of chemotherapy-induced myelosuppression in adult patients when administered prior to a platinum/etoposide-containing regimen or topotecan-containing regimen for extensive-stage small cell lung cancer. Subsequent to this approval, the USPTO received a patent term restoration application for Cosela (U.S. Patent Nos. 8,598,186 and 9,487,530) from GI Therapeutics, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 21, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Cosela represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Cosela is 2,081 days. Of this time, 1,838 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 5, 2015. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 5, 2015.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 15, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for Cosela (NDA 214200) was initially submitted on June 15, 2020.

3. *The date the application was approved:* February 12, 2021. FDA has verified the applicant's claim that NDA 214200 was approved on February 12, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 335 days or 1,162 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26098 Filed 11–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–E–0243]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zeposia

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Zeposia and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 29, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 28, 2024. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 29, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA-2022-E-0243 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ZEPOSIA.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Zeposia (ozanimod hydrochloride), which is indicated for the treatment of relapsing forms of multiple sclerosis, to include clinically isolated syndrome, relapsing-remitting disease, and active secondary

progressive disease, in adults. Subsequent to this approval, the USPTO received a patent term restoration application for Zeposia (U.S. Patent No. 8,481,573) from Scripps Research Institute and the USPTO requested FDA’s assistance in determining the patent’s eligibility for patent term restoration. In a letter dated September 8, 2022, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Zeposia represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Zeposia is 3,383 days. Of this time, 3,016 days occurred during the testing phase of the regulatory review period, while 367 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 22, 2010. The applicant claims January 17, 2011, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 22, 2010, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 25, 2019. FDA has verified the applicant’s claim that the new drug application (NDA) for Zeposia (NDA 209899) was initially submitted on March 25, 2019.

3. *The date the application was approved:* March 25, 2020. FDA has verified the applicant’s claim that NDA 209899 was approved on March 25, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,410 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21

CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 21, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–26097 Filed 11–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Study Section.

Date: March 5–7, 2024.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707

Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Bethesda, MD 20892, 301–496–9010, hoffertj@niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 21, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–26126 Filed 11–27–23; 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; Biophysics and Biochemistry Fellowship Review.

Date: December 13, 2023.

Time: 11:00 a.m. to 5:00 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: Dennis Pantazatos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (301) 594–2381, dennis.pantazatos@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Dysfunction and Integrative Neurodegeneration.

Date: December 18, 2023.

Time: 9:30 a.m. to 11:30 a.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: Bernard Rajeev Srambical Wilfred, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6813, bernard.srambicalwilfred@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: November 21, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–26127 Filed 11–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Bioinformatics Resource Centers (BRCs) for Infectious Diseases (U24 Clinical Trial Not Allowed).

Date: January 31, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 240–669–2075 richard.kostriken@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 22, 2023.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–26171 Filed 11–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2023–0297]

Area Maritime Security Advisory Committee (AMSC) Sector Puget Sound

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: The Coast Guard requests individuals interested in serving on the Area Maritime Security Advisory Committee (AMSC), Sector Puget Sound submit their applications for membership to the U.S. Coast Guard Captain of the Port Sector Puget Sound (COTP). The Advisory Committee assists the COTP as the Federal Maritime Security Coordinator, Sector Puget Sound, in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the U.S. Coast Guard COTP Sector Puget Sound by December 21st, 2023.

ADDRESSES: Applications for membership should be submitted to the COTP at the following address: Attn: Emergency Management Force Readiness Department c/o Nicole Metzke, U.S. Coast Guard Sector Puget Sound, 1519 Alaskan Way S, Building 4, Seattle, WA 98134.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application, or about the Puget Sound AMSC in general, contact Ms. Nicole Metzke, (206) 217–6694, nicole.l.metzke2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Basis and Purpose

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295, 116 Stat. 2064) added section 70112 of Title 46 of the U.S. Code and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 33 U.S.C. 1226; 46 U.S.C. 70112; 33

CFR 1.05–1, 6.01; DHS Delegation No. 00170.1(II)(71), Revision No. 01.3. The Puget Sound AMSC Advisory Committee shall assist the Federal Maritime Security Coordinator in the development, review, update, and exercising of the Area Maritime Security Plan for their area of responsibility. Such matters may include, but are not limited to, the following:

(1) Identifying critical port infrastructure and operations; Identifying risks (threats, vulnerabilities, and consequences).

(2) Determining mitigation strategies and implementation methods.

(3) Developing strategies to facilitate the recovery of the MTS after a Transportation Security Incident.

(4) Developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied.

(5) Providing advice to and assisting the Federal Maritime Security Coordinator in developing and maintaining the Area Maritime Security Plan.

(6) Working together with other AMSC Federal Agency Observers and Other Agency Participants, as well as maritime community members and port security professionals to improve the overall maritime security of the greater Puget Sound area.

II. AMSC Membership

The Puget Sound AMSC Advisory Committee has approximately 15 vacancies for appointed members. We are seeking to fill appointed member vacancies with this solicitation. Applicants may be required to pass an appropriate security background check prior to appointment to the committee. Applicants must register with and remain active as a Coast Guard Homeport user if appointed. Terms of office will be for five years; however, a member is eligible to serve additional terms of office. Members should have at least five years of experience related to maritime or port security operations. Members will not receive any salary or other compensation for their service on the Puget Sound AMSC Advisory Committee.

In accordance with 33 CFR 103, members may be selected from Federal, Territorial, or Tribal governments; State government and political subdivisions of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port partners

having a special competence in maritime security; and port partners affected by security practices and policies.

The Coast Guard does not discriminate in selecting committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability, genetic information, age, membership in an employee organization, or any other non-merit factor. The Coast Guard strives to achieve a widely diverse candidate pool for all its recruitment actions.

III. Request for Applications

Those seeking membership are not required to submit formal applications to the local COTP. However, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: November 21, 2023.

Mark A. McDonnell,

Captain, U.S. Coast Guard, Captain of the Port/Federal Maritime Security Coordinator Puget Sound.

[FR Doc. 2023–26153 Filed 11–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Park Service

[Docket No. FWS–HQ–NWRS–2023–0180; FF09R23000/FXRS126109AQ000/234]

Federal Land Managers' Air Quality Related Values Work Group (FLAG); Draft Addendum to 2010 Phase 1 Report

AGENCY: Fish and Wildlife Service and National Park Service, Interior (DOI).

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, in cooperation with the National Park Service, and the U.S. Department of Agriculture's Forest Service (the agencies), publish this notice to announce the availability of a draft addendum to the Federal Land Managers' Air Quality Related Values Work Group's (FLAG's) Phase 1 Report, which the agencies last revised in 2010 (FLAG 2010 report). We are proposing an addendum to include a provision related to temporary emissions. We invite comments and information on the

draft addendum from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive comments by December 28, 2023.

ADDRESSES:

Obtaining Documents: The draft addendum to the FLAG 2010 report, and any comments and other materials that we receive, will be available for public inspection at <https://www.regulations.gov>

in Docket No. FWS-HQ-NWRS-2023-0180. For reviewer convenience, we also will make the FLAG 2010 report available for review in <https://www.regulations.gov>; however, we are not taking comments on that final document.

Submitting Comments: You may submit written comments by one of the following methods. Please do not submit comments by both methods.

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-HQ-NWRS-2023-0180.

- *U.S. Mail:* Public Comments Processing, Attn: FWS-HQ-NWRS-2023-0180; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803. Please note in your submission that your comments are regarding the FLAG 2010 report addendum. We will post all information received on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT:

Jaron Ming, Chief, Branch of Air and Water Resources, by phone at 720-926-3528 or via email at jaron_ming@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Introduction

The United States Department of the Interior (DOI), the U.S. Fish and Wildlife Service, and the National Park Service, in coordination with the U.S. Department of Agriculture (USDA), the Forest Service (the agencies) publish this notice to announce the availability of a draft addendum to the Federal Land Managers' Air Quality Related Values Work Group's Phase 1 Report, which the agencies last revised in 2010 (FLAG 2010 report). We are proposing an

addendum to add a contextual consideration provision to the FLAG 2010 report concerning the FLM's analysis of temporary emissions for overall low-emitting facilities. We invite comments and information from the public and local, State, Tribal, and Federal agencies.

Background

FLAG was formed by the Department of the Interior's National Park Service and U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture's Forest Service, (1) to develop a more consistent and objective approach for these agencies' Federal land managers (FLMs) to evaluate air pollution effects on their air quality related values (AQRVs) in Federal class I areas, as defined by the Clean Air Act, and (2) to provide State permitting authorities and potential permit applicants consistency on how to assess the impacts of new and existing sources on AQRVs.

The FLAG effort focuses on the effects of the air pollutants that could affect the health and status of resources in areas managed by the agencies, primarily such pollutants as ozone, particulate matter, nitrogen dioxide, sulfur dioxide, nitrates, and sulfates.

The initial FLAG Phase 1 Report was published in 2000. On October 27, 2010, the National Park Service, in cooperation with the U.S. Fish and Wildlife Service and the Forest Service, published a revised FLAG report (75 FR 66125). This notice announces the availability of a draft addendum to the FLAG 2010 revision to add a contextual consideration to FLAG 2010 report concerning the FLM's analysis of temporary emissions for overall low-emitting facilities. The draft addendum would not change the FLM's role or affirmative responsibilities under the Clean Air Act. The draft addendum seeks to assist FLAG 2010 report users by describing how the FLMs will consider temporary emission for overall low-emitting facilities as it analyzes effects to AQRVs in Federal class I areas as part of the FLMs responsibilities under the Clean Air Act.

Authority: Clean Air Act of 1970, as amended (42 U.S.C. 7401 *et seq.*).

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023-26218 Filed 11-27-23; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500176106]

Public Meeting for the Steens Mountain Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Steens Mountain Advisory Council (SMAC) will meet as follows.

DATES: The SMAC will hold a meeting Thursday, January 25, 2024, from 10:00 a.m. to 5:00 p.m. Pacific Time (PT), and Friday, January 26, from 8:30 a.m. to 12:15 p.m. PT.

ADDRESSES: The meeting will be held at the Hilton Garden Inn at 425 Southwest Bluff Drive in Bend, Oregon. Virtual attendance through the Zoom for Government platform will be available. The final meeting agenda and Zoom link will be published on the SMAC web page at least 10 days in advance at <https://on.doi.gov/2PnZRcl>.

FOR FURTHER INFORMATION CONTACT: Tara Thissell, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738; telephone: (541) 573-4519; email: tthissell@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The SMAC was established on August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106-399). The SMAC provides recommendations to the BLM regarding new and unique approaches to management of the public lands within the bounds of the Steens Mountain Cooperative Management and Protection Area, recommends cooperative programs and incentives for landscape management that meet human needs, and advises the BLM on potential maintenance and improvement of the ecological and economic integrity of the area.

Agenda items for January 25 include reports from the Designated Federal

Official and Andrews/Steens Mountain Field Office Manager; presentations about the Page Springs Weir, the ecology of Steens Mountain, and how to make a substantive comment on National Environmental Policy Act documents; and discussions about grazing and the Bridge Creek Area Allotment Management Plan Environmental Impact Statement.

The January 26 session includes a panel conversation about the development of the Steens Mountain Cooperative Management and Protection Act and how things have evolved over the past two decades; discussion about the SMAC's charter and purpose; an opportunity for council members to share information from their constituents or present research; and continued discussion about strategic planning for the council. Any other matters that may reasonably come before the SMAC may also be included at any time throughout the 2-day session.

This meeting is open to the public. Public comment periods are scheduled for 3:45 p.m. on Thursday, January 25, and 11:30 a.m. on Friday, January 26. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Written public comments may be sent to the BLM Burns District Office listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. All comments received at least one week prior to the meeting will be provided to the SMAC prior to the meeting. The meeting may end early if all business items are completed ahead of schedule or may be extended if discussions warrant more time. All meetings, including virtual sessions, are open to the public in their entirety.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 7 business days prior to the meeting to give the BLM sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

(Authority: 5 U.S.C. ch. 10)

Jeffrey Rose,
District Manager.

[FR Doc. 2023–26184 Filed 11–27–23; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500176431]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service, the BLM, and the Mt. Emmons Mining Company, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on December 28, 2023.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, P.O. Box 151029, Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT:

David W. Ginther, Chief Cadastral Surveyor for Colorado, telephone: (970) 826–5064; email: dginther@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey and subdivision of section 7 in Township 9 South, Range 77 West, Sixth Principal Meridian, Colorado, were accepted on October 11, 2023.

The plat and field notes of the dependent resurvey and survey in Township 13 South, Range 86 West, Sixth Principal Meridian, Colorado, and unsurveyed Township 13 South, Range 87 West, Sixth Principal Meridian,

Colorado, were accepted on November 2, 2023.

The plat and field notes of the dependent resurvey and survey in Township 14 South, Range 86 West, Sixth Principal Meridian, Colorado, were accepted on November 2, 2023.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, 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.

(Authority: 43 U.S.C. chap. 3)

David W. Ginther,
Chief Cadastral Surveyor.

[FR Doc. 2023–26132 Filed 11–27–23; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2022–0053]

Notice of Availability of a Joint Record of Decision for the Proposed Empire Offshore Wind Projects

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Record of decision (ROD); notice of availability (NOA).

SUMMARY: The BOEM announces the availability of the joint ROD for the construction and operations plan (COP) submitted by Empire Wind, LLC (Empire Wind) for its proposed Empire Wind Offshore Wind Farm Projects (Projects) offshore New York. The final environmental impact statement (EIS) analyzes the potential environmental

impacts of the Projects as described in the COP (the proposed action) and the alternatives to the proposed action. The joint ROD includes the decision of the Department of the Interior (DOI) regarding the COP, and the decision of NMFS regarding Empire Wind's requested incidental take regulations (ITR) and an associated letter of authorization (LOA) under the Marine Mammal Protection Act (MMPA). NMFS has adopted the final EIS to support its decision of whether to issue the requested ITR. The joint ROD concludes the National Environmental Policy Act process for each agency.

ADDRESSES: The joint ROD and associated information are available on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/empire-wind>.

FOR FURTHER INFORMATION CONTACT: For information related to BOEM's decision, please contact: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM-OREP, Sterling, Virginia 20166, (703) 787-1730 or jessica.stromberg@boem.gov. For information related to NMFS' action, contact Katherine Renshaw, NOAA Office of General Counsel, (302) 515-0324.

SUPPLEMENTARY INFORMATION: Empire Wind seeks approval to construct, operate, and maintain the Projects: two wind energy facilities and their associated export cables on the Outer Continental Shelf (OCS) offshore New York. The Projects would be developed within the range of design parameters outlined in the Empire Wind COP, subject to applicable mitigation measures. Empire Wind proposes to develop the lease area in two wind farms, known as Empire Wind 1 (EW 1) and Empire Wind 2 (EW 2). EW 1 and EW 2 will be independent from each other. Including both EW 1 and EW 2, Empire Wind proposes constructing and operating up to 147 wind turbines and up to two offshore substations with two cable routes under the terms of Renewable Energy Lease OCS-A 0512 located 14 miles from Long Island, New York, and 19.5 miles from Long Branch, New Jersey. The onshore components of the Projects will include up to three export cable landfalls in New York (one for EW 1 and up to two for EW 2) and two onshore substations: EW 1 onshore substation in Brooklyn, New York; and EW 2 onshore substation A in Oceanside, New York, or EW 2 onshore substation C in Island Park, New York.

A notice of availability for the final EIS was published in the **Federal Register** on September 15, 2023. On November 15, 2023, BOEM published

an errata on its website that included certain edits to the summary and comparison of impacts among those listed in the alternative table in chapter 2 of the final EIS to correct impact conclusions for marine mammals. The errata also provides corrections to chapter 3 to include identification of species-specific cumulative impacts of the proposed action. These corrections are neither substantive nor affect the analysis or conclusions in the final EIS.

After carefully considering public comments on the draft EIS and the alternatives described and analyzed in the final EIS, DOI selected the combination of Alternative C-1, "Gravesend Anchorage Area," Alternative D, "EW 2 Submarine Export Cable Route Options to Minimize Impacts to the Sand Borrow Area," Alternative F, "Wind Resource Optimization with Modifications for Environmental and Technical Considerations," Alternative G, "Cable Bridge Crossing of Barnums Channel Adjacent to Long Island Railroad Bridge," and Alternative H, "Dredging for EW 1 Export Cable Landfall." This combination of alternatives is identified in the final EIS as the preferred alternative. The anticipated mitigation, monitoring, and reporting requirements are included in the ROD and will be included in BOEM's COP approval as terms and conditions. These requirements are available at: <https://www.boem.gov/renewable-energy/state-activities/empire-wind>.

NMFS has adopted BOEM's final EIS to support its decision of whether to issue the requested ITR and associated LOA to Empire Wind. NMFS's final decision will be documented in a separate decision memorandum prepared in accordance with NMFS's internal policy and procedures. The final ITR and LOA, if issued, will be published in the **Federal Register**. The LOA would authorize Empire Wind to take small numbers of marine mammal incidental to the Projects' construction, would set forth permissible methods of incidental taking, would specify means to ensure the least practicable adverse impact on marine mammals and their habitat, and would include requirements for monitoring and reporting. Pursuant to section 7 of the Endangered Species Act, NMFS issued a final biological opinion to BOEM on September 8, 2023, evaluating the effects of the proposed action on ESA-listed species. The biological opinion includes the associated permits, approvals, and authorizations that may be issued.

Authority: The National Environmental Policy Act of 1969, as

amended, (42 U.S.C. 4321 *et seq.*); 40 CFR 1505.2.

David Diamond,

Deputy Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2023-26170 Filed 11-27-23; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Electronic Eyewear Products and Components Thereof*, DN 3709; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Ingeniospec, LLC on November 20, 2023. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain electronic eyewear products and components thereof. The complaint names as respondents: Ampere LLC of Dover, DE; Ampere Technologies, Inc. of Dover, DE; GGTR LLC of Dover, DE; Gogotoro LLC of Brooklyn, NY; Zhuhai Wicue Technology Co., Ltd. of China; Bose Corporation of Framingham, MA; Epson America, Inc. of Los Alamitos, CA; Seiko Epson Corporation of Japan; EverySight Ltd. of Israel; EverySight US Inc. of New York, NY; Quanta Computer Incorporated of Taiwan; Lenovo (United States), Inc. of Morrisville, NC; Lenovo Group Limited of Hong Kong; Lenovo Information Products (Shenzhen) Co., Ltd. of China; Lucyd Ltd. of United Kingdom; Innovative Eyewear, Inc. of North Miami, FL; Luxottica Group S.p.A. of Italy; Luxottica of America, Inc. of Mason, OH; Magic Leap, Inc. of Plantation, FL; Razer Inc. of Irvine, CA; Razer USA Ltd. of Irvine, CA; TCL Technology Group Corporation of China; TCL Electronics Holdings Limited of Hong Kong; Falcon Innovation Technology (Shenzhen) Co., Ltd. of China; ThirdEye Gen, Inc. of Princeton, NJ; Vuzix Corporation of West Henrietta, NY; XREAL, Inc. of Sunnyvale, CA; EXREAL Technology Limited of Hong Kong; and Matrixed Reality Technology Co., Ltd. of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the

subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3709") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-26109 Filed 11-27-23; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Passive Optical Network Equipment, DN 3707*; the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Optimum Communications Services, Inc. on November 22, 2023. The original complaint was filed on November 12, 2023 and a notice of receipt of complaint; solicitation of comments relating to the public interest published in the **Federal Register** on November 20, 2023. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain passive optical network equipment. The amended complaint names as respondents: Hangzhou Softel Optic Co., Ltd. of China; Hangzhou DAYTAI Network Technologies Co., Ltd. of China; and Hangzhou Sumlo Industrial Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order and cease and desist orders.

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the amended complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the

United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3707") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time.

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 22, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023-26210 Filed 11-27-23; 8:45 am]

BILLING CODE 7020-02-P

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

DEPARTMENT OF JUSTICE**[OMB Number 1110-0002]****Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Supplementary Homicide Report (SHR)****AGENCY:** Federal Bureau of Investigation, Department of Justice.**ACTION:** 60-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, Department of Justice (DOJ), will be submitting the following information collection request to OMB for review and approval in accordance with the Paperwork Reduction Act (PRA) of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 29, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, Module D-1, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone: 304-625-4830, email: elabraham@fbi.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Abstract: Under title 28, United States Code, sections 534(a) and (c), this collection requests homicide data from respondents for the FBI's Uniform Crime Reporting (UCR) Program to serve as the national clearinghouse for the collection and dissemination of homicide and other crime-related data and to publish these statistics. SHR collects details about all murders and nonnegligent manslaughters (including justifiable homicides) and negligent manslaughters. The details include the reporting agency; month and year; situation; age, sex, race, and ethnicity of the victim(s) and the offender(s); weapon type used; relationship of the victim(s) to the offender(s); and circumstance(s) surrounding the incident (*e.g.*, argument, robbery, gang related), if known.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Supplementary Homicide Report (SHR).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1-704. The

applicable component within DOJ is the CJIS Division, FBI.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: State, local and tribal governments, Federal Government. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of LEAs submitting SHR data to the UCR Program monthly via the Summary Reporting System is 6,652. Annually, those LEAs submit a total of 79,824 responses (6,652 LEAs × 12 months = 79,824 responses annually). The estimated time it takes for an average respondent to respond is nine minutes.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated number of LEAs submitting SHR data to the UCR Program monthly via the Summary Reporting System is 6,652. Annually, those LEAs submit a total of 79,824 responses (6,652 LEAs × 12 months = 79,824 responses annually). The estimated time it takes for an average respondent to respond is nine minutes.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* Currently, LEAs incur no direct costs by participating in the FBI UCR Program. With the renewal of this collection, respondents are not expected to incur any capital, start-up, or system maintenance costs. Costs to agency records management systems are very difficult to obtain. Vendors do not divulge costs because charges differ from agency to agency and many costs are built into vendors' contracts. Depending on the contract, charges mandated by law may be included with no other additional costs. However, an estimate has been projected that agencies pay a \$107,000 maintenance fee every year for system maintenance costs.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
Supplementary Homicide Report (SHR)	6,652	1/month	79,824	9	11,973
Unduplicated Totals	6,652	1/month	79,824	9	11,973

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: November 21, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-26105 Filed 11-27-23; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On November 20, 2023, the Department of Justice lodged a proposed Consent Decree ("Decree") with the United States District Court for the Western District of Washington in the lawsuit entitled *United States v. Electron Hydro, LLC, and Thom A. Fischer*, Civil Action No. 2:20-CV-1746-JCC.

The proposed Decree will resolve alleged violations of the Clean Water Act arising from Electron Hydro, LLC's, and Thom A. Fischer's ("Defendants") construction activity at a hydroelectric facility on the Puyallup River in Pierce County, Washington, including illegal discharges into waters of the United States and violations of U.S. Army Corps of Engineers and State of Washington permits. Under the terms of the Decree, Defendants will pay a civil penalty of \$1.025 million, conduct surveys of stretches of the Puyallup River to recover discharged materials, implement best management practices at their construction site, hire a separate firm to review upcoming permit application materials, and place a 72-acre parcel of Electron's land into conservation in perpetuity.

The publication of this notice opens a period for public comment on the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Electron Hydro et al.*, D.J. Ref. No. 90-5-1-1-12395. All comments must be submitted no later than forty-five (45) 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 Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$18.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023-26150 Filed 11-27-23; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On November 21, 2023, the Department of Justice, along with the Office of the Attorney General of the State of Indiana, lodged a proposed Consent Decree with the United States District Court for the Southern District of Indiana in the lawsuit entitled *United States et al. v. Ingredion Inc.*, Case No. 23-2111.

The proposed Consent Decree settles claims brought under the Clean Air Act by the United States and the State of Indiana, as well as claims brought under state law by the State of Indiana, against Ingredion Incorporated ("Ingredion") for violating emissions limits and operation and monitoring requirements of Ingredion's air permits ("Title V Permits") for its wet corn mill facility in Indianapolis, Indiana.

Under the proposed Consent Decree, Ingredion will pay a civil penalty of \$1,139,600. The settlement requires Ingredion to install and operate new equipment to meet PM limits that are lower than the plant's current permitted limits. The company completed installation and testing of the new system in advance of this notice. The settlement also requires Ingredion to implement a modernized compliance

management system to address repeated operation and monitoring failures at the facility, and hire an independent auditor to verify the effectiveness of the system. Ingredion also committed to mitigating the harm associated with past excess PM emissions by paving onsite unpaved and partially paved roads and parking areas to reduce PM emissions generated by vehicle traffic, which Ingredion completed in advance of this notice. The company will also replace aging railway locomotives at the facility with two modern locomotives that meet emissions standards. As a state supplemental environmental project, the settlement requires Ingredion to contribute \$560,400 to the State of Indiana to support Brownfields redevelopment in and around Marion County, Indiana.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al. v. Ingredion Inc.*, 90-5-2-1-12360. 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 proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>.

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

For a copy of the Consent Decree, please enclose a check or money order for \$13 (52 pages at 25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023-26217 Filed 11-27-23; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0004]

Traylor-Sundt Joint Venture: Grant of Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA grants a permanent variance to Traylor-Sundt Joint Venture (SUNDTJV) related to work in compressed-air environments.

DATES: The permanent variance specified by this notice becomes effective on November 28, 2023 and shall remain in effect until the completion of the Integrated Pipeline Tunnel project or until modified or revoked by OSHA.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: robinson.kevin@dol.gov.

Copies of this Federal Register notice. Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's web page at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

I. Overview

On April 20, 2022, Traylor Bros., Inc. (Traylor) submitted an application by letter to modify the permanent variance granted to Traylor on March 11, 2016 (2016 Variance) (81 FR 12954), to include an additional employer, the Traylor-Sundt Joint Venture (SUNDTJV), which is a joint venture made up of two construction companies; Traylor and Sundt Construction, Inc. (Sundt). SUNDTJV was awarded the tunneling contract for the Integrated Pipeline Tunnel Project in Dallas, Texas (OSHA–2023–0004–0002). The Integrated Pipeline Tunnel Project includes two tunnels, the Cedar

Creek Tunnel, and the Hollywood Lake Tunnel, which require two separate tunnel drives. SUNDTJV also requested an interim order while OSHA evaluates the application (OSHA–2023–0004–0003). Because the joint venture includes an additional employer not covered by the previously issued permanent variance, OSHA has evaluated the modification request as an application by SUNDTJV for a new permanent variance. This notice covers the Integrated Pipeline Tunnel Project only and is not applicable to future tunneling projects by Traylor, Sundt, or SUNDTJV.

This notice addresses the application by SUNDTJV (the applicant) for a permanent variance and interim order from the provisions of the standard governing compressed air work that: (1) prohibit compressed-air worker exposure to pressures exceeding 50 pounds per square inch (p.s.i.) except in an emergency (29 CFR 1926.803(e)(5));¹ (2) require the use of the decompression values specified in decompression tables in appendix A of the compressed-air standard for construction (29 CFR 1926.803(f)(1)); and (3) require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and (g)(1)(xvii), respectively).

OSHA reviewed SUNDTJV's application for the variance and interim order and determined that they were appropriately submitted in compliance with the applicable variance procedures in Section 6(d) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 655) and OSHA's regulations at 29 CFR 1905.11 (Variances and other relief under section 6(d)), including the requirement that the applicant inform workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

OSHA reviewed the alternative procedures in SUNDTJV's application and preliminarily determined that the applicant's proposed alternatives on the whole, subject to the conditions in the request and imposed by the interim order, provide measures that are as safe and healthful as those required by the cited OSHA standards. On May 1, 2023, OSHA published a **Federal Register** notice announcing SUNDTJV's

¹ The decompression tables in appendix A of subpart S express the maximum working pressures as pounds per square inch gauge (p.s.i.g.), with a maximum working pressure of 50 p.s.i.g. Therefore, throughout this notice, OSHA expresses the 50 p.s.i. value specified by 29 CFR 1926.803(e)(5) as 50 p.s.i.g., consistent with the terminology in appendix A, Table 1 of subpart S.

application for permanent variance, stating the preliminary determination along with the basis of that determination, and granting the interim order (88 FR 26600). OSHA requested comments on each.

OSHA did not receive any comments or other information disputing the preliminary determination that the alternatives were at least as safe as OSHA's standard, nor any objections to OSHA granting a permanent variance. Accordingly, through this notice OSHA grants a permanent variance, subject to the conditions set out in this document.

A. Background

The information that follows about SUNDTJV, its methods, and the Integrated Pipeline Tunnel Project comes from the SUNDTJV variance application.

SUNDTJV is a contractor for the Integrated Pipeline Tunnel Project (the project), that works on complex tunnel projects using innovations in tunnel-excavation methods. The applicant's workers engage in the construction of tunnels using advanced shielded mechanical excavation techniques in conjunction with an earth pressure balance tunnel boring machine (TBM). Using shielded mechanical excavation techniques, in conjunction with precast concrete tunnel liners and backfill grout, TBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel face through various geologies and isolate that pressure to the forward section (the working chamber) of the TBM.

SUNDTJV asserts that it bores tunnels using a TBM at levels below the water table through soft soils consisting of clay, silt, and sand. TBMs are capable of maintaining pressure at the tunnel face, and stabilizing existing geological conditions, through the controlled use of a mechanically driven cutter head, bulkheads within the shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. The forward-most portion of the TBM is the working chamber, and this chamber is the only pressurized segment of the TBM. Within the shield, the working chamber consists of two sections: the forward working chamber and the staging chamber. The forward working chamber is immediately behind the cutter head and tunnel face. The staging chamber is behind the forward working chamber and between the man-lock door and the entry door to the forward working chamber.

The TBM has twin man-locks located between the pressurized working chamber and the non-pressurized

portion of the machine. Each man-lock has two compartments. This configuration allows workers to access the man-locks for compression and decompression, and medical personnel to access the man-locks if required in an emergency.

SUNDTJV's Hyperbaric Operations Manual (HOM) for the Integrated Pipeline Tunnel Project indicates that the maximum pressure to which it is likely to expose workers during project interventions for the Integrated Pipeline Tunnel Project is 58 p.s.i. Therefore, to work effectively, SUNDTJV must perform hyperbaric interventions in compressed air at pressures nearly 15% higher than the maximum pressure specified by the existing OSHA standard, 29 CFR 1926.803(e)(5), which states: "No employee shall be subjected to pressure exceeding 50 p.s.i. except in emergency" (see footnote 1).

SUNDTJV employs specially trained personnel for the construction of the tunnel. To keep the machinery working effectively, SUNDTJV asserts that these workers must periodically enter the excavation working chamber of the TBM to perform hyperbaric interventions during which workers would be exposed to air pressures up to 58 p.s.i., which exceeds the maximum pressure specified by the existing OSHA standard at 29 CFR 1926.803(e)(5). These interventions consist of conducting inspections or maintenance work on the cutter-head structure and cutting tools of the TBM, such as changing replaceable cutting tools and disposable wear bars, and, in rare cases, repairing structural damage to the cutter head. These interventions are the only time that workers are exposed to compressed air. Interventions in the working chamber (the pressurized portion of the TBM) take place only after halting tunnel excavation and preparing the machine and crew for an intervention.

During interventions, workers enter the working chamber through one of the twin man-locks that open into the staging chamber. To reach the forward part of the working chamber, workers pass through a door in a bulkhead that separates the staging chamber from the forward working chamber. The man-locks and the working chamber are designed to accommodate three people, which is the maximum crew size allowed under the permanent variance. When the required decompression times are greater than work times, the twin man-locks allow for crew rotation.

During crew rotation, one crew can be compressing or decompressing while the second crew is working. Therefore, the working crew always has an unoccupied man-lock at its disposal.

SUNDTJV asserts that these innovations in tunnel excavation have greatly reduced worker exposure to hazards of pressurized air work because they have eliminated the need to pressurize the entire tunnel for the project and would thereby reduce the number of workers exposed, as well as the total duration of exposure, to hyperbaric pressure during tunnel construction. These advances in technology substantially modified the methods used by the construction industry to excavate subaqueous tunnels compared to the caisson work regulated by the current OSHA compressed-air standard for construction at 29 CFR 1926.803.

In addition to the reduced exposures resulting from the innovations in tunnel-excavation methods, SUNDTJV asserts that innovations in hyperbaric medicine and technology improve the safety of decompression from hyperbaric exposures. These procedures, however, deviate from the decompression process that OSHA requires for construction in 29 CFR 1926.803(e)(5) and (f)(1) and the decompression tables in appendix A of 29 CFR 1926, subpart S. Nevertheless, according to SUNDTJV, their use of decompression protocols incorporating oxygen is more efficient, effective, and safer for tunnel workers than compliance with the decompression tables specified by the existing OSHA standard.

SUNDTJV contends that the alternative safety measures included in the application provide SUNDTJV's workers with a place of employment that is at least as safe under its proposed alternatives as they would be under OSHA's compressed-air standard for construction. SUNDTJV also provided OSHA a project-specific HOM, (OSHA-2023-0004-0004) that requires specialized medical support and hyperbaric supervision to provide assistance to a team of specially trained man-lock attendants and hyperbaric or compressed-air workers to support their assertions of equivalency in worker protection.

OSHA included all of the above information in the **Federal Register** notice announcing SUNDTJV's variance application and did not receive any comments disputing any of that information, including the safety assertions made by SUNDTJV in the variance application.

II. The Variance Application

Pursuant to the requirements of OSHA's variance regulations (29 CFR 1905.11), the applicant has certified that

it notified its workers² of the variance application and request for interim order by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant has certified that it informed its workers of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

III. OSHA History of Approval of Nearly Identical Variance Requests

OSHA has previously approved several nearly identical variances involving the same types of tunneling equipment used for similar projects (tunnel construction variances). OSHA notes that it granted several subaqueous tunnel construction permanent variances from the same provisions of OSHA's compressed-air standard (29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii)) that are the subject of the present application: (1) Impregilo, Healy, Parsons, Joint Venture (IHP JV) for the completion of the Anacostia River Tunnel in Washington, DC (80 FR 50652 (August 20, 2015)); (2) Traylor JV for the completion of the Blue Plains Tunnel in Washington, DC (80 FR 16440 (March 27, 2015)); (3) Tully/OHL USA Joint Venture for the completion of the New York Economic Development Corporation's New York Siphon Tunnel project (79 FR 29809 (May 23, 2014)); (4) Salini-Impregilo/Healy Joint Venture for the completion of the Northeast Boundary Tunnel in Washington, DC (85 FR 27767, (May 11, 2020)); (5) McNally/Kiewit SST Joint Venture for the completion of the Shoreline Storage Tunnel Project in Cleveland, Ohio (88 FR 15080, March 10, 2023); and (6) Traylor-Shea Joint Venture for the completion of the Alexandria RiverRenew Tunnel Project in Alexandria Virginia and Washington DC (88 FR 15080, March 10, 2023). OSHA also granted an interim order to Ballard Marine for the Suffolk County Outfall Tunnel project in West Babylon, New York (86 FR 5253 (January 19, 2021)). The proposed alternate conditions in this notice are nearly identical to the alternate conditions of the previous permanent variances.³ OSHA is not

² See the definition of "Affected employee or worker" in section VI.C of this Notice.

³ The previous tunnel construction variances allowed further deviation from OSHA standards by permitting employee exposures above 50 p.s.i., based on the composition of the soil and the amount of water that will be above the tunnel for various sections of this project. The current

aware of any injuries or other safety issues that arose from work performed under these conditions in accordance with the previous variances.

IV. Applicable OSHA Standard and the Relevant Variance

A. Variance From Paragraph (e)(5) of 29 CFR 1926.803, Prohibition of Exposure to Pressure Greater Than 50 p.s.i.

The applicant states that it may perform hyperbaric interventions at pressures greater than 50 p.s.i. in the working chamber of the TBM; this pressure exceeds the pressure limit of 50 p.s.i. specified for nonemergency purposes by 29 CFR 1926.803(e)(5). The TBM has twin man-locks, with each man-lock having two compartments. This configuration allows workers to access the man-locks for compression and decompression, and medical personnel to access the man-locks if required in an emergency.

TBMs are capable of maintaining pressure at the tunnel face, and stabilizing existing geological conditions, through the controlled use of a mechanically driven cutter head, bulkheads within the shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. As noted earlier, the forward-most portion of the TBM is the working chamber, and this chamber is the only pressurized segment of the TBM. Within the shield, the working chamber consists of two sections: the staging chamber and the forward working chamber. The staging chamber is the section of the working chamber between the man-lock door and the entry door to the forward working chamber. The forward working chamber is immediately behind the cutter head and tunnel face.

SUNDTJV will pressurize the working chamber to the level required to maintain a stable tunnel face. Pressure in the staging chamber ranges from atmospheric (no increased pressure) to a maximum pressure equal to the pressure in the working chamber. The applicant asserts that they may have to perform interventions at pressures up to 58 p.s.i.

During interventions, workers enter the working chamber through one of the twin man-locks that open into the staging chamber. To reach the forward part of the working chamber, workers pass through a door in a bulkhead that separates the staging chamber from the forward working chamber. The maximum crew size allowed in the

forward working chamber is three. At certain hyperbaric pressures (*i.e.*, when decompression times are greater than work times), the twin man-locks allow for crew rotation. During crew rotation, one crew can be compressing or decompressing while the second crew is working. Therefore, the working crew always has an unoccupied man-lock at its disposal.

Further, SUNDTJV has developed a project-specific HOM (OSHA–2023–0004–0004) that describes in detail the hyperbaric procedures, the required medical examination used during the tunnel-construction project, the standard operating procedures and the emergency and contingency procedures. The procedures include using experienced and knowledgeable man-lock attendants who have the training and experience necessary to recognize and treat decompression illnesses and injuries. The attendants are under the direct supervision of the hyperbaric supervisor (a competent person experienced and trained in hyperbaric operations, procedures, and safety) and attending physician. In addition, procedures include medical screening and review of prospective compressed-air workers (CAWs). The purpose of this screening procedure is to vet prospective CAWs with medical conditions (*e.g.*, deep vein thrombosis, poor vascular circulation, and muscle cramping) that could be aggravated by sitting in a cramped space (*e.g.*, a man-lock) for extended periods or by exposure to elevated pressures and compressed gas mixtures. A transportable recompression chamber (shuttle) is available to extract workers from the hyperbaric working chamber for emergency evacuation and medical treatment; the shuttle attaches to the topside medical lock, which is a large recompression chamber. The applicant believes that the procedures included in the HOM provide safe work conditions when interventions are necessary, including interventions above 50 p.s.i. or 50 p.s.i.g.

OSHA comprehensively reviewed the project-specific HOM and determined that the safety and health instructions and measures it specifies are appropriate and adequately protect the safety and health of the CAWs.

B. Variance From Paragraph (f)(1) of 29 CFR 1926.803, Requirement To Use OSHA Decompression Tables

OSHA's compressed-air standard for construction requires decompression in accordance with the decompression tables in appendix A of 29 CFR 1926, subpart S (see 29 CFR 1926.803(f)(1)). As an alternative to the OSHA

decompression tables, the applicant proposes to use newer decompression schedules (the 1992 French Decompression Tables) that rely on staged decompression and supplement breathing air used during decompression with air or oxygen (as appropriate).⁴ The applicant asserts decompression protocols using the 1992 French Decompression Tables for air or oxygen as specified by the Integrated Pipeline Tunnel Project-specific HOM are safer for tunnel workers than the decompression protocols specified in appendix A of 29 CFR 1926 subpart S. Accordingly, the applicant commits to following the decompression procedures described in that HOM, which requires SUNDTJV to follow the 1992 French Decompression Tables to decompress CAWs after they exit the hyperbaric conditions in the working chamber.

Depending on the maximum working pressure and exposure times, the 1992 French Decompression Tables provide for air decompression with or without oxygen. SUNDTJV asserts that oxygen decompression has many benefits, including (1) keeping the partial pressure of nitrogen in the lungs as low as possible; (2) keeping external pressure as low as possible to reduce the formation of bubbles in the blood; (3) removing nitrogen from the lungs and arterial blood and increasing the rate of nitrogen elimination; (4) improving the quality of breathing during decompression stops so that workers are less tired and to prevent bone necrosis; (5) reducing decompression time by about 33 percent as compared to air decompression; and (6) reducing inflammation.

In addition, the project-specific HOM requires a physician, certified in hyperbaric medicine, to manage the medical condition of CAWs during hyperbaric exposures and decompression. A trained and experienced man-lock attendant is also required to be present during hyperbaric exposures and decompression. This man-lock attendant is to operate the hyperbaric system to ensure compliance with the specified decompression table. A hyperbaric supervisor, who is trained in hyperbaric operations, procedures, and safety, directly oversees all hyperbaric interventions and ensures

⁴In 1992, the French Ministry of Labour replaced the 1974 French Decompression Tables with the 1992 French Decompression Tables, which differ from OSHA's decompression tables in appendix A by using: (1) staged decompression as opposed to continuous (linear) decompression; (2) decompression tables based on air or both air and pure oxygen; and (3) emergency tables when unexpected exposure times occur (up to 30 minutes above the maximum allowed working time).

permanent variance includes substantively the same safeguards as the variances that OSHA granted previously even though employees will not be exposed to pressures higher than 58 p.s.i.g.

that staff follow the procedures delineated in the HOM or by the attending physician.

C. Variance From Paragraph (g)(1)(iii) of 29 CFR 1926.803, Automatically Regulated Continuous Decompression

SUNDTJV seeks a permanent variance from the OSHA standard at 29 CFR 1926.803(g)(1)(iii), which requires automatic controls to regulate decompression. As noted above, the applicant is conducting the staged decompression according to the 1992 French Decompression Tables under the direct control of the trained man-lock attendant and under the oversight of the hyperbaric supervisor.

Breathing air under hyperbaric conditions increases the amount of nitrogen gas dissolved in a CAW's tissues. The greater the hyperbaric pressure under these conditions and the more time spent under the increased pressure, the greater the amount of nitrogen gas dissolved in the tissues. When the pressure decreases during decompression, tissues release the dissolved nitrogen gas into the blood system, which then carries the nitrogen gas to the lungs for elimination through exhalation. Releasing hyperbaric pressure too rapidly during decompression can increase the size of the bubbles formed by nitrogen gas in the blood system, resulting in decompression illness (DCI), commonly referred to as "the bends." This description of the etiology of DCI is consistent with current scientific theory and research on the issue (see footnote 16 in this notice discussing a 1985 NIOSH report on DCI).

The 1992 French Decompression Tables, proposed for use by the applicant, provide for stops during worker decompression (*i.e.*, staged decompression) to control the release of nitrogen gas from tissues into the blood system. Studies show that staged decompression, in combination with other features of the 1992 French Decompression Tables such as the use of oxygen, result in a lower incidence of DCI than the use of automatically regulated continuous decompression.⁵

In addition, the applicant asserts that staged decompression administered in accordance with its HOM is at least as effective as an automatic controller in regulating the decompression process because the HOM requires a hyperbaric supervisor who directly supervises all hyperbaric interventions and ensures that the man-lock attendant, who is a competent person in the manual control of hyperbaric systems, follows the schedule specified in the decompression tables, including stops.

D. Variance From Paragraph (g)(1)(xvii) of 29 CFR 1926.803, Requirement of Special Decompression Chamber

The OSHA compressed-air standard for construction requires employers to use a special decompression chamber of sufficient size to accommodate all CAWs being decompressed at the end of the shift when total decompression time exceeds 75 minutes (see 29 CFR 1926.803(g)(1)(xvii)). Use of the special decompression chamber enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

Space limitations in the TBM do not allow for the installation and use of an additional special decompression lock or chamber. The applicant proposes that it be permitted to rely on the man-locks and staging chamber in lieu of adding a separate, special decompression chamber. Because only a few workers out of the entire crew are exposed to hyperbaric pressure, the man-locks (which, as noted earlier, connect directly to the working chamber) and the staging chamber are of sufficient size to accommodate all of the exposed workers during decompression. The applicant uses the existing man-locks, each of which adequately accommodates a three-member crew for this purpose when decompression lasts up to 75 minutes. When decompression exceeds 75 minutes, crews can open the door connecting the two compartments in each man-lock (during decompression stops) or exit the man-

lock and move into the staging chamber where additional space is available. The applicant asserts that this alternative arrangement is as effective as a special decompression chamber in that it has sufficient space for all the CAWs at the end of a shift and enables the CAWs to move about and flex their joints to prevent neuromuscular problems.

V. Decision

After reviewing the proposed alternatives, OSHA has determined that the applicant's proposed alternatives on the whole, subject to the conditions in the request and imposed by this permanent variance, provide measures that are as safe and healthful as those required by the cited OSHA standards addressed in section IV of this notice.

In addition, OSHA has determined that each of the following alternatives are at least as effective as the specified OSHA requirements:

A. 29 CFR 1926.803(e)(5)

The applicant has developed, and proposed to implement, effective alternative measures to the prohibition of using compressed air under hyperbaric conditions exceeding 50 p.s.i. The alternative measures include use of engineering and administrative controls of the hazards associated with work performed in compressed-air conditions exceeding 50 p.s.i. while engaged in the construction of a subaqueous tunnel using advance shielded mechanical-excavation techniques in conjunction with the TBM. Prior to conducting interventions in the TBM's pressurized working chamber, SUNDTJV halts tunnel excavation and prepares the machine and crew to conduct the interventions. Interventions involve inspection, maintenance, or repair of the mechanical-excavation components located in the working chamber.

B. 29 CFR 1926.803(f)(1)

The applicant has proposed to implement equally effective alternative measures to the requirement in 29 CFR 1926.803(f)(1) for compliance with OSHA's decompression tables. The HOM specifies the procedures and personnel qualifications for performing work safely during the compression and decompression phases of interventions. The HOM also specifies the decompression tables the applicant proposes to use (the 1992 French Decompression Tables). Depending on the maximum working pressure and exposure times during the interventions, the tables provide for decompression using air, pure oxygen, or a combination of air and oxygen. The decompression

⁵ See, *e.g.*, Dr. Eric Kindwall, EP (1997), Compressed air tunneling and caisson work decompression procedures: development, problems, and solutions. *Undersea and Hyperbaric Medicine*, 24(4), pp. 337–345. This article reported 60 treated cases of DCI among 4,168 exposures between 19 and 31 p.s.i.g. over a 51-week contract period, for a DCI incidence of 1.44% for the decompression tables specified by the OSHA standard. Dr. Kindwall notes that the use of automatically regulated continuous decompression in the Washington State safety standards for compressed-air work (from which OSHA derived its decompression tables) was at the insistence of

contractors and the union, and against the advice of the expert who calculated the decompression table and recommended using staged decompression. Dr. Kindwall then states, "Continuous decompression is inefficient and wasteful. For example, if the last stage from 4 p.s.i.g. . . . to the surface took 1h, at least half the time is spent at pressures less than 2 p.s.i.g. . . . , which provides less and less meaningful bubble suppression" In addition, Dr. Kindwall addresses the continuous-decompression protocol in the OSHA compressed-air standard for construction, noting that "[a]side from the tables for saturation diving to deep depths, no other widely used or officially approved diving decompression tables use straight line, continuous decompressions at varying rates. Stage decompression is usually the rule, since it is simpler to control."

tables also include delays or stops for various time intervals at different pressure levels during the transition to atmospheric pressure (*i.e.*, staged decompression). In all cases, a physician certified in hyperbaric medicine will manage the medical condition of CAWs during decompression. In addition, a trained and experienced man-lock attendant, experienced in recognizing decompression sickness or illnesses and injuries, will be present. Of key importance, a hyperbaric supervisor, trained in hyperbaric operations, procedures, and safety, will directly supervise all hyperbaric operations to ensure compliance with the procedures delineated in the project-specific HOM or by the attending physician.

Prior to granting the six previous permanent variances to IHP JV, Traylor JV, Tully JV, Salini-Impregilo Joint Venture, Ballard, and Traylor TSJV, OSHA conducted a review of the scientific literature and concluded that the alternative decompression method (*i.e.*, the 1992 French Decompression Tables) SUNDTJV proposed would be at least as safe as the decompression tables specified by OSHA when applied by trained medical personnel under the conditions imposed by the permanent variance.

Some of the literature indicates that the alternative decompression method may be safer, concluding that decompression performed in accordance with these tables resulted in a lower occurrence of DCI than decompression conducted in accordance with the decompression tables specified by the standard. For example, H. L. Anderson studied the occurrence of DCI at maximum hyperbaric pressures ranging from 4 p.s.i.g. to 43 p.s.i.g. during construction of the Great Belt Tunnel in Denmark (1992–1996).⁶ This project used the 1992 French Decompression Tables to decompress the workers during part of the construction. Anderson observed 6 DCI cases out of 7,220 decompression events and reported that switching to the 1992 French Decompression tables reduced the DCI incidence to 0.08% compared to a previous incidence rate of 0.14%. The DCI incidence in the study by H. L. Andersen is substantially less than the DCI incidence reported for the decompression tables specified in appendix A.

OSHA found no studies in which the DCI incidence reported for the 1992

French Decompression Tables were higher than the DCI incidence reported for the OSHA decompression tables.⁷

OSHA's experience with the previous six variances, which all incorporated nearly identical decompression plans and did not result in safety issues, also provides evidence that the alternative procedure as a whole is at least as effective for this type of tunneling project as compliance with OSHA's decompression tables. The experience of State Plans⁸ that either granted variances (Nevada, Oregon and Washington)⁹ or promulgated a new standard (California)¹⁰ for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, provide additional evidence of the effectiveness of this alternative procedure.

C. 29 CFR 1926.803(g)(1)(iii)

The applicant developed, and proposed to implement, an equally effective alternative to 29 CFR 1926.803(g)(1)(iii), which requires the use of automatic controllers that continuously decrease pressure to achieve decompression in accordance with the tables specified by the standard. The applicant's alternative includes using the 1992 French Decompression Tables for guiding staged decompression to achieve lower occurrences of DCI, using a trained and competent attendant for implementing appropriate hyperbaric entry and exit procedures, and providing a competent hyperbaric supervisor and attending physician certified in hyperbaric medicine to oversee all hyperbaric operations.

In reaching this conclusion, OSHA again notes the experience of previous nearly identical tunneling variances, the experiences of State Plan States, and a

⁷ Le Péchon JC, Barre P, Baud JP, Ollivier F (September 1996). Compressed air work—French Tables 1992—operational results. *JCLP Hyperbarie Paris, Centre Medical Subaquatique Interentreprise, Marseille: Communication a l'EUBS*, pp. 1–5 (see Docket ID. OSHA–2012–0036–0005).

⁸ Under section 18 of the OSH Act, Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such States and territories as “State Plan States.” Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards (29 U.S.C. 667).

⁹ These state variances are available in the docket for the 2015 Traylor JV variance: Docket ID. OSHA–2012–0035–0006 (Nevada), OSHA–2012–0035–0005 (Oregon), and OSHA–2012–0035–0004 (Washington).

¹⁰ See California Code of Regulations, title 8, subchapter 7, group 26, article 154, available at <http://www.dir.ca.gov/title8/sb7g26a154.html>.

review of the literature and other information noted earlier.

D. 29 CFR 1926.803(g)(1)(xvii)

The applicant developed, and proposed to implement, an effective alternative to the use of the special decompression chamber required by 29 CFR 1926.803(g)(1)(xvii). The TBM's man-lock and working chamber appear to satisfy all of the conditions of the special decompression chamber, including that they provide sufficient space for the maximum crew of three CAWs to stand up and move around, and safely accommodate decompression times up to 360 minutes. Therefore, again noting OSHA's previous experience with nearly identical variances including the same alternative, OSHA preliminarily determined that the TBM's man-lock and working chamber function as effectively as the special decompression chamber required by the standard.

Based on a review of available evidence, the experience of State Plans that either granted variances (Nevada, Oregon, and Washington)¹¹ or promulgated a new standard (California)¹² for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, and the information provided in the applicant's variance application, OSHA is granting the permanent variance.

Pursuant to Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(d)), and based on the record discussed above, the agency finds that when SUNDTJV complies with the conditions of the following order, the working conditions of the workers are at least as safe and healthful as if it complied with the working conditions specified by paragraphs (e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii) of 29 CFR 1926.803. Therefore, SUNDTJV must: (1) comply with the conditions listed below under “Conditions Specified for the Permanent Variance” for the period between the date of this notice and completion of the Integrated Pipeline Tunnel Project; (2) comply fully with all other applicable provisions of 29 CFR part 1926; and (3) provide a copy of this **Federal Register** notice to all employees affected by the conditions, including the affected employees of other employers, using the same means it used to inform these employees of the application for a

¹¹ These state variances are available in the docket: Docket ID. OSHA–2012–0035–0006 (Nevada), OSHA–2012–0035–0007 (Oregon), and OSHA–2012–0035–0008 (Washington).

¹² See California Code of Regulations, title 8, subchapter 7, group 26, article 154, available at <http://www.dir.ca.gov/title8/sb7g26a154.html>.

⁶ Anderson HL (2002). Decompression sickness during construction of the Great Belt tunnel, Denmark. *Undersea and Hyperbaric Medicine*, 29(3), pp. 172–188.

permanent variance. Additionally, this order will remain in effect until one of the following conditions occurs: (1) completion of the Integrated Pipeline Tunnel Project; or (2) OSHA modifies or revokes this final order in accordance with 29 CFR 1905.13.

VI. Description of the Specified Conditions for the Permanent Variance

The conditions for the variance are set out in the Order at the end of this document. This section provides additional detail regarding the conditions in the Order.

Condition A: Scope

The scope of the permanent variance limits coverage to the work situations specified. Clearly defining the scope of the permanent variance provides SUNDTJV, SUNDTJV's employees, potential future applicants, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the permanent variance applies. To the extent that SUNDTJV exceeds the defined scope of this variance, it will be required to comply with OSHA's standards. This permanent variance applies only to the applicant, SUNDTJV, and only to the remainder of construction work on the Integrated Pipeline Tunnel Project.

Condition B: List of Abbreviations

Condition B defines abbreviations used in the permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition C: Definitions

The condition defines a series of terms, mostly technical terms, used in the permanent variance to standardize and clarify their meaning. OSHA believes that defining these terms serves to enhance the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition D: Safety and Health Practices

This condition requires the applicant to develop and submit to OSHA an HOM specific to the Integrated Pipeline Tunnel Project at least six months before using the TBM for tunneling operations. The applicant must also submit, at least six months before using the TBM, proof that the TBM's hyperbaric chambers have been

designed, fabricated, inspected, tested, marked, and stamped in accordance with the requirements of ASME PVHO-1.2019 (or the most recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*). These requirements ensure that the applicant develops hyperbaric safety and health procedures suitable for the project.

The submission of the HOM enables OSHA to determine whether the safety and health instructions and measures it specifies are appropriate to the field conditions of the tunnel (including expected geological conditions), conform to the conditions of the variance, and adequately protect the safety and health of the CAWs. It also facilitates OSHA's ability to ensure that the applicant is complying with these instructions and measures. The requirement for proof of compliance with ASME PVHO-1.2019 is intended to ensure that the equipment is structurally sound and capable of performing to protect the safety of the employees exposed to hyperbaric pressure. The applicant has submitted the HOM and proof of compliance with ASME PVHO-1.2019.

Additionally, the condition includes a series of related hazard prevention and control requirements and methods (e.g., decompression tables, job hazard analyses (JHA), operations and inspections checklists, incident investigation, and recording and notification to OSHA of recordable hyperbaric injuries and illnesses) designed to ensure the continued effective functioning of the hyperbaric equipment and operating system.

Condition E: Communication

This condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication are intended to ensure that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected workers and support personnel during hyperbaric operations. Availability of such reliable means of communications enables affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during TBM operations.

Condition F: Worker Qualification and Training

This condition requires the applicant to develop and implement an effective qualification and training program for affected workers. The condition specifies the factors that an affected worker must know to perform safely during hyperbaric operations, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing hyperbaric intervention work is intended to ensure that they recognize, and respond appropriately to, hyperbaric safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing worker injury, illness, and fatalities.

Paragraph (2)(e) of this condition requires the applicant to provide affected workers with information they can use to contact the appropriate healthcare professionals if the workers believe they are developing hyperbaric-related health effects. This requirement provides for early intervention and treatment of DCI and other health effects resulting from hyperbaric exposure, thereby reducing the potential severity of these effects.

Condition G: Inspections, Tests, and Accident Prevention

Condition G requires the applicant to develop, implement, and operate a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems, and associated work areas. This condition helps to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct hyperbaric operations. The condition also enhances worker safety by reducing the risk of hyperbaric-related emergencies.

Paragraph (3) of this condition requires the applicant to document tests, inspections, corrective actions, and repairs involving the TBM, and maintain these documents at the jobsite for the duration of the job. This requirement provides the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems, and to determine that the actions taken to correct defects in hyperbaric equipment and systems were appropriate, prior to returning them to service.

Condition H: Compression and Decompression

This condition requires the applicant to consult with the designated medical advisor regarding special compression or decompression procedures appropriate for any unacclimated CAW and then implement the procedures recommended by the medical advisor. This proposed provision ensures that the applicant consults with the medical advisor, and involves the medical advisor in the evaluation, development, and implementation of compression or decompression protocols appropriate for any CAW requiring acclimation to the hyperbaric conditions encountered during TBM operations. Accordingly, CAWs requiring acclimation have an opportunity to acclimate prior to exposure to these hyperbaric conditions. OSHA believes this condition will prevent or reduce adverse reactions among CAWs to the effects of compression or decompression associated with the intervention work they perform in the TBM.

Condition I: Recordkeeping

Under OSHA's recordkeeping requirements in 29 CFR part 1904 regarding Recording and Reporting Occupational Injuries and Illnesses, the employer must maintain a record of any recordable injury, illness, or fatality (as defined by 29 CFR part 1904) resulting from exposure of an employee to hyperbaric conditions by completing the OSHA Form 301 Incident Report and OSHA Form 300 Log of Work Related Injuries and Illnesses. The applicant did not seek a variance from this standard and therefore SUNDTJV must comply fully with those requirements.

Examples of important information to include on the OSHA Form 301 Injury and Illness Incident Report (along with the corresponding questions on the form) are:

Q14

- the task performed;
- the composition of the gas mixture (e.g., air or oxygen);
- an estimate of the CAW's workload;
- the maximum working pressure;
- temperature in the work and decompression environments;
- unusual occurrences, if any, during the task or decompression

Q15

- time of symptom onset;
- duration between decompression and onset of symptoms

Q16

- type and duration of symptoms;
- a medical summary of the illness or injury

Q17

- duration of the hyperbaric intervention;
- possible contributing factors;
- the number of prior interventions

completed by the injured or ill CAW; and the pressure to which the CAW was exposed during those interventions.¹³

Condition J below adds additional reporting responsibilities, beyond those already required by the OSHA standard. The applicant is required to maintain records of specific factors associated with each hyperbaric intervention. The information gathered and recorded under Condition J, in concert with the information provided under Condition I (using OSHA Form 301 Injury and Illness Incident Report to investigate and record hyperbaric recordable injuries as defined by 29 CFR 1904.4, 1904.7, and 1904.8–.12), enables the applicant and OSHA to assess the effectiveness of the permanent variance in preventing DCI and other hyperbaric-related effects.

Condition J: Notifications

Under the notifications condition, the applicant is required, within specified periods of time, to notify OSHA of: (1) any recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality that occurs as a result of hyperbaric exposures during TBM operations within 8 hours; (2) provide OSHA a copy of the hyperbaric exposures incident investigation report (using OSHA Form 301 Injury and Illness Incident Report) of these events within 24 hours of the incident; (3) include on OSHA Form 301 Injury and Illness Incident Report information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented; (4) provide the certification that affected workers were informed of the incident and the results of the incident investigation; (5) notify OSHA's Office of Technical Programs and Coordination Activities (OTPCA) and the OSHA Area Office in Dallas, Texas within 15 working days should the applicant need to revise the HOM to accommodate changes in its compressed-air operations that affect SUNDTJVs ability to comply with the conditions of the permanent variance; and (6) provide OTPCA and the OSHA

Area Office in Dallas, Texas, at the end of the project, with a report evaluating the effectiveness of the decompression tables.

It should be noted that the requirement for completing and submitting the hyperbaric exposure-related (recordable) incident investigation report (OSHA 301 Injury and Illness Incident Report) is more restrictive than the current recordkeeping requirement of completing OSHA Form 301 Injury and Illness Incident Report within 7 calendar days of the incident (1904.29(b)(3)). This modified, more stringent incident investigation and reporting requirement is restricted to intervention-related hyperbaric (recordable) incidents only. Providing rapid notification to OSHA is essential because time is a critical element in OSHA's ability to determine the continued effectiveness of the variance conditions in preventing hyperbaric incidents, and the applicant's identification and implementation of appropriate corrective and preventive actions.

Further, these notification requirements also enable the applicant, its employees, and OSHA to assess the effectiveness of the permanent variance in providing the requisite level of safety to the applicant's workers and, based on this assessment, whether to revise or revoke the conditions of the permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent possible further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

Additionally, this condition requires the applicant to notify OSHA no later than seven (7) days of having knowledge that it will cease to do business, has a new address or location for the main office, or transfers the operations covered by the permanent variance to a successor company. In addition, the condition specifies that the transfer of the permanent variance to a successor company must be approved by OSHA. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the permanent variance and expedite the agency's administration and enforcement of the permanent variance. Stipulating that the applicant is required to have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by permanent variance,

¹³ See 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses (http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631); recordkeeping forms and instructions (<http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf>); and OSHA Recordkeeping Handbook (<http://www.osha.gov/recordkeeping/handbook/index.html>).

thereby ensuring the safety of workers involved in performing the operations covered by the permanent variance.

VI. Order

As of the effective date of this final order, OSHA is revoking the interim order granted to the employer on May 1, 2023, and replacing it with a permanent variance order. Note that there are not any substantive changes in the conditions between the interim order and this final order.

OSHA issues this final order authorizing SUNDTJV to comply with the following conditions instead of complying with the requirements of 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii). These conditions are:

A. Scope

The permanent variance applies only when SUNDTJV stops the tunnel-boring work, pressurizes the working chamber, and the CAWs either enter the working chamber to perform an intervention (*i.e.*, inspect, maintain, or repair the mechanical-excavation components), or exit the working chamber after performing interventions.

The permanent variance applies only to work:

1. That occurs in conjunction with construction of the Integrated Pipeline Tunnel Project, a tunnel constructed using advanced shielded mechanical-excavation techniques and involving operation of an TBM;
2. In the TBM's forward section (the working chamber) and associated hyperbaric chambers used to pressurize and decompress employees entering and exiting the working chamber; and
3. Performed in compliance with all applicable provisions of 29 CFR part 1926 except for the requirements specified by 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii).
4. This order will remain in effect until one of the following conditions occurs: (1) completion of the Integrated Pipeline Tunnel Project; or (2) OSHA modifies or revokes this final order in accordance with 29 CFR 1905.13.

B. List of Abbreviations

Abbreviations used throughout this permanent variance includes the following:

1. CAW—Compressed-air worker
2. CFR—Code of Federal Regulations
3. DCI—Decompression Illness
4. DMT—Diver Medical Technician
5. TBM—Earth Pressure Balanced Tunnel Boring Machine
6. HOM—Hyperbaric Operations Manual
7. JHA—Job hazard analysis
8. OSHA—Occupational Safety and Health Administration
9. OTPCA—Office of Technical Programs and

Coordination Activities

C. Definitions

The following definitions apply to this permanent variance, SUNDTJV's project-specific HOM, and all work carried out under the conditions of this permanent variance.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this permanent variance, or any one of his or her authorized representatives. The term “employee” has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

2. *Atmospheric pressure*—the pressure of air at sea level, generally 14.7 pounds per square inch absolute (p.s.i.a.), 1 atmosphere absolute, or 0 p.s.i.g.

3. *Compressed-air worker*—an individual who is specially trained and medically qualified to perform work in a pressurized environment while breathing air at pressures not exceeding 58 p.s.i.g.

4. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.¹⁴

5. *Decompression illness*—an illness (also called decompression sickness or “the bends”) caused by gas bubbles appearing in body compartments due to a reduction in ambient pressure. Examples of symptoms of decompression illness include, but are not limited to: joint pain (also known as the “bends” for agonizing pain or the “niggles” for slight pain); areas of bone destruction (termed dysbaric osteonecrosis); skin disorders (such as cutis marmorata, which causes a pink marbling of the skin); spinal cord and brain disorders (such as stroke, paralysis, paresthesia, and bladder dysfunction); cardiopulmonary disorders, such as shortness of breath; and arterial gas embolism (gas bubbles in the arteries that block blood flow).¹⁵

Note: Health effects associated with hyperbaric intervention, but not considered symptoms of DCI, can include: barotrauma (direct damage to air-containing cavities in the body such as ears, sinuses, and lungs); nitrogen narcosis (reversible alteration in consciousness that may occur in hyperbaric

environments and is caused by the anesthetic effect of certain gases at high pressure); and oxygen toxicity (a central nervous system condition resulting from the harmful effects of breathing molecular oxygen (O₂) at elevated partial pressures).

6. *Diver Medical Technician*—Member of the dive team who is experienced in first aid.

7. *Earth Pressure Balanced Tunnel Boring Machine*—the machinery used to excavate a tunnel.

8. *Hot work*—any activity performed in a hazardous location that may introduce an ignition source into a potentially flammable atmosphere.¹⁶

9. *Hyperbaric*—at a higher pressure than atmospheric pressure.

10. *Hyperbaric intervention*—a term that describes the process of stopping the TBM and preparing and executing work under hyperbaric pressure in the working chamber for the purpose of inspecting, replacing, or repairing cutting tools and/or the cutterhead structure.

11. *Hyperbaric Operations Manual*—a detailed, project-specific health and safety plan developed and implemented by SUNDTJV for working in compressed air during the Integrated Pipeline Tunnel Project.

12. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

13. *Man-lock*—an enclosed space capable of pressurization, and used for compressing or decompressing any employee or material when either is passing into, or out of, a working chamber.

14. *Medical Advisor*—medical professional experienced in the physical requirements of compressed air work and the treatment of decompression illness.

15. *Pressure*—a force acting on a unit area. Usually expressed as pounds per square inch (p.s.i.).

16. *p.s.i.*—pounds per square inch, a common unit of measurement of pressure; a pressure given in p.s.i. corresponds to absolute pressure.

17. *p.s.i.a.*—pounds per square inch absolute, or absolute pressure, is the sum of the atmospheric pressure and gauge pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Adding 14.7 to a pressure expressed in units of p.s.i.g. will yield the absolute pressure, expressed as p.s.i.a.

18. *p.s.i.g.*—pounds per square inch gauge, a common unit of pressure; pressure expressed as p.s.i.g. corresponds to pressure relative to

¹⁴ Adapted from 29 CFR 1926.32(f).

¹⁵ See appendix 10 of “A Guide to the Work in Compressed-Air Regulations 1996,” published by the United Kingdom Health and Safety Executive available from NIOSH at <http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-254/compReg1996.pdf>.

¹⁶ Also see 29 CFR 1910.146(b).

atmospheric pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i.a. Subtracting 14.7 from a pressure expressed in units of p.s.i.a. yields the gauge pressure, expressed as p.s.i.g. At sea level the gauge pressure is 0 p.s.i.g.

19. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work, or the project.¹⁷

20. *Working chamber*—an enclosed space in the TBM in which CAWs perform interventions, and which is accessible only through a man-lock.

D. Safety and Health Practices

1. SUNDTJV must implement the project-specific HOM submitted to OSHA as part of the application (see OSHA–2023–0004–0004). The HOM provides the minimum requirements regarding expected safety and health hazards (including anticipated geological conditions) and hyperbaric exposures during the tunnel-construction project.

2. SUNDTJV has demonstrated through documentation in the HOM that the TBM, including its hyperbaric chambers, is in compliance with the requirements of ASME PVHO–1.2019 (or more recent edition of *Safety Standards for Pressure Vessels for Human Occupancy*). SUNDTJV must notify OSHA before making any alterations to the TBM that would affect the PVHO certification. Any such alteration to the TBM would require recertification of compliance with ASME PVHO–1.2019 requirements and OSHA approval prior to use.

3. SUNDTJV must implement the safety and health instructions included in the manufacturer's operations manuals for the TBM, and the safety and health instructions provided by the manufacturer for the operation of decompression equipment.

4. SUNDTJV must ensure that there are no exposures to pressures greater than 58 p.s.i.g.

5. SUNDTJV must ensure that air or oxygen is the only breathing gas in the working chamber.

6. SUNDTJV must follow the 1992 French Decompression Tables for air or oxygen decompression as specified in the HOM; specifically, the extracted portions of the 1992 French Decompression tables titled, “French Regulation Air Standard Tables.”

7. SUNDTJV must equip man-locks used by employees with an air or oxygen delivery system, as specified by the HOM for the project. SUNDTJV is prohibited from storing in the tunnel any oxygen or other compressed gases used in conjunction with hyperbaric work.

8. Workers performing hot work under hyperbaric conditions must use flame-retardant personal protective equipment and clothing.

9. In hyperbaric work areas, SUNDTJV must maintain an adequate fire-suppression system approved for hyperbaric work areas.

10. SUNDTJV must develop and implement one or more Job Hazard Analysis (JHA) for work in the hyperbaric work areas, and review, periodically and as necessary (e.g., after making changes to a planned intervention that affects its operation), the contents of the JHAs with affected employees. The JHAs must include all the job functions that the risk assessment¹⁸ indicates are essential to prevent injury or illness.

11. SUNDTJV must develop a set of checklists to guide compressed-air work and ensure that employees follow the procedures required by the permanent variance (including all procedures required by the HOM approved by OSHA for the project, which this permanent variance incorporates by reference). The checklists must include all steps and equipment functions that the risk assessment indicates are essential to prevent injury or illness during compressed-air work.

12. SUNDTJV must ensure that the safety and health provisions of this project-specific HOM adequately protect the workers of all contractors and subcontractors involved in hyperbaric operations for the project to which the HOM applies.

E. Communication

1. Prior to beginning a shift, SUNDTJV must implement a system that informs workers exposed to hyperbaric conditions of any hazardous occurrences or conditions that might affect their safety, including hyperbaric incidents, gas releases, equipment failures, earth or rock slides, cave-ins, flooding, fires, or explosions.

2. SUNDTJV must provide a power-assisted means of communication among affected workers and support personnel in hyperbaric conditions where unassisted voice communication is inadequate.

(a) SUNDTJV must use an independent power supply for powered communication systems, and these systems have to operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) SUNDTJV must test communication systems at the start of each shift and as necessary thereafter to ensure proper operation.

F. Worker Qualifications and Training

SUNDTJV must:

1. Ensure that each affected worker receives effective training on how to safely enter, work in, exit from, and undertake emergency evacuation or rescue from, hyperbaric conditions, and document this training.

2. Provide effective instruction on hyperbaric conditions, before beginning hyperbaric operations, to each worker who performs work, or controls the exposure of others, and document this instruction. The instruction must include:

(a) The physics and physiology of hyperbaric work;

(b) Recognition of pressure-related injuries;

(c) Information on the causes and recognition of the signs and symptoms associated with decompression illness, and other hyperbaric intervention-related health effects (e.g., barotrauma, nitrogen narcosis, and oxygen toxicity);

(d) How to avoid discomfort during compression and decompression;

(e) Information the workers can use to contact the appropriate healthcare professionals should the workers have concerns that they may be experiencing adverse health effects from hyperbaric exposure; and

(f) Procedures and requirements applicable to the employee in the project-specific HOM.

3. Repeat the instruction specified in paragraph (G) of this condition periodically and as necessary (e.g., after making changes to its hyperbaric operations).

4. When conducting training for its hyperbaric workers, make this training available to OSHA personnel and notify the OTPCA at OSHA's national office and OSHA's Dallas Area Office before the training takes place.

G. Inspections, Tests, and Accident Prevention

1. SUNDTJV must initiate and maintain a program of frequent and regular inspections of the TBM's hyperbaric equipment and support systems (such as temperature control, illumination, ventilation, and fire-prevention and fire-suppression

¹⁸ See ANSI/AIHA Z10–2012, American National Standard for Occupational Health and Safety Management Systems, for reference.

¹⁷ Adapted from 29 CFR 1926.32(m).

systems), and hyperbaric work areas, as required under 29 CFR 1926.20(b)(2), including:

(a) Developing a set of checklists to be used by a competent person in conducting weekly inspections of hyperbaric equipment and work areas; and

(b) Ensuring that a competent person conducts daily visual checks and weekly inspections of the TBM.

2. Remove from service any equipment that constitutes a safety hazard until it corrects the hazardous condition and has the correction approved by a qualified person.

3. SUNDTJV must maintain records of all tests and inspections of the TBM, as well as associated corrective actions and repairs, at the job site for the duration of the tunneling project and for 90 days after the final project report is submitted to OSHA.

H. Compression and Decompression

SUNDTJV must consult with its attending physician concerning the need for special compression or decompression exposures appropriate for CAWs not acclimated to hyperbaric exposure.

I. Recordkeeping

In addition to completing OSHA Form 301 Injury and Illness Incident Report and OSHA Form 300 Log of Work-Related Injuries and Illnesses, SUNDTJV must maintain records of:

1. The date, times (e.g., time compression started, time spent compressing, time performing intervention, time spent decompressing), and pressure for each hyperbaric intervention.

2. The names of all supervisors and DMTs involved for each intervention.

3. The name of each individual worker exposed to hyperbaric pressure and the decompression protocols and results for each worker.

4. The total number of interventions and the amount of hyperbaric work time at each pressure.

5. The results of the post-intervention physical assessment of each CAW for signs and symptoms of decompression illness, barotrauma, nitrogen narcosis, oxygen toxicity, or other health effects associated with work in compressed air for each hyperbaric intervention.

J. Notifications

1. To assist OSHA in administering the conditions specified herein, SUNDTJV must:

(a) Notify the OTPCA and the OSHA Area Office in Dallas, Texas at www.osha.gov/contactus/byoffice of any recordable injury, illness, or fatality (by

submitting the completed OSHA Form 301 Injuries and Illness Incident Report)¹⁹ resulting from exposure of an employee to hyperbaric conditions, including those that do not require recompression treatment (e.g., nitrogen narcosis, oxygen toxicity, barotrauma), but still meet the recordable injury or illness criteria of 29 CFR 1904. The notification must be made within 8 hours of the incident or 8 hours after becoming aware of a recordable injury, illness, or fatality; a copy of the incident investigation (OSHA Form 301 Injuries and Illness Incident Report) must be submitted to OSHA within 24 hours of the incident or 24 hours after becoming aware of a recordable injury, illness, or fatality. In addition to the information required by OSHA Form 301 Injuries and Illness Incident Report, the incident-investigation report must include a root-cause determination, and the preventive and corrective actions identified and implemented.

(b) Provide certification to the OTPCA and the OSHA Area Office in Dallas, Texas within 15 working days of the incident that SUNDTJV informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

(c) Notify the OTPCA and the OSHA Area Office Dallas, Texas within 15 working days and in writing, of any change in the compressed-air operations that affects SUNDTJV's ability to comply with the conditions specified herein.

(d) Upon completion of the Integrated Pipeline Tunnel Project, evaluate the effectiveness of the decompression tables used throughout the project, and provide a written report of this evaluation to the OTPCA and the OSHA Area Office in Dallas, Texas.

Note: The evaluation report must contain summaries of: (1) The number, dates, durations, and pressures of the hyperbaric interventions completed; (2) decompression protocols implemented (including composition of gas mixtures (air and/or oxygen), and the results achieved; (3) the total number of interventions and the number of hyperbaric incidents (decompression illnesses and/or health effects associated with hyperbaric interventions as recorded on OSHA Form 301 Injuries and Illness Incident Report and OSHA Form 300 Log of Work-

Related Injuries and Illnesses, and relevant medical diagnoses, and treating physicians' opinions); and (4) root causes of any hyperbaric incidents, and preventive and corrective actions identified and implemented.

(e) To assist OSHA in administering the conditions specified herein, inform the OTPCA and the OSHA Area Office in Dallas, Texas as soon as possible, but no later than seven (7) days, after it has knowledge that it will:

(i) Cease doing business;

(ii) Change the location and address of the main office for managing the tunneling operations specified herein; or

(iii) Transfer the operations specified herein to a successor company.

(f) Notify all affected employees of this permanent variance by the same means required to inform them of its application for a permanent variance.

(g) This permanent variance cannot be transferred to a successor company without OSHA approval.

OSHA hereby grants a permanent variance to SUNDTJV to the provisions of 29 CFR 1926.803 outlined in this notice.

VII. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 655(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1905.11.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–26179 Filed 11–27–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities; Comment Request: Federal Contractor Veterans' Employment Report VETS–4212

ACTION: Request for comments.

SUMMARY: The Veterans' Employment and Training Service (VETS) is announcing an opportunity for public comment on a collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice

¹⁹ See 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses) (http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631); recordkeeping forms and instructions (<http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf>); and the OSHA Recordkeeping Handbook (<http://www.osha.gov/recordkeeping/handbook/index.html>).

in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. In this notice, VETS is soliciting comments concerning the proposed information collection request for the VETS Federal Contractor Veterans' Employment Report VETS-4212.

DATES: Comments must be submitted by January 29, 2024.

ADDRESSES: Follow the instructions for submitting comments.

- *Email:* 4212-FRN-2023-VETS@dol.gov. Include "VETS-4212 Form" in the subject line of the message.

- *Fax:* (202) 693-4755. Please send comments by fax only if they are 10 pages or less.

- *Mail:* William E. Coughlin, Investigative Analyst, Compliance and Investigations, VETS, U.S. Department of Labor, Room S-1325, 200 Constitution Avenue NW, Washington, DC 20210.

- Receipt of submissions, whether by U.S. Mail, email, or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693-4700 (VOICE) (this is not a toll-free number) or (202) 693-4760 (TTY/TDD).

All comments received, including any personal information provided, will be available for public inspection during normal business hours at the above address. People needing assistance to review comments will be provided with appropriate aids such as readers or print magnifiers.

FOR FURTHER INFORMATION CONTACT:

William E. Coughlin, Investigative Analyst, Compliance and Investigations, VETS, U.S. Department of Labor, who may be reached at (202) 693-4715 or by email at: 4212-FRN-2023-VETS@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), 38 U.S.C. 4212(d), requires Federal contractors and subcontractors subject to the Act's affirmative action provisions in 38 U.S.C. 4212(a) to track and report annually to the Secretary of Labor the number of employees in their workforces, by job category and hiring location, who belong to the specified categories of protected veterans. VETS maintains regulations to implement the reporting requirements under VEVRAA, and uses the VETS-4212 form for providing the required information on the employment of covered veterans.

The regulations in 41 CFR part 61-300 require contractors and subcontractors with a covered Federal contract entered into or modified in the amount of \$150,000 or more to use the Federal Contractor Veterans' Employment Report VETS-4212 form for reporting information on their employment of covered veterans under VEVRAA.

The VETS-4212 Report is currently approved under OMB No. 1293-0005.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning a request to extend the currently approved information collection request. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions or responses.

III. Current Actions

The Department of Labor seeks approval of the extension of the currently approved information collection request in order to carry out its responsibilities to administer and enforce compliance with the contractor reporting requirements under VEVRAA, as amended by the JVA. In preparation of that request, the Department seeks public comments on the information collection requirements.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: Federal Contractor Veterans' Employment Report VETS-4212.

OMB Number: 1293-0005.

Affected Public: Private Sector—businesses or other for profits and not-for-profit institutions.

Total Respondents: 21,000.

Average responses per Respondent: 18.

Total Annual Responses: 378,000.

Average Time per Response:

- Electronic Submission—20 minutes.

- Paper Submission—40 minutes.

Total Burden Hours: 129,200.

Frequency: Annually.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintaining): \$735,000.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed in Washington, DC, this 15th day of November 2023.

James D. Rodriguez,

Assistant Secretary of Labor for Veterans' Employment and Training Service.

[FR Doc. 2023-26088 Filed 11-27-23; 8:45 am]

BILLING CODE 4510-79-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-2024-005]

Senior Executive Service (SES) Performance Review Board; Members

AGENCY: Office of Human Capital, National Archives and Records Administration.

ACTION: Notice of membership on the SES Performance Review Board.

SUMMARY: Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board (PRB). The members of the PRB for the National Archives and Records Administration are: William J. Bosanko, Chief Operating Officer; Micah M. Cheatham, Chief of Management and Administration; and Valorie F. Findlater, Chief Human Capital Officer. These appointments supersede all previous appointments.

DATES: This appointment is effective on November 28, 2023.

FOR FURTHER INFORMATION CONTACT:

Valorie Findlater, Office of Human Capital, by email at valorie.findlater@nara.gov or by telephone at (301) 837-3754.

SUPPLEMENTARY INFORMATION: The authority for this notice is 5 U.S.C. 4314(c), which also requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by

the supervisor and recommend final action to the appointing authority regarding matters related to senior executive performance.

Debra Steidel Wall,

Deputy Archivist of the United States.

[FR Doc. 2023-26196 Filed 11-27-23; 8:45 am]

BILLING CODE 7515-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-23-0013; NARA-2024-004]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by January 12, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-23-0013/document>. This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via *regulations.gov*, you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in

parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT:

Eddie Germino, Strategy and Performance Division, by email at regulation_comments@nara.gov or at 301-837-3758. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-837-1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as "other" documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a "Consolidated

Reply" summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Health and Human Services, Food and Drug Administration, Social Media Records (DAA-0088-2022-0002).

2. Department of Homeland Security, U.S. Customs and Border Protection, Custodial Medical Records (DAA–0568–2022–0003).

3. Department of Homeland Security, U.S. Customs and Border Protection, Trade Allegation Records (DAA–0568–2019–0004).

4. Department of Homeland Security, U.S. Secret Service, Investigative Records (DAA–0087–2021–0001).

5. Department of the Treasury, Internal Revenue Service, Corrupt PSTs (DAA–0058–2023–0003).

6. Federal Communications Commission, Office of Economics and Analytics, Automated Reporting Management Information System (ARMIS) (DAA–0173–2021–0030).

7. National Aeronautics and Space Administration, Agency-wide, Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Case Files (DAA–0255–2023–0002).

Laurence Brewer,
Chief Records Officer for the U.S.
Government.

[FR Doc. 2023–26185 Filed 11–27–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) NSB–NSF Commission on Merit Review hereby gives notice of the scheduling of a videoconference meeting for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Tuesday, November 28, 2023, from 9:00 a.m.–12:00 p.m. Eastern.

PLACE: This meeting will be held in person and by videoconference through the National Science Foundation headquarters at 2415 Eisenhower Ave., Alexandria, VA 22314.

STATUS: One portion open and one portion closed.

MATTERS TO BE CONSIDERED:

Open: 9:00–11:20 a.m. Matters to be considered: Commission Chair's opening remarks; Discussion of High Risk/High Reward research; Discussion of Portfolio Management; and closing remarks.

Closed: 11:20 a.m.–12:00 p.m. Matters to be considered: Chairman's opening remarks regarding the agenda; Commission planning; and Closing remarks.

CONTACT PERSON FOR MORE INFORMATION:
Point of contact for this meeting is:

(Chris Blair, cblair@nsf.gov), 703/292–7000. Members of the public can observe the public portion of this meeting through a YouTube livestream—<https://www.youtube.com/watch?v=VncqrySuhVw>.

Ann E. Bushmiller,
Senior Counsel to the National Science Board.

[FR Doc. 2023–26224 Filed 11–24–23; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board (NSB) and the NSB Committee on Strategy (CS) hereby give notice of the scheduling of meetings for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, November 29, 2023, from 10:00 a.m.–5:20 p.m. and Thursday, November 30, 2023, from 8:30 a.m.–2:05 p.m. Eastern.

PLACE: These meetings will be held at NSF headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314, and by videoconference. If the COVID status for Alexandria, Virginia goes to “high,” please fill out and bring OMB's certification of vaccination form with you. All open sessions of the meeting will be webcast live on the NSB YouTube channel.

November 29, 2023—<https://www.youtube.com/watch?v=Wtyvh6VBbKI>

November 30, 2023—<https://www.youtube.com/watch?v=P-B91ZCfCw0>

STATUS: Parts of these meetings will be open to the public. The rest of the meetings will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Wednesday, November 29, 2023

Plenary Board Meeting

Open Session: 10:00–1:00 p.m.

- NSB Chair's Opening Remarks
- NSF Director's Remarks
 - External Engagements/Office of Legislative and Public Affairs update
 - Senior Staff updates
- Approval of August 2023 Open Meeting minutes
- Discussion with NSF Directorate for STEM Education, Assistant Director, James Moore
- NSB Committee Reports
- Committee on External Engagement
 - update on engagement initiatives

- Committee on Science and Engineering Policy
 - National Security Team
 - Talent Development Team
- NSF SAHPR Update

Closed Session: 2:00–2:25 p.m.

- NSB Chair's Remarks
- NSF Director's Remarks
 - Agency Operating Status
- Approval of May 2023 Closed Meeting Minutes

Committee on Strategy

Closed Meeting: 2:25–2:55 p.m.

- Committee Chair's Opening Remarks on the Agenda
- NSF FY 2024 and 2025 Budget Update
- CHIPS and Science Update (written)

Plenary NSB

Closed Session: 2:55–4:35 p.m.

- NSF SAHPR Update
- SAHPR-related Statement and Discussion with NSB
- Vote to move into Executive Plenary Closed

Plenary Board

Closed (Executive) Session: 4:35–5:20 p.m.

- NSB/NSF Discussion of SAHPR-related Statement

Thursday, November 30, 2023

Plenary Board Meeting

Open Session: 8:30–9:50 a.m.

- NSB Chair's Opening Remarks
- Presentation and Discussion, Office of the Chief Diversity and Inclusion Officer, Charles Barber
- NSB Committee Reports
 - Committee on Awards and Facilities Next Generation Very Large Array
 - Committee on Oversight
 - NSB–NSF Commission on Merit Review

Plenary Board Meeting

Closed Session: 10:00 a.m.–12:05 p.m.

- NSB Closed Committee Reports
 - Subcommittee on Technology, Innovation, and Partnerships
 - Report on 11/21 S–TIP meeting
- Regional Innovation Engines Presentation and Discussion
 - Consideration of associated resolution
- NSB Closed Committee Reports
 - NSB–NSF Commission on Merit Review
 - Committee on Awards and Facilities
 - Annual report of the Chief Officer for Research Facilities
 - Antarctic Research Season Briefing

- Leadership-Class Computing Facility Construction Award and Vote
- Vote to move into Executive Plenary Closed Session

Plenary Board

Closed (Executive) Session: 12:50 p.m.–2:05 p.m.

- NSB Chair's Opening Remarks
 - Approval of August 2023 Executive Plenary closed meeting minutes
 - NSB Honorary Awards, Discussion of slate of finalists for the 2024 Vannevar Bush and Science & Society awards and Vote
 - NSF Director's Remarks
 - Organizational Updates
 - Infrastructure Planning
 - NSB Chair's Closing Remarks
- Meeting Adjourns: 2:05 p.m.

Portions Open to the Public

Wednesday, November 29, 2023

10:00 a.m.–1:00 p.m. Plenary NSB

Thursday, November 30, 2023

8:30 a.m.–9:50 a.m. Plenary NSB

Portions Closed to the Public

Wednesday, November 29, 2023

2:00 p.m.–2:25 p.m. Plenary NSB
2:25 p.m.–2:55 p.m. Committee on Strategy

2:55 p.m.–4:35 p.m. Plenary NSB
4:35 p.m.–5:20 p.m. Plenary NSB (executive session)

Thursday, November 30, 2023

10:00 a.m.–12:05 p.m. Plenary NSB
12:50 p.m.–2:05 p.m. Plenary NSB (executive session)

Members of the public are advised that the NSB provides some flexibility around start and end times. A session may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next session will start no later than 15 minutes after the noticed start time. If a session ends early, the next meeting may start up to 15 minutes earlier than the noticed start time. Sessions will not vary from noticed times by more than 15 minutes.

CONTACT PERSON FOR MORE INFORMATION:

The NSB Office contact is Christopher Blair, cblair@nsf.gov, 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, nlymn@nsf.gov, 703–292–2490. Please refer to the NSB website for additional information: <https://www.nsf.gov/nsb>.

Ann E. Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2023–26225 Filed 11–24–23; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0195]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by December 28, 2023. A request for a hearing or petitions for leave to intervene must be filed by January 29, 2024. This monthly notice includes all amendments issued, or proposed to be issued, from October 13, 2023, to November 8, 2023. The last monthly notice was published on October 31, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0195. Address questions about Docket IDs in [Regulations.gov](https://www.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** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT:

Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5411; email: Shirley.Rohrer@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0195, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0195.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2023–0195, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the

comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of the *Code of Federal Regulations* (10 CFR) "Notice for public comment; State consultation," are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the

expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the

Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding

officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT REQUEST(S)

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Units 1 and 2, Ogle County, IL

Docket No(s)	50–454, 50–455, 50–456, 50–457.
Application date	September 29, 2023.
ADAMS Accession No	ML23272A201.
Location in Application of NSHC	Pages 50–52 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would revise the Byron and Braidwood (1) Technical Specification (TS) 3.7.15 to increase the required spent fuel pool boron concentration to be greater or equal to 2000 parts per million; (2) TS 3.7.16 to update Figure 3.7.1.16–1 to include fuel from Framatome and Westinghouse; (3) TS 4.3.1.b to update the description and references; and (4) TS 4.3.1.c and d (Braidwood only) to update the description and references.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 4300 Winfield Road, Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Joel Wiebe, 301–415–6606.

Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC

Docket No(s)	50–261.
Application date	October 5, 2023.
ADAMS Accession No	ML23278A247.
Location in Application of NSHC	Pages 6–7 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendment would revise Technical Specification (TS) Section 5.7, "High Radiation Area," consistent with NRC-approved TS Task Force (TSTF) Traveler 258 (TSTF–258–A), Revision 4, "Changes to Section 5.0, Administrative Controls."
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 4720 Piedmont Row Dr., Charlotte, NC 28210.

LICENSE AMENDMENT REQUEST(S)—Continued

NRC Project Manager, Telephone Number	Luke Haeg, 301–415–0272.
Nebraska Public Power District; Cooper Nuclear Station; Nemaha County, NE	
Docket No(s)	50–298.
Application date	September 6, 2023.
ADAMS Accession No	ML23249A134.
Location in Application of NSHC	Pages 15–17 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would revise Cooper Nuclear Station Technical Specification (TS) Section 3.8.3, “Diesel Fuel Oil, Lube Oil, and Starting Air,” to allow the use of temporary fuel oil storage tanks to supplement the required fuel oil storage inventory used by the emergency diesel generators. The proposed TS change would be applicable during the 2024 Refueling Outage 33 while in Modes 4 or 5 to allow cleaning, inspection, and any needed repairs of the permanent diesel generator fuel oil storage tanks.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	John C. McClure, Vice President, Governmental Affairs & General Counsel Nebraska Public Power District, P.O. Box 499, Columbus, NE 68601.
NRC Project Manager, Telephone Number	Thomas Wengert, 301–415–4037.
Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; San Luis Obispo County, CA	
Docket No(s)	50–275, 50–323.
Application date	September 27, 2023.
ADAMS Accession No	ML23270B909.
Location in Application of NSHC	Pages 15 to 17 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would permit Diablo Canyon Power Plant, Units 1 and 2, to adopt 10 CFR 50.69, “Risk-Informed Categorization and Treatment of Structures, Systems and Components for Nuclear Power Reactors.”
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jennifer Post, Esq., Pacific Gas and Electric Co., 77 Beale Street, Room 3065, Mail Code B30A, San Francisco, CA 94105.
NRC Project Manager, Telephone Number	Samson Lee, 301–415–3168.
Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN; Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket No(s)	50–327, 50–328, 50–390, 50–391.
Application date	August 2, 2023, as supplemented by letter(s) dated September 20, 2023.
ADAMS Accession No	ML23214A385, ML23264A006.
Location in Application of NSHC	Enclosure 1 of the Supplement dated September 20, 2023.
Brief Description of Amendment(s)	On September 5, 2023, the NRC staff published a proposed no significant hazards consideration (NSHC) determination in the Federal Register (88 FR 60714) for the proposed amendments. Subsequently, by letter dated September 20, 2023, the licensee clarified the NSHC of the August 2, 2023, amendment request as originally noticed in the Federal Register . The clarified NSHC is Enclosure 1 to the September 20, 2023, letter.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Perry Buckberg, 301–415–1383.
Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX	
Docket No(s)	50–445, 50–446.
Application date	September 14, 2023.
ADAMS Accession No	ML23257A172.
Location in Application of NSHC	Pages 30–32 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would modify the Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2, Technical Specification Required Action 3.8.1.B.4 to extend the allowed outage time for an inoperable emergency diesel generator from 72 hours to 14 days.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004.
NRC Project Manager, Telephone Number	Dennis Galvin, 301–415–6256.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for

each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the

Commission’s rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a

hearing in connection with these actions, were published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these

amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained

using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC; Duke Energy Carolinas, LLC; Oconee Nuclear Station, Units 1, 2, and 3; Oconee County, SC; Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC

Docket No(s)	50–413, 50–414, 50–369, 50–370, 50–269, 50–270, 50–287, 50–261, 50–400.
Amendment Date	October 24, 2023.
ADAMS Accession No	ML23241A987.
Amendment No(s)	Catawba 318 (Unit 1), 314 (Unit 2), Harris 200 (Unit 1), McGuire 329 (Unit 1), 308 (Unit 2), Oconee 429 (Unit 1), 431 (Unit 2), 430 (Unit 3), Robinson 278 (Unit 2).
Brief Description of Amendment(s)	The amendments revised surveillance requirements for reactor coolant system pressure isolation valve operational leakage testing and removed restrictive surveillance frequencies related to the reactor trip system instrumentation.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–348, 50–364, 50–424, 50–425.
Amendment Date	October 23, 2023.
ADAMS Accession No	ML23187A148.
Amendment No(s)	Farley 248 (Unit 1), 245 (Unit 2); Vogtle 222 (Unit 1), 205 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Technical Specification (TS) 3.2.1, "Heat Flux Hot Channel Factor (FQ(Z))," to adopt the TS changes for the Relaxed Axial Offset Control (RAOC) methodology described in Appendix A of Westinghouse topical report WCAP–17661–P–A, Revision 1, "Improved RAOC and CAOC [Constant Axial Offset Control] FQ Surveillance Technical Specifications" (ML19225C081), to address the issues identified in Westinghouse Nuclear Safety Advisory Letter (NSAL)–09–5, Revision 1, "Relaxed Axial Offset Control FQ Technical Specification Actions," dated September 23, 2009, and NSAL–15–1, "Heat Flux Hot Channel Factor Technical Specification Surveillance," dated February 3, 2015. The amendments include adoption of several technical specification task force (TSTF) change travelers to align the Vogtle, Units 1 and 2, and Farley, Units 1 and 2, TSs with the FQ formulations and required actions of TS 3.2.1B, "Heat Flux Hot Channel Factor (FQ(Z)) (RAOC–W(Z) Methodology)," of NUREG–1431, "Standard Technical Specifications Westinghouse Plants," Volume 1, Revision 5 (ML21259A155). The TSTFs are (1) TSTF–99–A, Revision 0, "Extend the Completion Time for Fq(w) not within limits from 2 hours to 4 hours;" (ML040480063); (2) TSTF–241–A, Revision 4, "Allow time for stabilization after reducing power due to QPTR [quadrant power tilt ratio] out of limit;" (ML040611034); and (3) TSTF–290–A, Revision 0, "Revisions to hot channel factor specifications," (ML040630063). Additionally, the amendments revised the Vogtle, Units 1 and 2, and Farley, Units 1 and 2, TS 5.6.5, "Core Operating Limits Report (COLR)," to include WCAP–17661–P–A, Revision 1, in the list of the NRC approved methodologies used to develop the cycle specific COLR.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–424, 50–425.
Amendment Date	October 12, 2023.
ADAMS Accession No	ML23263A985.
Amendment No(s)	221 (Unit 1), 205 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Technical Specification 5.5.11, "Ventilation Filter Testing Program (VFTP)." Specifically, the amendments revised the acceptance criteria for the charcoal absorber penetration for the Control Room Emergency Filtration System item number 5.5.11.c from 0.2-percent to 0.5-percent.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA	
Docket No(s)	52–025, 52–026.
Amendment Date	November 7, 2023.
ADAMS Accession No	ML23268A057.
Amendment No(s)	194 (Unit 3), 191 (Unit 4).
Brief Description of Amendment(s)	The amendments relocated Technical Specification 3.7.9, “Spent Fuel Pool Makeup Water Sources,” to the Vogtle Technical Requirements Manual (TRM) as “UFSAR [Updated Final Safety Analysis Report] Standard Content,” which is controlled in accordance with 10 CFR 50.59, “Changes, tests and experiments.” The amendments also changed to plant-specific design control document Tier 2 information affected by the relocation.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX	
Docket No(s)	50–498, 50–499.
Amendment Date	November 1, 2023.
ADAMS Accession No	ML23298A000.
Amendment No(s)	226 (Unit 1) and 211 (Unit 2).
Brief Description of Amendment(s)	The NRC staff approved conforming administrative license amendments regarding the indirect transfer of the NRG South Texas LP 44-percent possession-only non-operating interests in South Texas Project (STP), Units 1 and 2, from NRG South Texas LP to Constellation Energy Generation, LLC. The amendments revised Renewed Facility Operating License Nos. NPF–76 and NPF–80 to reflect the renaming of NRG South Texas LP to Constellation South Texas, LLC.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Surry County, VA	
Docket No(s)	50–280, 50–281.
Amendment Date	November 2, 2023.
ADAMS Accession No	ML23200A262.
Amendment No(s)	314 (Unit 1), 314 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the following technical specifications (TSs), as part of a criticality safety analysis for fuel assembly storage in the Surry Power Station, Units 1 and 2, spent fuel pool storage racks and new fuel storage racks; TS 5.3.1.1, Spent Fuel Pool Storage Racks; TS 5.3.1.2, New Fuel Storage Racks; TS 5.3.1.3, Two Region Spent Fuel Pool Layout; and adds new Figure 5.3–1, New Fuel Storage Racks Empty Cells, and Figure 5.3–2, Region 1 Burnup Curve.
Public Comments Received as to Proposed NSHC (Yes/No).	Yes.
Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Surry County, VA	
Docket No(s)	50–280, 50–281.
Amendment Date	November 7, 2023.
ADAMS Accession No	ML23242A229.
Amendment No(s)	315 (Unit 1); 315 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the Surry Emergency Plan to allow the relocation of the Technical Support Center from its current location, adjacent to the Main Control Room, to a building that was used previously as the Local Emergency Operations Facility.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Circumstances or Emergency Situation)

Since publication of the last monthly notice, the Commission has issued the following amendment. The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act

of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR, chapter I, which are set forth in the license amendment.

Because of exigent circumstances or emergency situation associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed NSHC

determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee’s facility of the licensee’s application and of the Commission’s proposed determination of NSHC. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to

respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its NSHC determination. In such case, the license amendment has been issued without opportunity for comment prior to issuance. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for

a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendments involve NSHC. The basis for this determination is contained in the documents related to each action. Accordingly, the amendment has been issued and made effective as indicated. For those amendments that have not been previously noticed in the **Federal Register**, within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the guidance concerning the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2 as discussed in section II.A of this document.

Unless otherwise indicated, the Commission has determined that the amendment satisfies the criteria for

categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to these actions, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession number(s) for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the "Obtaining Information and Submitting Comments" section of this document.

LICENSE AMENDMENT ISSUANCE(S)—EXIGENT/EMERGENCY CIRCUMSTANCES

DTE Electric Company; Fermi, Unit 2; Monroe County, MI

Docket No(s)	50–341.
Amendment Date	October 30, 2023.
ADAMS Accession No	ML23297A051.
Amendment No(s)	226.
Brief Description of Amendment(s)	This exigent amendment revised Technical Specification (TS) 3.8.1, "AC [alternating current] Sources—Operating," to allow for a one-time extension of the Required Action B.4 Completion Time, from 72 hours to 7 days, to perform online repairs of Division I Mechanical Draft Cooling Tower A and C fan pedestals. In addition, the amendment also approved an editorial correction to the one-time footnote on TS 3.7.2, "Emergency Equipment Cooling water (EECW)/Emergency Equipment service Water (EESW) System and Ultimate Heat sink (UHS)." The temporary one-time extension will expire at 11:59 pm on November 19, 2023.
Local Media Notice (Yes/No)	No.
Public Comments Requested as to Proposed NSHC (Yes/No).	No.

V. Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as separate individual notice.

It was published as an individual notice either because time did not allow the Commission to wait for this monthly notice or because the action involved exigent circumstances. It is repeated here because the monthly notice lists all amendments issued or proposed to be issued involving NSHC.

For details, including the applicable notice period, see the individual notice in the **Federal Register** on the day and page cited.

LICENSE AMENDMENT REQUEST(S)—REPEAT OF INDIVIDUAL FEDERAL REGISTER NOTICE

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; Coffey County, KS

Docket No(s)	50–482.
Application Date	October 19, 2023.
ADAMS Accession No	ML23292A359.
Brief Description of Amendment(s)	The proposed amendment would modify the implementation date of License Amendment No. 237 for Wolf Creek Generating Station, Unit 1. Amendment No. 237 allows the use of hard hat mounted portable lights.

LICENSE AMENDMENT REQUEST(S)—REPEAT OF INDIVIDUAL FEDERAL REGISTER NOTICE—Continued

Date & Cite of Federal Register Individual Notice.	October 26, 2023; 88 FR 73628.
Expiration Dates for Public Comments & Hearing Requests.	November 27, 2023 (comments); December 26, 2023 (hearing requests).

Dated: November 16, 2023.

For the Nuclear Regulatory Commission.

Jamie M. Heisserer,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023-25746 Filed 11-27-23; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 99902056; NRC-2023-0186]

Tennessee Valley Authority; Clinch River Nuclear Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 17, 2023, request from Tennessee Valley Authority from certain requirements of NRC regulations pertaining to the submission of a construction permit application.

DATES: The exemption was issued on November 21, 2023.

ADDRESSES: Please refer to Docket ID NRC-2023-0186 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-2023-0186. Address questions about Docket IDs to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to

PDR.Resource@nrc.gov. The NRC's response letter to TVA on the request for exemption from certain requirements of paragraph 2.101(a)(5) of title 10 of the *Code of Federal Regulations* (10 CFR) and NRC's supporting safety evaluation are available in ADAMS under Accession Nos. ML23045A008 and ML23114A098, respectively.

- *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:

Allen Fetter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8556; email: Allen.Fetter@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: November 21, 2023.

Brian W. Smith,

Director, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 99902056

Tennessee Valley Authority Clinch River Nuclear Site, Construction Permit Application Submittal Exemption

I. Background

Tennessee Valley Authority (TVA) is currently the holder of an early site permit (ESP) for the Clinch River Nuclear (CRN) Site in Oak Ridge, Tennessee. ESP-006 was issued to TVA on December 19, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML1919352D341). Prior to the issuance of ESP-006, the NRC prepared a final environmental impact statement (FEIS) to support the agency's licensing decision. Subsequently, TVA completed a programmatic environmental impact statement (PEIS) for the CRN Site Advanced Nuclear Reactor Technology Park (published in the **Federal Register** on July 29, 2022). TVA intends to

submit a construction permit (CP) application for a license to construct a small modular reactor (SMR) at the CRN Site and intends to submit the CP application in two parts, in accordance with the provisions of Title 10 of the *Code of Federal Regulations* 2.101(a)(5). Because of the extent and recency of environmental information gathered for the ESP and the PEIS at the CRN site, TVA anticipates the CP application environmental report (ER) could be available for submittal in advance of the preliminary safety analysis report (PSAR).

II. Request/Action

TVA submitted an exemption request to the NRC via a letter on August 17, 2023, titled "Request for Exemption from Certain Requirements of 10 CFR 2.101(a)(5)," (ML23229A569). Specifically, TVA requested an exemption from the portion of 10 CFR 2.101(a)(5) which states, "[w]hichever part [of the application] is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1), or 52.79(a)(1), as applicable, and § 50.37 of this chapter." TVA specifically requests that the information required by 10 CFR 50.34(a)(1) (*i.e.*, a portion of the PSAR) be deferred to the second part of the submittal. TVA intends to submit the ER required by 10 CFR 50.30(f) as the first part of the CP application, preceding the portion of the PSAR required by 10 CFR 50.34(a)(1), which would be submitted as the second part of the CP application.

III. Discussion

The requirements of both parts of a two-part application are delineated in 10 CFR 2.101(a)(5), which states that "[o]ne part shall be accompanied by the information required by 10 CFR 50.30(f) [ER]," while "[t]he other part shall include information required by 10 CFR 50.34(a) [PSAR] and, if applicable, 10 CFR 50.34a."

In addition to these requirements, 10 CFR 2.101(a)(5) also requires that whichever part is filed first shall contain the following as part of the submittal:

- the filing fee required by 10 CFR 50.30(e) and 10 CFR 170.21;
- the general information required by 10 CFR 50.33;

- the portion of the PSAR required by 10 CFR 50.34(a)(1); and
- the agreement limiting access to Classified Information required by 10 CFR 50.37.

TVA requested an exemption from the requirement to submit the portion of the PSAR required by 10 CFR 50.34(a)(1) with the first part of the application. TVA intends to submit the ER required by 50.30(f) as the first part of the CP application and the PSAR required by 10 CFR 50.34(a) as the second part of the CP application. TVA states there will be no more than six months between submittals.

TVA proposes to submit the following information in the first part of the CP application:

- the filing fee required by 10 CFR 50.33(e) and 10 CFR 170.21;
- the general information required by 10 CFR 50.33;
- the agreement limiting access to Classified Information required by 10 CFR 50.37; and
- the ER required by 10 CFR 50.30(f).

TVA proposes to submit the following information in the second part of the CP application:

- the PSAR required by 10 CFR 50.34(a); and information required by 10 CFR 50.34a(a) and (b).

Because the staff's review of an ER can be done independently from the review of a PSAR, the staff finds that there are no issues associated with the ER coming to NRC up to six months before the PSAR. The ER, however, would need to contain all the necessary safety-related information for the NRC staff to prepare an environmental impact statement (EIS), as required by 10 CFR 51.41 and as described in Regulatory Guide 4.2 and NUREG-1555. The information subsequently provided in the PSAR would also need to be consistent with the information provided in the ER as any discrepancies could potentially impact the staff's environmental review.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present, as defined in 10 CFR 50.12(a)(2).

A. The Exemption Is Authorized by Law

The proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the

Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The submittal of an application and the NRC review of said application and preparation of a final EIS and a final safety evaluation report (FSER) are administrative actions. Therefore, exempting TVA from certain application submission requirements under 10 CFR 2.101(a)(5) does not present an undue risk to public health and safety. A CP allowing for the construction of a nuclear power plant cannot be issued by the Commission until the staff completes their review of the entire CP application and issues the FEIS and final safety evaluation report (FSER), irrespective of whether the CP application is submitted in two parts and regardless of which part of the application is filed first.

C. The Exemption Is Consistent With the Common Defense and Security

The order and timing of submittal of parts of a CP application has no relation to security issues. Therefore, the common defense and security is not affected by this exemption.

D. Special Circumstances

In accordance with 10 CFR 50.12(a)(2), the NRC will not consider granting an exemption to its regulations unless special circumstances are present. As stipulated in 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 2.101(a)(5) is to facilitate the application submittal process for CP applicants and reduce the time required to bring online nuclear power plants which satisfy all safety and environmental requirements (73 FR 20963, 20970; April 17, 2008). TVA has indicated that, without the requested exemption, their CP application development and submittal process could be potentially delayed such that the application of the rule would not serve the underlying purpose of facilitating the application process.

Therefore, because the application of the relevant portions of 10 CFR 2.101(a)(5) is not necessary to achieve the underlying purpose of the rule, the special circumstances requirement in 10 CFR 50.12 for the granting of an exemption from 10 CFR 2.101(a)(5) is met.

E. Environmental Considerations

The NRC has determined that the issuance of the requested exemption meets the provisions of the categorical exclusion in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of Chapter 10 qualifies as a categorical exclusion if: (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involves one of several matters, including scheduling requirements (§ 51.22(c)(25)(iv)(G)). The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the granting of the exemption request involves no significant hazards consideration because the exemption involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. As such, the exemption does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. As such, the exemption is

administrative in nature, does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite, and does not contribute to any significant increase in occupational or public radiation exposure. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

The exemption involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. As such, the exemption does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi), the exemption must be from certain requirements only. Subsection (c)(25)(vi)(G) allows scheduling requirements to be subject to a categorical exclusion. The exemption involves scheduling requirements because it involves administrative filing requirements. The exemption would allow the information required for the first part of the CP application under 10 CFR 2.101(a)(5) to be deferred to the second part of the submittal. Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the granting of this exemption request.

IV. Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the applicant a one-time exemption from the specific requirement of 10 CFR 2.101(a)(5) to file a portion of the PSAR as part of the first submittal in the two-part application submittal process. The decision to issue TVA this exemption does not constitute approval of the CP application TVA intends to submit. The NRC staff will determine if the application is sufficient for docketing and the application would be reviewed using established NRC license review processes and standards. The complete application must meet all applicable regulatory requirements before a CP is issued by NRC.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of November 2023.

For the Nuclear Regulatory Commission.
Brian W. Smith,
Director, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–26138 Filed 11–27–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022–94; MC2024–69 and CP2024–70]

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:* December 1, 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:

Table of Contents

- 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):* CP2022–94; *Filing Title:* USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 19, Filed Under Seal,

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).

Filing Acceptance Date: November 21, 2023; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* December 1, 2023.

2. *Docket No(s):* MC2024–69 and CP2024–70; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 112 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 21, 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:* December 1, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–26205 Filed 11–27–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–66 and CP2024–67; MC2024–67 and CP2024–68; MC2024–68 and CP2024–69]

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 30, 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):* MC2024–66 and CP2024–67; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 109 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 20, 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 30, 2023.

2. *Docket No(s):* MC2024–67 and CP2024–68; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 110 to Competitive

Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 20, 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 30, 2023.

3. *Docket No(s):* MC2024–68 and CP2024–69; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 111 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 20, 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 30, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–26114 Filed 11–27–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99001; File No. 4–698]

Joint Industry Plan; Notice of Withdrawal of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

November 21, 2023.

On August 3, 2023, the Operating Committee for Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”):¹ BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAAX Emerald, LLC, MIAAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE

¹ The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016). Unless otherwise defined herein, capitalized terms used herein are defined as set forth in the CAT NMS Plan.

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).

Chicago, Inc. and NYSE National, Inc. (collectively, the “Participants”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”),² and Rule 608 of Regulation NMS thereunder,³ a proposed amendment to the CAT NMS Plan to modify the current linkage timeline for the consolidated audit trail to a different linkage timeline.⁴ The proposed plan amendment (the “Proposed Amendment”) was published for comment in the **Federal Register** on August 24, 2023.⁵

The Commission is publishing this notice to reflect that on November 9, 2023, prior to the end of the 90-day period provided for in Rule 608(b)(2)(i) of Regulation NMS,⁶ the Participants withdrew the Proposed Amendment.⁷

By the Commission.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023–26125 Filed 11–27–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99012; File No. SR–CboeEDGA–2023–020]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 22, 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 November 10, 2023, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the “Exchange”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (“EDGA Equities”) by modifying its Add/Remove Volume Tiers. The Exchange proposes to implement these changes effective November 1, 2023.³

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly

available information,⁴ no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Taker-Maker” model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that remove liquidity and assesses a fee of \$0.0030 per share for orders that add liquidity.⁵ For orders in securities priced below \$1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity.⁶ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Add/Remove Volume Tiers

Under footnote 7 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers three Add Volume Tiers that each assess a reduced fee for Members’ qualifying orders yielding fee codes 3,⁷ 4,⁸ B,⁹ V,¹⁰ and Y,¹¹ where a Member reaches certain add volume-based criteria. The Exchange is proposing to introduce a new Add Volume Tier 4. The proposed criteria is as follows:

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 27, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

⁵ See EDGA Equities Fee Schedule, Standard Rates.

⁶ *Id.*

⁷ Fee code 3 is appended to orders that add liquidity to EDGA in Tape A or Tape C securities during the pre and post market.

⁸ Fee code 4 is appended to orders that add liquidity to EDGA in Tape B securities during the pre and post market.

⁹ Fee code B is appended to orders that add liquidity to EDGA in Tape B securities.

¹⁰ Fee code V is appended to orders that add liquidity to EDGA in Tape A securities.

¹¹ Fee code Y is appended to orders that add liquidity to EDGA in Tape C securities.

² 15 U.S.C. 78k–1(a)(3).

³ 17 CFR 242.608.

⁴ See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Aug. 3, 2023).

⁵ See Exchange Act Release No. 98165 (Aug. 18, 2023), 88 FR 58012 (Aug. 24, 2023). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-c.htm>.

⁶ See 17 CFR 242.608(b)(2)(i).

⁷ See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Nov. 9, 2023).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b–4.

³ The Exchange initially filed the proposed fee change on November 1, 2023 (SR–CboeEDGA–2023–019). On November 10, 2023, the Exchange withdrew that filing and submitted this proposal.

- Proposed Tier 4 assesses a reduced fee of \$0.0014 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes 3, 4, B, V, or Y) where a Member adds or removes an ADV ¹² $\geq 0.90\%$ of the TCV.¹³

The Exchange believes that proposed Add Volume Tier 4 will incentivize Members to add volume to and remove volume from the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. The Exchange further believes the proposed reduced fee associated with proposed Add Volume Tier 4 provides a fee commensurate with the difficulty of meeting the criteria associated with the tier.

In addition to the Add Volume Tiers offered under footnote 7, the Exchange also offers three Remove Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes N,¹⁴ W,¹⁵ 6¹⁶ and BB,¹⁷ where a Member reaches certain remove volume-based criteria. Currently Members who satisfy the criteria of Remove Volume Tier 2 receive an enhanced rebate of \$0.0022 per share for securities priced at or above \$1.00. The Exchange now proposed to revise the enhanced rebate associated with Remove Volume Tier 2. As proposed, Members who satisfy the criteria of Remove Volume Tier 2 will receive an enhanced rebate of \$0.0020 per share for securities priced at or above \$1.00. The purpose of reducing the enhanced rebate associated with Remove Volume Tier 2 is for business and competitive reasons, as the Exchange believes that reducing such rebate as proposed would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the modest decrease in the enhanced rebate

associated with Remove Volume Tier 2, the enhanced rebate remains competitive and continues to be in-line with the enhanced rebate provided under Remove Volume Tier 1 and Remove Volume Tier 3 (discussed *infra*).

Additionally, the Exchange proposes to amend Remove Volume Tier 3. Currently, the criteria for Remove Volume Tier 3 is as follows:

- Remove Volume Tier 3 provides an enhanced rebate of \$0.0024 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes N, W, 6, or BB) where (1) Member adds or removes a Step-Up ADV from May 2021 $\geq 0.05\%$ of the TCV or Member adds or removes a Step-Up ADV from May 2021 $\geq 3,000,000$ shares; and (2) Member adds an ADV $\geq 0.05\%$ or Member adds an ADV $\geq 3,000,000$ shares.

The proposed criteria for Remove Volume Tier 3 is as follows:

- Proposed Remove Volume Tier 3 provides an enhanced rebate of \$0.0022 per share for securities priced at or above \$1.00 to qualifying orders (*i.e.*, orders yielding fee codes N, W, 6, or BB) where a Member adds or removes an ADV $\geq 0.25\%$ of the TCV.

The proposed criteria is less stringent than the current criteria as the proposed criteria does not have a Step-Up ADV component. The Exchange believes that proposed Remove Volume Tier 3 will incentivize Members to add volume to and remove volume from the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. While the proposed rebate under Remove Volume Tier 3 is less than the current rebate provided under such tier, the Exchange believes the proposed enhanced rebate associated with proposed Remove Volume Tier 3 provides a rebate commensurate with the difficulty of meeting the criteria associated with the tier and is in-line with the enhanced rebates provided under Remove Volume Tiers 1 and 2.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.¹⁸ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁹ requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)²⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as section 6(b)(4)²¹ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to introduce Add Volume Tier 4, reduce the rebate provided under Remove Volume Tier 2, and modify Remove Volume Tier 3 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,²² including the Exchange,²³ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

²⁰ *Id.*

²¹ 15 U.S.C. 78f(b)(4).

²² See e.g., BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²³ See e.g., EDGA Equities Fee Schedule, Fee Codes 3 and 6.

¹² "ADV" means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

¹³ "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹⁴ Fee code N is appended to orders that remove liquidity from EDGA in Tape C securities.

¹⁵ Fee code W is appended to orders that remove liquidity from EDGA in Tape A securities.

¹⁶ Fee code 6 is appended to orders that remove liquidity from EDGA in all tapes in the pre and post market.

¹⁷ Fee code BB is appended to orders that remove liquidity from EDGA in Tape B securities.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

In particular, the Exchange believes its proposal to introduce Add Volume Tier 4 and modify Remove Volume Tiers 2 and 3 is reasonable because the tiers will be available to all Members and provide all Members with an additional opportunity to receive a reduced fee or an enhanced rebate. The Exchange further believes that despite any proposed reduced rebates, the proposed Add Volume Tier 4 and modified Remove Volume Tiers 2 and 3 will provide a reasonable means to encourage adding and/or removing displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide volume to the Exchange by offering them an additional opportunity to receive a reduced fee or an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

In addition, the Exchange believes that its proposal to lower the enhanced rebate paid to Members that satisfy the criteria of Remove Volume Tier 2 is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-removing orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed lower enhanced rebate (\$0.0020 per share) is reasonable and appropriate because it represents only a modest decrease from the current enhanced rebate (\$0.0022 per share) and remains competitive with the reduced fees offered under Remove Volume Tier 1 and proposed Remove Volume Tier 3. The Exchange further believes that the proposed decrease to the enhanced rebate associated with Remove Volume Tier 2 is not unfairly discriminatory because it applies to all Members equally, in that all Members will receive the reduced fee upon satisfying the criteria of Remove Volume Tier 2.

Similarly, the Exchange believes its proposal to lower the enhanced rebate to Members that satisfy the criteria of Remove Volume Tier 3 is reasonable, equitable, and consistent with the Act because such is commensurate with the new proposed criteria. As noted above, the proposed criteria under Remove Volume Tier 3 is less stringent than the

existing criteria as there is no Step-Up ADV component. The Exchange further believes that the proposed decrease to the enhanced rebate associated with Remove Volume Tier 3 is not unfairly discriminatory because it applies to all Members equally, in that all Members will receive the reduced fee upon satisfying the criteria of Remove Volume Tier 3.

The Exchange believes the proposed Add Volume Tier 4 and the proposed modified Remove Volume Tier 3 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the new and revised tiers and have the opportunity to meet the tiers' criteria and receive the corresponding reduced fee or enhanced rebate if such criteria are met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed rule changes would definitely result in any Members qualifying for the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 4, and at least five Members will be able to satisfy proposed Remove Volume Tier 3. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate or reduced fee.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering

competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed introduction of Add Volume Tier 4 and the proposed changes to Remove Volume Tiers 2 and 3 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers' criteria and will receive the reduced fee or enhanced rebate on their qualifying orders if such criteria are met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition. Despite any proposed reduced rebate, the Exchange's fee structure is intended to increase the competitiveness of EDGA by adopting a new pricing incentive and amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.²⁴ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference

²⁴ *Supra* note 3 [sic].

for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.’ . . .”.²⁶ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act²⁷ and paragraph (f) of Rule 19b-4²⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2023-020 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-CboeEDGA-2023-020. 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-CboeEDGA-2023-020 and should be submitted on or before December 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023-26189 Filed 11-27-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35055; 812-15514]

IndexIQ Active ETF Trust and IndexIQ Advisors LLC

November 21, 2023.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).
ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6-07(2)(a), (b), and (c) of Regulation S-X (“Disclosure Requirements”).

Summary of Application: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

Applicants: IndexIQ Active ETF Trust and IndexIQ Advisors LLC.

Filing Dates: The application was filed on October 12, 2023.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 18, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f).

²⁹ 17 CFR 200.30-3(a)(12).

state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission:

Secretaries-Office@sec.gov. Applicants: Matthew V. Curtin, Esq., *IndexIQ* Advisors, *mcurtin@indexiq.com* and Barry I. Pershkov, Chapman and Cutler LLP, *pershkov@chapman.com*.

FOR FURTHER INFORMATION CONTACT:

Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 12, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-26118 Filed 11-27-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99009; File No. SR-BOX-2023-26]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BOX Rule 5050 (Series of Options Contracts Open for Trading)

November 21, 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 November 15, 2023, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared

by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule amend BOX Rule 5050 (Series of Options Contracts Open for Trading). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <https://rules.boxexchange.com/rulefilings>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 5050 (Series of Options Contracts Open for Trading) to adopt IM-5050-12 to implement a new strike interval program for stocks that are priced less than \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange also proposes to amend the table in IM-5050-11 to harmonize the table to the proposed change. This is a competitive filing that is based on a proposal recently submitted by Miami International Securities Exchange, LLC ("MIAX") approved by the Commission.³

Background

Currently, BOX Rule 5050, Series of Options Contracts Open for Trading, describes the process and procedures for listing and trading series of options⁴ on

the Exchange. IM-5050-3 provides for a \$2.50 Strike Price Program, where the Exchange may select up to 60 option classes⁵ on individual stocks for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25.00 but less than \$50.00.⁶ IM-5050-2 also provides for a \$1 Strike Price Interval Program, where the interval between strike prices of series of options⁷ on individual stocks may be \$1.00 or greater provided the strike price is \$50.00 or less, but not less than \$1.00.⁸ Additionally, Rule 5050 provides for a \$0.50 Strike Program.⁹ The interval of strike prices of series of options on individual stocks may be \$0.50 or greater beginning at \$0.50 where the strike price is \$5.50 or less, but only for options classes whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The listing of \$0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the "\$0.50 Strike Program") as specifically designated by the Exchange. The Exchange may list \$0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$0.50 Strike Program under their respective rules. A stock shall remain in the \$0.50 Strike Program until otherwise designated by the Exchange.¹⁰

Proposal

At this time, the Exchange proposes to adopt a new strike interval program for stocks that are not in the aforementioned \$0.50 Strike Program (or the Short Term Option Series Program)¹¹ and that close below \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The \$0.50 Strike Program considers stocks that have a closing price at or below \$5.00 whereas the Exchange's proposal will consider

Corporation pursuant to the Rules of the Clearing Corporation. See BOX Rule 100(a)(38).

⁵ The terms "class of options" means all options contracts of the same type and style covering the same underlying security. See BOX Rule 100(a)(11).

⁶ See IM-5050-3.

⁷ The term "series of options" means all options contracts of the same class of options having the same exercise price and expiration date. See BOX Rule 100(a)(63).

⁸ See IM-5050-2.

⁹ See IM-5050-5.

¹⁰ *Id.*

¹¹ See IM-5050-6.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98917 (November 13, 2023) (Order Approving SR-MIAX-2023-36).

⁴ The term "option contract" means a put or a call issued, or subject to issuance by the Clearing

stocks that have a closing price below \$2.50. Currently, there is a subset of stocks that are not included in the \$0.50 Strike Program as a result of the limitations of that program which provides that the listing of \$0.50 strike prices shall be limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by the OCC during the preceding three calendar months.¹² Therefore, the Exchange is proposing to implement a new strike interval program termed the “Low Priced Stock Strike Price Interval Program.”

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (i) close below \$2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list \$0.50 strike price intervals from \$0.50 up to \$2.00.¹³ For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the “price of the underlying stock” shall be measured in the same way as “the price of the underlying security” as set forth in Rule 5050(b)(1).¹⁴ Further, no additional series in \$0.50 intervals may be listed if the underlying stock closes at or above \$2.50 in its primary market. Additional series in \$0.50 intervals may not be added until the underlying stock again closes below \$2.50.

The Exchange’s proposal addresses a gap in strike coverage for low priced stocks. The \$0.50 Strike Program considers stocks that close below \$5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the

Exchange’s proposal has a narrower focus, with respect to the underlying’s stock price, and is targeted on those stocks that close below \$2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that its average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depositary Receipts, and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.¹⁵ Rule 5020(f) provides the criteria for listing options on American Depositary Receipts (“ADRs”) if they meet certain criteria and guidelines set forth in Exchange Rule 5020. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares.¹⁶ Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b-4(e) of the Securities Exchange Act of 1934 provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period.¹⁷

Additionally, the Exchange proposes to amend the table in IM-5050-11 to insert a new column to harmonize the Exchange’s proposal to the strike intervals for Short Term Options Series as described in IM-5050-12. The table in IM-5050-11 is intended to limit the intervals between strikes for multiply listed equity options within the Short

Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.¹⁸ However, the lowest share price column is titled “less than \$25.” The Exchange now proposes to insert a column titled “less than \$2.50” and to set the strike interval at \$0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled “less than \$25,” to “\$2.50 to less than \$25” as a result of the adoption of the new proposed column, “less than \$2.50.” The Exchange believes this change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange’s proposal.

Impact of Proposal

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort undertaken by the industry to curb strike proliferation. This initiative has been spearheaded by the Nasdaq BX who filed an initial proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the “Strike Interval Proposal”).¹⁹ The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-

¹⁸ See Securities Exchange Release Act No. 91125 (February 21, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

¹⁹ See Securities Exchange Act No. 91225 (February 12, 2021), 86 FR 10375 (February 12, 2021) (SR-BX-2020-032) (BX Strike Approval Order); See also BX Options Strike Proliferation Proposal (February 25, 2021) available at: <https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal>.

¹² See IM-5050-5.

¹³ While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

¹⁴ The Exchange notes this is the same methodology used in the \$1 Strike Price Interval Program. See IM-5050-2(b)(3).

¹⁵ See Exchange Rule 5020(b)(2).

¹⁶ See Exchange Rule 5020(f)(3)(ii).

¹⁷ See Exchange Rule 6020(b)(7).

one days from the listing date.²⁰ The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there wasn't. At the time of its proposal Nasdaq BX estimated that the Strike Interval Proposal would reduce the number of strikes it listed by 81,000.²¹ The Exchange proposes to amend the table to define the strike interval at \$0.50 for underlying stocks with a share price of less than \$2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand²² which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, the Exchange determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols 36 are currently in the \$1 Strike Price Interval Program with \$1.00 and \$2.00 strikes listed. Under the Exchange's proposal the Exchange would add the \$0.50 and \$1.50 strikes for these symbols for the current expiration terms. The remaining 70 symbols eligible under the Exchange's proposal would have \$0.50, \$1.00, \$1.50 and \$2.00 strikes added to their current expiration terms. Therefore, for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program a total of approximately 3,250 options would be added. As of August 9, 2023, the Exchange listed 1,106,550 options, therefore the additional options that would be listed under this proposal would represent a very minor increase of 0.294% in the number of options listed on the Exchange.

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than \$2.50 and that also meet the average daily trading volume

requirement. Additionally, because the strike increment is \$0.50 there are only a total of four strikes that may be listed under the program (\$0.50, \$1.00, \$1.50, and \$2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (e.g., the \$0.50 Strike Program or the \$1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority ("OPRA"), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Participants²³ will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

Implementation

The Exchange will issue a notice to Participants via Regulatory Notice with appropriate advanced notice announcing the implementation date of the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,²⁴ in general, and Section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and

perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under \$2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at \$0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.²⁶ Currently the lowest strike listed is for \$2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at \$0.92 on August 9, 2023, and had open interest of over 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.²⁷ Similarly, the lowest strike listed is for \$2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in \$0.50 increments from \$0.50 up to \$2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to the efforts undertaken by the industry to curb strike proliferation as that effort focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below \$2.50 to be

²⁰ See Securities Exchange Act No. 91225 (February 12, 2021), 86 FR 10375 (February 12, 2021) (SR-BX-2020-032).

²¹ See *id.*

²² See proposed IM-5050-12 which requires that an underlying stock have an average daily trading volume of 1,000,000 shares for the three (3) preceding months to be eligible for inclusion in the Low Priced Stock Strike Price Interval Program.

²³ The term "Participant" means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an "Options Participant". See Exchange Rule 100.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Yahoo! Finance, <https://finance.yahoo.com/quote/SOND/history?p=SOND> (last visited August 10, 2023).

²⁷ See Yahoo! Finance, <https://finance.yahoo.com/quote/CTXR/history?p=CTXR> (last visited August 10, 2023).

eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is \$0.50, there are only a maximum of four strikes that may be added (\$0.50, \$1.00, \$1.50, and \$2.00). Therefore, the Exchange does not believe that its proposal will undermine the industry's efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that its average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that its average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,²⁸ ADRs,²⁹ and broad-based indexes.³⁰

The Exchange believes that the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its Participants will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well and improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by

giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in Exchange Rule 5020, Criteria for Underlying Securities. Specifically, Rule 5020 requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be registered and be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.³¹ Additionally, Rule 5020 provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Exchange Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.³² The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance to the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Exchange Rule 5020 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed Average Daily Volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange

notes that the rule change is being proposed as a competitive response to a filing submitted by MIAX that was recently approved by the Commission.³³

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Participants of the Exchange and all Participants may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below \$2.50, which will allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote inter-market competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act³⁴ and Rule 19b-4(f)(6)³⁵ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.³⁶

³³ See *supra* note 3.

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ 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

²⁸ See *supra* note 15.

²⁹ See *supra* note 16.

³⁰ See *supra* note 17.

³¹ See Exchange Rule 5020(a)(1) and (2).

³² See Exchange Rule 5020(b)(1),(2),(3) and (4).

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁷ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved a proposed rule change substantially identical to the one proposed by the Exchange.³⁸ The proposed change raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³⁹

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-BOX-2023-26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁷ 17 CFR 240.19b-4(f)(6)(iii).

³⁸ See *supra* note 3.

³⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-BOX-2023-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BOX-2023-26 and should be submitted on or before December 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Christina Z. Milnor,
Assistant Secretary.

[FR Doc. 2023-26113 Filed 11-27-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35056; 812-15506]

Meketa Infrastructure Fund and Meketa Capital, LLC

November 21, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of

1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose early withdrawal charges and asset-based distribution and/or service fees.

APPLICANTS: Meketa Infrastructure Fund and Meketa Capital, LLC.

FILING DATES: The application was filed on September 14, 2023, and amended on October 17, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 18, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Chelsea Childs, Esq., Ropes & Gray LLP, Chelsea.Childs@ropesgray.com.

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 17, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/>

⁴⁰ 17 CFR 200.30-3(a)(12), (59).

[legacy/companysearch.html](#). You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-26117 Filed 11-27-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99007; File No. SR-BOX-2023-28]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish IM-7600-8

November 21, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 17, 2023, BOX Exchange LLC ("BOX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 establish IM-7600-8. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <https://rules.boxexchange.com/rulefilings>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish IM-7600-8. Proposed IM-7600-8 codifies current functionality and proposes an additional enhancement. Specifically, the Exchange is proposing to codify current functionality that, upon order entry, the system reduces a Complex QOO Order or multi-leg QOO Order to its simplest form, which also requires a corresponding quantity increase and a price decrease (for example the system will reduce 6A+3B, 1 time to 2A+B, 3 times for $\frac{1}{3}$ of the price).⁵ Additionally, the Exchange is proposing that, if reducing the order to its simplest form results in a net price for the order that exceeds three decimal places, the system will round the net price of the Complex QOO Order or multi-leg QOO Order to the third decimal place with the advantage to the initiating side. For purposes of executing and determining the priority of the component legs of Complex QOO or multi-leg QOO Orders, the system will calculate the quantities and prices of the component legs in one cent (\$0.01) increments necessary to achieve the net price of the order. The component legs of a Complex QOO Order or multi-leg QOO Order will execute in one cent (\$0.01) increments and the priority of each component leg will be determined based on its execution price. A Complex QOO Order or multi-leg QOO Order that is reduced to its simplest form will be executed pursuant to the provisions in Rule 7600 (Qualified Open Outcry Orders—Floor Crossing), including Rule 7600(c) (Submission of QOO Orders).

Background

Today, BOX Participants may submit a Complex QOO Order or multi-leg QOO Order with leg ratios that have not been reduced by the highest common denominator for the component legs of the order. Upon receipt of such a Complex QOO Order or multi-leg QOO Order, the system will reduce the order to its simplest form by dividing the leg quantities by their highest common

denominator.⁶ The system makes a corresponding reduction to the price of the strategy and a corresponding increase to the quantity of the strategy so that the net price of the order before and after the reduction by the highest common denominator is economically equivalent.⁷ The order is then accepted into the system and processed according to Exchange rules. The Exchange reduces such strategy orders to their simplest form to avoid populating the Complex Order Book⁸ with multiple versions of economically equivalent strategies which may cause confusion and result in unnecessary demands on system resources. Currently, when this process of reducing an order to its simplest form results in a net price with more than three decimal places (*i.e.*, 1.666...) ("non-conforming strategy price"), the system rejects the Complex QOO Order or multi-leg QOO Order back to the submitting Participant.⁹

Proposal

The Exchange now proposes a system enhancement to accept a Complex QOO Order or multi-leg QOO Order with a non-conforming strategy price. Under this proposal, when reducing the leg ratios of the Complex QOO Order or multi-leg QOO Order, the system will now round a non-conforming strategy price to a net price with three decimals to the advantage of the initiating side instead of rejecting such orders. The order can then be accepted and processed pursuant to Exchange rules. The Exchange notes that the current priority rules for Complex QOO Orders and multi-leg QOO Orders will continue to apply. As discussed above, if the

⁶ For example, a Complex QOO Order is submitted as 6A+3B. The system will reduce the strategy to its simplest form by dividing each leg by their highest common denominator (*i.e.*, 3), resulting in 2A+B (6A/3 + 3B/3). This operation is performed so that the system is not replete with multiple versions of economically equivalent strategies which would populate the Complex Order Book and may cause confusion and result in unnecessary demands on system resources.

⁷ For example, if the above Complex Order of 6A+3B was submitted with a price of 3.30 for the strategy, in addition to dividing each leg by 3, the system will divide the price by the same value, resulting in a price of 1.10 (3.30/3) for the reduced strategy of 2A+B. Additionally, the system would multiply the quantity of the strategy by 3 so that the net result is a strategy for 2A+B for 1.10, 3 times. In summary, the strategy 6A+3B, 1 time for 3.30 is economically equivalent to 2A+B, 3 times for 1.10.

⁸ The term "Complex Order Book" means the electronic book of Complex Orders maintained by the BOX Trading Host. See BOX Rule 7240(a)(8).

⁹ The Exchange notes that currently when reducing strategy orders to their simplest form results in a net price with three or fewer decimal places, the Complex QOO Order or multi-leg QOO Order is executed pursuant to the provisions in Rule 7600.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The strategy 6A+3B, 1 time for X price is equal to the strategy 2A+B, 3 times for X/3 of the price. See also *infra* note 5.

process of reducing a strategy order to its simplest form results in the net price of the order that exceeds three decimal places the system will round the net price of the Complex QOO Order or multi-leg QOO Order to the third decimal place with advantage to the initiating side. For purposes of executing and determining the priority of the component legs of Complex QOO or multi-leg QOO Orders, the system will calculate the quantities and prices of the component legs in one cent (\$0.01) increments necessary to achieve the net price of the order. The component legs of a Complex QOO Order or multi-leg QOO Order will execute in one cent (\$0.01) increments and the priority of each component leg will be determined based on its execution price. A Complex QOO Order or multi-leg QOO Order that is reduced to its simplest form will be executed pursuant to the provisions in Rule 7600 (Qualified Open Outcry Orders—Floor Crossing), including Rule 7600(c) (Submission of QOO Orders).

The priority rules for Complex QOO and multi-leg QOO Orders will apply to Complex QOO and multi-leg QOO Orders with prices rounded pursuant to proposed IM-7600-8. The Exchange notes that order priority rules for Complex QOO Orders include that Complex QOO Orders may not trade through any equal or better priced Public Customer orders on the Complex Order Book and may not trade through any non-Public Customer Complex bids or offers on the Complex Order Book that are ranked ahead of such equal or better priced Public Customer Complex bids or offers, and may not trade through any non-Public Customer bids or offers on the Complex Order Book that are priced better than the proposed execution price. Additionally, the Complex QOO Order may be executed at a price without giving priority to equivalent bids or offers in the individual series legs on the initiating side, provided at least one options leg betters the corresponding bid or offer on the BOX Book by at least one minimum trading increment as set forth in Rule 7240(b)(1).¹⁰

Order priority rules for multi-leg QOO Orders include that each component series of a multi-leg QOO Order may not trade through any equal or better priced Public Customer bids or offers on the BOX Book for that series or any non-Public Customer bids or offers on the BOX Book for that series that are ranked

ahead of or equal to better priced Public Customer bids or offers, and may not trade through any non-Public Customer bids or offers for that series on the BOX Book that are priced better than the proposed execution price. Specifically, the initiating side component legs of a multi-leg QOO Order must execute against the BOX Book as provided by Rules 7600(d) and (h) before executing against the contra-side multi-leg QOO Order.¹¹

The following examples illustrate these concepts:

Example of the Proposed Rounding and Execution of a Complex QOO Order With a Non-Conforming Price

A Complex QOO Order is submitted to transact the strategy of $6A+3B$ for 12.50, 51 times, where the initiating side is buying (quoted in terms of the price of buying $6A+3B$ one time). The system will then reduce the order $6A+3B$ to its simplest form, dividing by its highest common denominator of 3, resulting in an order of $2A+B$ for a net price of 4.166... ($12.50/3 = 4.166...$) and a corresponding increase of the quantity to 153 ($51 * 3$). The strategy $2A+B$ for 4.166..., 153 times, is the equivalent of $6A+3B$ for 12.50, 51 times ($6A/3+3B/3 = 2A+B$). Under this proposal, the system will round 4.166... in favor of the initiating side, resulting in an order of $2A+B$ at a net price of 4.166, 153 times. Although the net price of the order is sub-penny, the component legs must execute in one cent (\$0.01) increments. Accordingly, to execute at a net price of 4.166, the order will be executed at split prices of $2A+B$ for 4.16, 62 times and $2A+B$ for 4.17, 91 times.¹² The resulting average execution price per strategy is $4.1659 ((4.16 * 62/153) + (4.17 * 91/153))$.

¹¹ See BOX Rule 7600(c). The Exchange notes that the initiating side of a QOO Order is allocated first against any better priced bids or offers on the BOX Book, provided that an adequate book sweep size was provided by the Floor Broker pursuant to paragraph (h). Next, at the same price as the contra-side of the QOO Order, if any contracts of the initiating side remain, the initiating side of the QOO Order will match against Public Customer Orders on the BOX Book, along with any bids or offers of non-Public Customers ranked ahead of such Public Customer Orders on the BOX Book, provided that an adequate book sweep size was provided by the Floor Broker pursuant to paragraph (h). Multiple bids or offers at the same price are matched based on time priority. See BOX Rules 7600(d)(1) and (2).

¹² The Exchange notes that BOX currently utilizes rounding for the execution of split price transactions on the BOX Trading Floor when the quantity at each price level is not a natural number. Here, the current split pricing algorithm rounds the quantity of $2A+B$ for 4.16 to 62 times and $2A+B$ for 4.17 to 91 times because the calculation used to split $2A+B$ for 4.166, 153 times, results in a quantity of 61.2 for 4.16 and 91.8 for 4.17. Rounding 61.2 to 62 and 91.8 to 91, in this case, is to the advantage of the initiating side pursuant to BOX IM-7600-7.

= 4.1659) with the advantage to the initiating side of the order.¹³

Example of Complex QOO Order With Resting Public Customer Complex Order

The above Complex QOO Order ($6A+3B$ for 12.50, 51 times, reduced and rounded to $2A+B$ for 4.166, 153 times) would execute a quantity of 62 for 4.16 and a quantity of 91 for 4.17.¹⁴ However, assuming there is a Public Customer Complex Order offered at 4.16 on the Complex Order Book, the above Complex QOO Order for $2A+B$ will be rejected¹⁵ because the Public Customer Complex Order at 4.16 on the Complex Order Book has priority over the Complex QOO Order.

Example of Multi-Leg QOO Order With Ratio Reduction and No Price Rounding

A multi-leg QOO Order to buy $12A+3B$ for 12.498, 51 times, will first be reduced to its simplest form of $4A+B$ ($12A/3+3B/3$) for 4.166 ($12.498/3$) and a quantity of 153 ($51*3$) by the system. In order to accomplish this execution, the system would create an order to buy $4A+B$ for 4.16, 62 times, and an order to buy $4A+B$ for 4.17, 91 times.¹⁶ Further, assume that the BOX Book for leg A is 0.50 bid and 0.52 offered and for leg B is 2.00 bid and 2.10 offered. The execution for 4.16 would be broken down into leg A for 0.52 and leg B for 2.08 ($4*0.52+2.08=4.16$). If there were a Public Customer order on the BOX Book at either 0.52 for leg A or 2.08 for leg

¹³ Today, when a Floor Broker submits a QOO Order to the system in sub-minimum increments, the system will split the QOO Order into two transactions. The transactions are separated by one tick that, when combined, will yield a net price equal to the original price entered by the Floor Broker. See Securities Exchange Act Release No. 82891 (March 16, 2018), 83 FR 12627 (March 22, 2018) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 7600(i) To Allow Split-Price Transactions on the BOX Trading Floor). See also Securities Exchange Act Release No. 87613 (November 25, 2019), 84 FR 66049 (December 2, 2019) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 7600).

¹⁴ See *supra* note 10. [sic]

¹⁵ The Exchange notes that a Floor Broker may, but is not required to, provide a book sweep size. The book sweep size is the number of contracts, if any, of the initiating side of the QOO Order that the Floor Broker is willing to relinquish to orders and quotes on the Complex Order Book and the BOX Book that have priority pursuant to Rule 7240(b)(2) and (3) as well as Rule 7600(c). If the number of contracts on the Complex Order Book or the BOX Book that have priority over the contra-side order is greater than the book sweep size, then the QOO Order will be rejected. If the number of contracts on the Complex Order Book or BOX Book that have priority over the contra-side order is less than or equal to the book sweep size, then the QOO Order will execute. See BOX Rule 7600(h).

¹⁶ See *supra* note 10. [sic]

¹⁰ See BOX Rule 7600(c). The term "BOX Book" means the electronic book of orders on each single option series maintained by the BOX Trading Host. See BOX Rule 100(a)(10).

B, the multi-leg QOO Order would be rejected because the Public Customer Order at either 0.52 for leg A or 2.08 for leg B on the BOX Book has priority over the leg of the multi-leg QOO Order.¹⁷

Example of the Proposed Rounding and Execution of a Multi-Leg QOO Order With a Non-Conforming Price

A multi-leg QOO Order is submitted to transact the strategy of 12A+3B for 12.50, 51 times, where the initiating side is buying (quoted in terms of the price of buying 12A+3B one time). The system will then reduce the order 12A+3B to its simplest form, dividing by its highest common denominator of 3, resulting in an order of 4A+B for a net price of 4.166... (12.50/3 = 4.166...) and a corresponding increase of the quantity to 153 (51*3). The strategy 4A+B for 4.166..., 153 times, is the equivalent of 12A+3B for 12.50, 51 times (12A/3+3B/3 = 4A+B). Under this proposal, the system will round 4.166... in favor of the initiating side, resulting in an order of 4A+B at a net price of 4.166, 153 times. Next, because the net price is sub-penny, the order will be executed at split prices of 4A+B for 4.16, 62 times and 4A+B for 4.17, 91 times.¹⁸ The resulting average execution price per strategy is 4.1659 ((4.16 * 62/153) + (4.17 * 91/153) = 4.1659) with the advantage to the initiating side of the order.¹⁹

The Exchange notes that a similar concept exists at another exchange today.²⁰ Specifically, Phlx Options 8, Section 22(a)(2)(E)(i) states that “rounding of prices may be used only where necessary to execute the trade at the MPV, and only to the benefit of a Public Customer order or, where multiple Public Customer orders are involved, for the Public Customer order that is earliest in time. If no Public Customer order is involved, rounding of prices is available to the non-Public Customer order that is earliest in time.” The Exchange notes that its proposal differs from Phlx’s rule in that the net prices for Complex QOO Orders or multi-leg QOO Orders will be rounded to the advantage of the initiating side,

which is in line with how rounding happens on BOX today. Specifically, BOX currently utilizes rounding for the execution of split price transactions on the BOX Trading Floor when the quantity at each price level is not a natural number. In its filing where BOX established split price transactions, the Exchange provided the following example which shows how rounding occurs in certain situations where the allocation between two increment prices results in a fractional amount of contracts.²¹ The example is as follows:

A Split-Price QOO Order for 301 contracts at \$1.025 is received by the system where the initiating side is to sell. In order to achieve a net price of \$1.025, 150.5 contracts would need to be executed at \$1.00 and 150.5 would need to be executed at \$1.05. However, executions must occur in whole natural numbers. Therefore, the system will instead round to the advantage of the initiating side. Specifically, the system will split the order into 151 contracts at \$1.05 and 150 at \$1.00. The average execution price is \$1.0251 which is a better price for the initiating side (*i.e.*, selling 301 contracts for an average price of \$1.0251 instead of \$1.025). Two trades would be reported to the tape; a purchase of 151 contracts at \$1.05 and a purchase of 150 contracts at \$1.00.

The Exchange notes that, although Complex QOO Order and multi-leg QOO Order net prices are allowed to be submitted in sub-minimum increment prices, the order, including the legs, may only be executed in the minimum increment, which is one cent (\$0.01).²² Net order prices are allowed in sub-minimum increments²³ because net execution prices can be achieved via split prices where transactions separated by one tick are combined to yield a net price equal to or very nearly equal to the order price, with any advantage going to the initiating side.²⁴

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the

Act,²⁵ in general, and Section 6(b)(5) of the Act,²⁶ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that codifying current functionality that, upon order entry, the system reduces a Complex QOO Order or multi-leg QOO Order to its simplest form removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest by providing clarity and transparency in the handling of certain strategy orders. Additionally, if the process of reducing a strategy order to its simplest form results in the net price of the order that exceeds three decimal places the Exchange proposes to round the net price of the Complex QOO Order or multi-leg QOO Order to the third decimal place with advantage to the initiating side. For purposes of executing and determining the priority of the component legs of Complex QOO or multi-leg QOO Orders, the system will calculate the quantities and prices in one cent (\$0.01) increments of the component legs necessary to achieve the net price of the order. The component legs of a Complex QOO Order or multi-leg QOO Order will execute in one cent (\$0.01) increments and the priority of each component leg will be determined based on its execution price. A Complex QOO Order or multi-leg QOO Order that is reduced to its simplest form will be executed pursuant to the provisions in Rule 7600 (Qualified Open Outcry Orders—Floor Crossing), including Rule 7600(c) (Submission of QOO Orders).

The Exchange believes that allowing investors to enter Complex QOO Orders and multi-leg QOO Orders without first reducing such orders to their simplest form allows investors the flexibility to express and enter orders according to their preferences. In order to better accommodate these investor preferences, the Exchange reduces such strategy orders to their simplest form so that the system is not replete with multiple versions of economically equivalent strategies which would populate the Complex Order Book and may cause confusion and result in unnecessary demands on system resources. Thus, the Exchange believes that accepting and handling such strategy orders as proposed removes

¹⁷ The Exchange notes that each component series of a multi-leg QOO Order may not trade through any equal or better priced Public Customer bids or offers on the BOX Book for that series or any non-Public Customer bids or offers on the BOX Book for that series that are ranked ahead of or equal to better priced Public Customer bids or offers, and may not trade through any non-Public Customer bids or offers for that series on the BOX Book that are priced better than the proposed execution price. See BOX Rule 7600(c). See also *supra* notes 9 and 13.

¹⁸ See *supra* note 10. [sic]

¹⁹ See *supra* note 11. [sic]

²⁰ See Nasdaq PHLX LLC (“Phlx”) Options 8, Section 22(a)(2)(E)(i).

²¹ See Securities Exchange Act Release No. 82315 (December 13, 2017), 83 FR 12627 (March 22, 2018) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 7600(i) To Allow Split-Price Transactions on the BOX Trading Floor).

²² See BOX Rules 7050(b) and 7240(b)(1).

²³ The Exchange notes that the BOX system allows the net order price to be entered up to three places after the decimal.

²⁴ For example, a Floor Broker can execute a split price Complex QOO Order at a price of 2.005 in strategy A+B, 100 times (100 contracts of A and 100 contracts of B). The order would be split into A+B for 2.01, 50 times and A+B for 2.00, 50 times for a net price of 2.005 for the strategy. The following executions would be reported: 50 Leg A at 1.00, 50 Leg A at 1.00, 50 Leg B at 1.00, and 50 Leg B at 1.01.

²⁵ 15 U.S.C. 78f(b).

²⁶ 5 U.S.C. 78f(b)(5).

impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest.

The Exchange believes that the proposed rule is consistent with current rules on BOX. Specifically, as detailed above, BOX rounds to the advantage of the initiating side for split-price transactions.²⁷ The Exchange believes that rounding to the advantage of the initiating side in certain situations results in the fair and equitable pricing of orders among BOX Participants, and provides clarity and transparency in the Exchange's rules so that all BOX Participants will be informed as to the net price the Participant is entitled to receive as a result of rounding. The Exchange believes that rounding to the advantage of the initiating side is reasonable and appropriate, as the initiating side is providing liquidity to the Exchange and thus adding value to the market.

The Exchange notes that order priority rules for Complex QOO Orders include that Complex QOO Orders may not trade through any equal or better priced Public Customer orders on the Complex Order Book and may not trade through any non-Public Customer Complex bids or offers on the Complex Order Book that are ranked ahead of such equal or better priced Public Customer Complex bids or offers, and may not trade through any non-Public Customer bids or offers on the Complex Order Book that are priced better than the proposed execution price. Additionally, the Complex QOO Order may be executed at a price without giving priority to equivalent bids or offers in the individual series legs on the initiating side, provided at least one options leg better than the corresponding bid or offer on the BOX Book by at least one minimum trading increment as set forth in Rule 7240(b)(1).²⁸ Order priority rules for multi-leg QOO Orders include that each component series of a multi-leg QOO Order may not trade through any equal or better priced Public Customer bids or offers on the BOX Book for that series or any non-Public Customer bids or offers on the BOX Book for that series that are ranked ahead of or equal to better priced Public Customer bids or offers, and may not trade through any non-Public Customer bids or offers for that series on the BOX Book that are priced better than the proposed execution price. Specifically, the initiating side component legs of a multi-leg QOO Order must execute

against the Complex Order Book and the BOX Book as provided by Rules 7600(d) and (h) before executing against the contra-side multi-leg QOO Order.²⁹ These priority rules will continue to be applicable, which the Exchange believes removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest.

Lastly, the Exchange notes that the proposed change will result in orders being accepted on BOX that BOX's system currently rejects which, in turn, could result in increased liquidity on BOX to the benefit of all Participants. As such, BOX believes the proposed rule change is in the public interest, and therefore, consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the proposed change is consistent with the rules on BOX³⁰ and will allow BOX to accept orders that it currently rejects, which may result in increased liquidity to the benefit of all Participants. The Exchange also believes that the proposed change will not impose any burden on intramarket competition as the proposed change applies equally to all Floor Participants who wish to execute Complex QOO Orders or multi-leg QOO Orders on the BOX Trading Floor. Further, the Exchange believes that the proposed change will not impose any burden on intermarket competition as a similar concept currently exists on another exchange and other exchanges could choose to adopt similar rules.³¹

As such, the Exchange does not believe that the proposed rule change

²⁹ See BOX Rule 7600(c). The Exchange notes that the initiating side of a QOO Order is allocated first against any better priced bids or offers on the BOX Book, provided that an adequate book sweep size was provided by the Floor Broker pursuant to paragraph (h). Next, at the same price as the contra-side of the QOO Order, if any contracts of the initiating side remain, the initiating side of the QOO Order will match against Public Customer Orders on the BOX Book, along with any bids or offers of non-Public Customers ranked ahead of such Public Customer Orders on the BOX Book, provided that an adequate book sweep size was provided by the Floor Broker pursuant to paragraph (h). Multiple bids or offers at the same price are matched based on time priority. See BOX Rules 7600(d)(1) and (2). Further rule 7600(h) provides that a Floor Broker may, but is not required to, provide a book sweep size for Complex QOO Orders and multi-leg QOO orders.

³⁰ See BOX Rule 7600(i) and IM-7600-7. See also *supra* note 11.

³¹ See *supra* note 18.

will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (a) significantly affect the protection of investors or the public interest; (b) impose any significant burden on competition; and (c) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³² and Rule 19b-4(f)(6) thereunder.³³

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the delay will allow the Exchange to immediately begin accepting orders that the Exchange's system currently rejects, which will provide investors with the flexibility to express and enter orders according to their preferences. Additionally, the Exchange states that accepting and executing orders that would otherwise be rejected may increase liquidity on the Exchange, which would benefit all Exchange Participants. The Exchange notes that although orders may be submitted in sub-minimum increments, priority is determined and orders are executed in minimum increments of \$0.01, and the proposal does not change order priority and execution as governed by Exchange Rule 7600, including Exchange Rule 7600(c).

The Commission finds that waiving the 30-day operative delay is consistent

³² 15 U.S.C. 78s(b)(3)(A).

³³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁴ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ See *supra* note 11.

²⁸ See BOX Rule 7600(c).

with the protection of investors and the public interest. As described above, BOX's system reduces complex QOO and multi-leg QOO orders submitted to the Exchange to their simplest form to avoid populating the Exchange's Complex Order Book with multiple versions of economically equivalent strategies. When this process results in a net price for a Complex QOO Order or multi-leg QOO Order that exceeds three decimal places, the Exchange's system currently rejects the Complex QOO Order or multi-leg QOO Order back to the submitting Participant. Under the proposal, the Exchange will round the net price of such an order to the third decimal place with the advantage to the initiating side. This process will allow the Exchange to accept Complex QOO and multi-leg QOO Orders that the Exchange's system currently rejects, which will provide investors with an additional venue for trading these orders. The system will calculate the quantities and prices, in \$0.01 increments, of the component legs necessary to achieve the net price of a Complex QOO Order or multi-leg QOO Order, and the component legs of the orders will execute in \$0.01 increments, with their priority based on their execution prices.³⁵ A Complex QOO Order or multi-leg QOO Order that has been reduced to its simplest form will be executed pursuant to Exchange Rule 7600, including Exchange Rule 7600(c).³⁶ As described above, the process for calculating the quantities and execution prices of the component legs of a Complex QOO Order or multi-leg QOO Order is consistent with the process that the Exchange currently uses for executing split price transactions on the Exchange's trading floor.³⁷ For these reasons, the Commission designates the proposal operative upon filing.³⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BOX-2023-28.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-BOX-2023-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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-BOX-2023-28 and should be submitted on or before December 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Christina Z. Milnor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99008; File No. SR-BX-2023-031]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Options 7, Section 2 Regarding Fees and Rebates

November 21, 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 November 17, 2023, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 2.³

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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

³⁵ See proposed BOX IM-7600-8.

³⁶ See *id.*

³⁷ See *supra* note 21 and accompanying text.

³⁸ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed pricing changes on November 14, 2023 (SR-BX-2023-029). On November 16, 2023, the Exchange withdrew that filing and submitted this filing.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BX's Pricing Schedule at Options 7,

Section 2, BX Options Market-Fees and Rebates. Specifically, BX proposes to (i) amend BX's fees and rebates for execution of contracts at Options 7, Section 2(1) including note 1, and reserve note 2; (ii) amend fees for routing contracts to markets other than the Exchange at Options 7, Section 2(3); (iii) amend fees and rebates for execution of contracts on the Exchange that generate an order exposure alert at

Options 7, Section 2(4); and (iv) amend fees and rebates for BX Price Improvement Auction ("PRISM") at Options 7, Section 2(5). Each change will be described below.

Options 7, Section 2(1)

Today, the Exchange assesses the following Penny Symbols and Non-Penny Symbols Maker Rebates and Taker Fees:

PENNY SYMBOLS

Market participant	Maker rebate	Taker fee
Lead Market Maker	² (0.29)	\$0.50
Market Maker	² (0.25)	0.50
Non-Customer	(0.12)	0.50
Firm	(0.12)	0.50
Customer	(0.30)	¹ 0.46

NON-PENNY SYMBOLS

Market participant	Maker rebate / fee	Taker fee
Lead Market Maker	(0.45)	\$1.10
Market Maker	(0.40)	1.10
Non-Customer	0.45	1.10
Firm	0.45	1.10
Customer	³ (0.90)	0.79

At this time, the Exchange proposes to reduce certain Penny Symbol Maker Rebates and Taker Fees and increase certain Non-Penny Symbol Maker Rebates and Taker Fees. With respect to the Penny Symbols, the Exchange proposes to decrease the Maker Rebates for Lead Market Makers ⁴ from \$0.29 to \$0.24 per contract and decrease the Maker Rebates for Market Makers ⁵ from \$0.25 to \$0.20 per contract. While the Exchange is reducing these Penny Symbol Maker Rebates for Lead Market Makers and Market Makers, the Exchange will continue to offer the rebates to incentivize market participants to direct order flow to BX. Additionally, the Exchange proposes to reduce the Customer ⁶ Penny Symbol

Taker Fee from \$0.46 to \$0.40 per contract. The Exchange believes reducing this Penny Symbol Taker Fee will attract more Customer order flow to BX.⁷

With respect to Non-Penny Symbols, the Exchange proposes to increase the Maker Rebates for Customers from \$0.90 to \$1.10 per contract and increase the Taker Fees for all Non-Customers ⁸ from \$1.10 to \$1.25 per contract. The Exchange believes the increase to the Non-Penny Symbol Customer Maker Rebate will attract more Customer order flow to BX. With respect to the Non-Penny Symbol Taker Fee for Non-Customers, while the Exchange is increasing these fees, the Exchange believes that these fees will continue to draw participants seeking liquidity to BX because BX is increasing its Non-Penny Customer Maker Rebate to enhance its market quality and provide

more trading opportunities, which benefits all market participants.

The Exchange proposes to amend note 1 of Options 7, Section 2(1) which currently reduces the Customer Penny Symbol Taker Fee from \$0.46 to \$0.33 per contract for trades which remove liquidity in SPDR S&P 500 ETF ("SPY"). With the proposed changes to the Customer Penny Symbol Taker Fee noted herein, note 1 of Options 7, Section 2(1) would reduce the Customer Penny Symbol Taker Fee from \$0.40 to \$0.33 per contract for trades which remove liquidity in SPY. Additionally, the Exchange proposes to extend this Customer Penny Symbol discount to transactions that remove liquidity in Invesco QQQ Trust Series 1 ("QQQ") and iShares Russell 2000 ETF ("IWM"). The proposed rule text would provide, "Customer Taker Fee will be \$0.33 per contract for trades which remove liquidity in SPY, QQQ, and IWM." The Exchange believes that note 1 will continue to attract Customer Penny Symbol SPY transactions that remove liquidity as the Exchange will continue to discount these fees for SPY. The addition of Taker Fee discounts for QQQ and IWM will attract additional QQQ and IWM transactions that remove liquidity to BX.

⁴ The term "Lead Market Maker" or ("LMM") applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes). See BX Options 7, Section 1(a).

⁵ The term "BX Options Market Maker" or ("M") is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. See BX Options 7, Section 1(a).

⁶ The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options

Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(48)). See BX Options 7, Section 1(a).

⁷ The Exchange is proposing to add dollar signs in a few places in the table in Options 7, Section 2(1) where the dollar sign is missing.

⁸ The term "Non-Customer" shall include a Professional, Broker-Dealer and Non-BX Options Market Maker. See BX Options 7, Section 1(a).

The Exchange also proposes to reserve note 2 of Options 7, Section 2(1) which currently provides, “The Maker Rebate for Lead Market Makers and Market Makers in SPY will be \$0.22 per contract. The Maker Rebate for Lead Market Makers and Market Makers in AAPL and QQQ will be \$0.42 per contract.” Today, the Penny Symbol Maker Rebates for Lead Market Makers and Market Makers in SPY is reduced to \$0.22 per contract with this note 2. The Exchange would no longer reduce the Penny Symbol Maker Rebates for Lead Market Makers and Market Makers in SPY to \$0.22, rather SPY would be paid the same Maker Rebates (a \$0.24 per contract Lead Market Maker Penny Symbol Maker Rebate and a \$0.20 per contract Market Maker Penny Symbol Maker Rebate) as all other options symbols. Additionally, AAPL and QQQ would no longer be paid a \$0.42 per contract Penny Symbol Maker Rebate for Lead Market Makers and Market Makers, rather AAPL and QQQ would be paid the same Maker Rebates (a \$0.24 per contract Lead Market Maker Penny Symbol Maker Rebate and a \$0.20 per contract Market Maker Penny Symbol Maker Rebate) as all other options symbols. With this proposal, the Exchange would uniformly pay the proposed Lead Market Maker and Market Maker Penny Symbol Maker Rebates on all options symbols.

Options 7, Section 2(3)

Currently, BX assesses a Non-Customer routing fee of \$0.99 per

contract and a Customer routing fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to markets other than The Nasdaq Options Market LLC (“NOM”) and Nasdaq Phlx LLC (“Phlx”). Currently, if the away market pays a rebate, the Exchange assesses a Customer a Routing Fee of \$0.13 per contract for markets other than NOM and Phlx. Currently, BX assesses a Customer a \$0.13 per contract Fixed Fee in addition to the actual transaction fee assessed when routing to NOM and Phlx.

At this time, the Exchange proposes to assess a Non-Customer an increased routing fee to route to any options exchange of \$1.20 per contract. The Exchange also proposes to assess a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange. The Exchange would no longer assess the lower routing of \$0.13 per contract, in addition to the actual transaction fee assessed, when routing to NOM and Phlx. The Exchange will continue to assess a \$0.13 per contract routing fee if the away market pays a rebate, including NOM and Phlx. The purpose of the proposed routing fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of options Participants. In determining its proposed routing fees, the Exchange took into account transaction fees

assessed by other options exchanges, the Exchange’s projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will continue to use its affiliated broker-dealer, Nasdaq Execution Services, to route orders to other options exchanges. Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as “Do Not Route” to avoid any routing fees.⁹ The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. Also, the Exchange’s proposal would uniformly assess the same Customer routing fees, regardless of the away venue, of \$0.23 per contract, in addition to the actual transaction fee assessed, or \$0.13 per contract if the away market pays a rebate.

Options 7, Section 2(4)

Today, the Exchange assesses the below fees and pays the below rebates for execution of contracts on BX that generate an order exposure alert¹⁰ pursuant to Options 5, Section 4.

Customer	Lead market maker	BX options market maker	Non-customer	
Penny Symbols:				
Rebate for Order triggering order exposure alert	\$0.34	\$0.00	\$0.00	\$0.00
Fee for Order responding to order exposure alert	0.39	0.39	0.39	0.45
Non-Penny Symbols:				
Rebate for Order triggering order exposure alert	0.70	0.00	0.00	0.00
Fee for Order responding to order exposure alert	0.85	0.85	0.85	0.89

At this time, the Exchange proposes to amend its pricing related to execution of contracts on BX that generate an order exposure alert. With respect to Customer fees and rebates, the Exchange proposes to increase the Penny Symbol rebate for an order triggering an order exposure alert from \$0.34 to \$0.47 per contract. The Exchange proposes to increase the Customer Penny Symbol fee for orders that respond to an order exposure alert from \$0.39 to \$0.47 per contract. The Exchange proposes to

increase the Customer Non-Penny Symbol rebate for an order triggering an order exposure alert from \$0.70 to \$1.10 per contract. The Exchange proposes to increase the Customer Non-Penny Symbol fee for orders that respond to an order exposure alert from \$0.85 to \$1.25 per contract.

With respect to Lead Market Maker fees and rebates, the Exchange proposes to increase the Penny Symbol rebate for an order triggering an order exposure alert from \$0.00 to \$0.10 per contract. The Exchange proposes to increase the

Lead Market Maker Penny Symbol fee for orders that respond to an order exposure alert from \$0.39 to \$0.50 per contract. The Exchange proposes to increase the Lead Market Maker Non-Penny Symbol rebate for an order triggering an order exposure alert from \$0.00 to \$0.25 per contract. The Exchange proposes to increase the Lead Market Maker Non-Penny Symbol fee for orders that respond to an order exposure alert from \$0.85 to \$1.25 per contract.

⁹ See BX Options 3, Section 7(c).

¹⁰ An order exposure alert provides marketable orders on BX’s order book an additional opportunity for execution on BX when it is not part

of the national best bid or offer (“NBBO”) contra to the order and the order locks or crosses the away best bid or offer (“ABBO”).

With respect to Market Maker fees and rebates, the Exchange proposes to increase the Penny Symbol rebate for an order triggering an order exposure alert from \$0.00 to \$0.10 per contract. The Exchange proposes to increase the Market Maker Penny Symbol fee for orders that respond to an order exposure alert from \$0.39 to \$0.50 per contract. The Exchange proposes to increase the Market Maker Non-Penny Symbol rebate for an order triggering an order exposure alert from \$0.00 to \$0.25 per contract. The Exchange proposes to increase the Market Maker Non-Penny Symbol fee for orders that respond to an order exposure alert from \$0.85 to \$1.25 per contract.

With respect to Non-Customer fees and rebates, the Exchange proposes to increase the Penny Symbol rebate for an order triggering an order exposure alert from \$0.00 to \$0.10 per contract. The Exchange proposes to increase the Non-Customer Penny Symbol fee for orders that respond to an order exposure alert from \$0.45 to \$0.50 per contract. The Exchange proposes to increase the Non-Customer Non-Penny Symbol rebate for an order triggering an order exposure alert from \$0.00 to \$0.25 per contract. The Exchange proposes to increase the Non-Customer Non-Penny Symbol fee for orders that respond to an order exposure alert from \$0.89 to \$1.25 per contract.

While the Exchange is increasing fees to respond to an order exposure alert, it is also increasing rebates that trigger an order exposure alert. The Exchange believes that this pricing will continue to provide incentives to Participants to utilize the order exposure functionality which facilitates the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Options 7, Section 2(5)

Currently, the Exchange assesses the below fees and pays the below rebates for orders executed in its PRISM Auction.

FEES AND REBATES

[Per contract]

Type of market participants	Submitted PRISM auction order fee		Response to PRISM auction fee		PRISM order traded with PRISM response rebate	
	PRISM order	Initiating order	Penny classes	Non-penny classes	Penny classes	Non-penny classes
Customer	\$0.00	\$0.00	\$0.49	\$0.94	\$0.35	\$0.70
Lead Market Maker	0.00	0.05	0.49	0.94	0.00	0.00
BX Options Market Maker	0.00	0.05	0.49	0.94	0.00	0.00
Non-Customer	0.00	0.05	0.49	0.94	0.00	0.00

The Exchange proposes to amend its PRISM pricing to delineate PRISM Auction Orders¹¹ in Penny and Non-Penny Classes. Today, the Exchange assesses no PRISM Order¹² fee to any Participant in Penny or Non-Penny Classes and assesses Non-Customers a \$0.05 per contract Initiating Order¹³ fee in Penny and Non-Penny Classes. With respect to PRISM Auction Orders submitted in Penny Classes, the Exchange proposes to continue to assess no PRISM Order fee to any Participant and also proposes to amend the Non-Customer Initiating Order Fees from \$0.05 to \$0.00 per contract. Today, Customers are not assessed an Initiating Order Fee in either Penny or Non-Penny Classes. With this proposed change, no Participant will be assessed an Initiating Order fee in Penny Classes.

With respect to PRISM Auction Orders submitted in Non-Penny Classes, the Exchange proposes to adopt new pricing. The Exchange proposes to pay

a Non-Penny Class PRISM Order rebate to a Customer of \$0.12 per contract. Similar to Penny Classes, the Exchange proposes to assess no Non-Penny Class PRISM Order fees or Initiating Order fees to any Participant. The Exchange believes that the proposed pricing will encourage BX Participants to submit a greater amount of PRISM Orders to BX as the Exchange will not assess PRISM Order or Initiating Order fees to any BX Participant (Penny or Non-Penny Class) and it will pay a Non-Penny Class Customer PRISM Order rebate of \$0.12 per contract.

With respect to a PRISM Response¹⁴ to a PRISM Auction¹⁵ the Exchange proposes to increase the \$0.49 per contract fee for Penny Classes, which is currently assessed to all Participants (Customer, Lead Market Maker, BX Options Market Maker, and Non-Customer), to \$0.50 per contract for Lead Market Makers, BX Options Market Makers and Non-Customers. The Exchange proposes to assess a Customer a \$0.40 per contract PRISM Response fee for Penny Classes. Additionally, the Exchange proposes to increase the \$0.94

per contract fee for Non-Penny Classes, which is currently assessed to all Participants (Customer, Lead Market Maker, BX Options Market Maker, and Non-Customer), to \$1.25 per contract for Lead Market Makers, BX Options Market Makers and Non-Customers. The Exchange proposes to assess a Customer a \$0.79 per contract PRISM Response fee for Non-Penny Classes. These proposed fees are the same as the Taker Fees assessed to the same Participants when removing liquidity from the order book. The Exchange is not amending the rebates paid to a PRISM Order when that order trades with a PRISM Response. The Exchange believes that the increased PRISM Response fees will continue to attract order flow to BX since the Exchange is no longer assessing any fees to submit PRISM Orders and Initiating Orders and is now offering a Customer Non-Penny rebate to submit a PRISM Order with this proposal.

Unrelated Market or Marketable Interest

The Exchange assesses fees and pays rebates with respect to unrelated market or marketable interest received prior to the commencement of a PRISM Auction and during a PRISM Auction. Today, when a PRISM Order is a Customer order and executes against unrelated market or marketable interest received during a PRISM Auction, the Customer

¹¹ A PRISM Auction Order is a two-sided, paired order comprised of a PRISM Order and an Initiating Order. See BX Options 7, Section 2(5).

¹² A PRISM Order is one-side of a PRISM Auction Order that represents an agency order on behalf a Public Customer, broker-dealer or other entity which is paired with an Initiating Order. See BX Options 7, Section 2(5).

¹³ An Initiating Order is one-side of a PRISM Auction Order that represents principal or other interest which is paired with a PRISM Order. See BX Options 7, Section 2(5).

¹⁴ A PRISM Response is interest that executed against the PRISM Order pursuant to Options 3, Section 13. See BX Options 7, Section 2(5).

¹⁵ The Exchange proposes to add the word "PRISM" before "Response" in Options 7, Section 2(5) of the Pricing Schedule to utilize the defined term in the description of the column header.

order receives a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes, which represents the pricing within Options 7, Section 2(5). In this case, the unrelated market or marketable interest received during a PRISM Auction is assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes as described in Options 7, Section 2(5).

Likewise, today, when a PRISM Order is a Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received *during* a PRISM Auction, the Lead Market Maker, BX Options Market Maker or Non-Customer order pays no fee, which represents the pricing within Options 7, Section 2(5). In this case, the unrelated market or marketable interest received during a PRISM Auction is assessed a \$0.49 per contract fee for Penny Classes or a \$0.94 per contract fee for Non-Penny Classes as described in Options 7, Section 2(5). In contrast, today, when a PRISM Order is a Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order and executes against unrelated market or marketable interest received *prior* to a PRISM Auction, the Customer, Lead Market Maker, BX Options Market Maker or Non-Customer order is subject to the Taker Fee within Options 7, Section 2(1).¹⁶ The Exchange applies the order book pricing within Options 7, Section 2(1) to interest received *prior* to the PRISM Auction, which is considered unrelated market or marketable interest for purposes of the PRISM Auction. In contrast, the Exchange applies PRISM pricing within Options 7, Section 2(5) to the unrelated market or marketable interest when interest arrived *during* a PRISM Auction.

At this time, the Exchange proposes to amend the unrelated market or marketable interest rule text in Options 7, Section 2(5) to reflect the amendments proposed herein to Options 7, Section 2(1) order book pricing and Options 7, Section 2(5) PRISM pricing. The Exchange believes this pricing will continue to attract liquidity to BX and reward Participants differently for the order flow.

Request for PRISM

With respect to Request for PRISM¹⁷ Pricing, today, in lieu of Options 7, Section 2(5) pricing, different pricing is assessed and paid to PRISM Auction Orders which commenced as a Request for PRISM pursuant to Options 3, Section 7(e)(1)(A)(1)(b) and executed in the PRISM Auction. With respect to PRISM Orders, today, a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes is paid to a PRISM Order when a BX Participant responds to a Request for PRISM with an Initiating Order, provided the PRISM Order trades with an Initiating Order. Also, today, a rebate of \$0.35 per contract for Penny Classes and \$0.70 per contract for Non-Penny Classes is paid to the PRISM Order when the PRISM Order trades with a PRISM Response. This pricing is not being amended.

With respect to Initiating Orders, today, a fee of \$0.49 per contract for Penny Classes and \$0.94 per contract fee for Non-Penny Classes is assessed to the Initiating Order when a BX Participant responds to a Request for PRISM with an Initiating Order, provided the PRISM Order trades with an Initiating Order. This pricing is being amended such that a fee of \$0.50 per contract for Penny Classes and \$1.25 per contract fee for Non-Penny Classes will be assessed to the Initiating Order when a BX Participant responds to a Request for PRISM with an Initiating Order, provided the PRISM Order trades with an Initiating Order.

With respect to Responses to a PRISM Auction, today, Responses to a PRISM Auction is assessed \$0.49 per contract fee for Penny Classes and a \$0.94 per contract fee for Non-Penny Classes. This pricing is being amended such that Responses to a PRISM Auction will be assessed \$0.50 per contract fee for Penny Classes and a \$1.25 per contract fee for Non-Penny Classes.

While the Exchange is increasing the pricing to Initiating Orders and Responses to a PRISM Auction, the Exchange believes that this pricing remains competitive and will continue to attract PRISM Auction order flow to BX.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5)

of the Act,¹⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*²⁰ (“NetCoalition”), the D.C. Circuit stated, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.’ . . .”²¹

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

Options 7, Section 2(1)

The Exchange’s proposal to reduce the Lead Market Maker and Market Maker Penny Symbol Maker Rebates and the Customer Penny Symbol Taker Fee is reasonable. Despite the reduction of these Penny Symbol Maker Rebates for Lead Market Makers and Market Makers, the Exchange will continue to

¹⁶ Today, BX assesses the following Penny Symbol Taker Fees: \$0.50 per contract for a Lead Market Maker, Market Maker, Non-Customer, and Firm and \$0.46 per contract for a Customer. BX assesses the following Non-Penny Symbol Taker Fees: \$1.10 per contract for a Lead Market Maker, Market Maker, Non-Customer, and Firm and \$0.79 per contract for a Customer. The Exchange is proposing changes to these fees as described herein.

¹⁷ A Request for PRISM is a mechanism to submit orders into a PRISM Auction as described within Options 3, Section 7(e)(1)(A)(1)(b). See BX Options 7, Section 2(5).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

²¹ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

offer these rebates to incentivize Participants to continue to direct order flow to BX. The reduction of the Customer Penny Symbol Taker Fee from \$0.46 to \$0.40 per contract will attract more Customer order flow to BX to take advantage of the lower rate.

The Exchange's proposal to reduce the Lead Market Maker and Market Maker Penny Symbol Maker Rebates and the Customer Penny Symbol Taker Fee is equitable and not unfairly discriminatory. With respect to the amendments to the Lead Market Maker and Market Maker Penny Symbol Maker Rebates, the Exchange notes that unlike other market participants, Lead Market Makers and Market Makers add value through continuous quoting and the commitment of capital.²² Further, differentiating Lead Market Makers and Market Makers is equitable and not unfairly discriminatory because Lead Market Makers are subject to heightened quoting obligations²³ as compared to Market Makers. The higher rebate therefore recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Lead Market Makers. Overall, the Exchange believes that incentivizing both Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. The reduction of the Customer Penny Symbol Taker Fee from \$0.46 to \$0.40 per contract is equitable and not unfairly discriminatory because Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants.

The Exchange's proposal to increase²⁴ the Customer Non-Penny Symbol Maker Rebate and Non-Customer Non-Penny Symbol Taker Fees is reasonable. Increasing the Customer Maker Rebate from \$0.90 to \$1.10 per contract will attract more Customer order flow to BX. With respect to increasing the Taker Fees for all Non-Customers from \$1.10 to \$1.25 per contract, the Exchange believes that these fees will continue to draw participants seeking liquidity to BX because BX is increasing its Non-Penny Customer Maker Rebate to enhance its market quality and provide more trading

opportunities, which benefits all market participants.

The Exchange's proposal to increase the Customer Non-Penny Symbol Maker Rebate and Non-Customer Non-Penny Symbol Taker Fees is equitable and not unfairly discriminatory. The increase in the Customer Non-Penny Symbol Maker Rebate from \$0.90 to \$1.10 is equitable and not unfairly discriminatory because Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. The increase in the Non-Penny Symbol Taker Fees for all Non-Customers from \$1.10 to \$1.25 per contract, is equitable and not unfairly discriminatory because the Exchange will uniformly assess the Non-Penny Taker Fees to all Non-Customers.

With respect to note 1 of Options 7, Section 2(1), the Exchange's proposal to reduce the Customer Penny Symbol Taker Fee from the proposed \$0.40 per contract to \$0.33 per contract for trades which remove liquidity in SPY, the Exchange believes that this is reasonable because note 1 will continue to attract Customer Penny Symbol SPY transactions that remove liquidity as the Exchange will continue to offer this discount, albeit a lesser discount as proposed. Also, Customers will continue to receive favorable pricing in SPY as compared to Non-Customers. Additionally, the Exchange's proposal to extend this discount to Customer Penny Symbol transactions that remove liquidity in QQQ and IWM will attract QQQ and IWM transactions that remove liquidity to BX. In addition, the Exchange believes that it is reasonable to pay lower fees in SPY, QQQ and IWM as compared to other options symbols because the Exchange is seeking to incentivize greater order flow in these highly liquid Penny Symbols which are subject to greater competition among options exchanges. Finally, the Exchange's proposal to reserve note 2 of Options 7, Section 2(1) is reasonable because the Exchange would assess the Penny Symbol Maker Rebate for Lead Market Makers and Market Makers in SPY, AAPL and QQQ the same fees as it assesses to all other options symbols.

With respect to note 1 of Options 7, Section 2(1), the Exchange's proposal to reduce the Customer Penny Symbol Taker Fee from \$0.40 to \$0.33 per contract for trades which remove liquidity in SPY and also extend this discount to Customer Penny Symbol Taker Fees that remove liquidity in QQQ and IWM is equitable and not unfairly discriminatory because

Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Additionally, the Exchange will assess the lower Taker Fee uniformly to all Customer Penny Symbol Taker Fees in SPY, QQQ and IWM. Finally, the Exchange's proposal to reserve note 2 of Options 7, Section 2(1) is equitable and not unfairly discriminatory because the Exchange would pay the same Penny Symbol Maker Rebates to Lead Market Makers and Market Makers for all other options symbols.

Options 7, Section 2(3)

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange and a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange²⁵ is reasonable because the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. While the Exchange is no longer offering a discounted Routing Fee to route to NOM and Phlx, the Exchange notes that the Routing Fee will be \$0.13 for these markets, similar to other options markets, if they pay a rebate.²⁶ Routing services offered by the Exchange are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. Also, the Exchange notes that market participants may elect to mark their orders as "Do Not Route" to avoid any routing fees.²⁷

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange and a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to

²⁵ The Exchange would no longer assess the lower routing of \$0.13 per contract, in addition to the actual transaction fee assessed, when routing to NOM and Phlx.

²⁶ Both NOM and Phlx offer rebates. See NOM's Pricing Schedule at Options 7, Section 2 and Phlx's Pricing Schedule at Options 7, Sections 2 and 4.

²⁷ See BX Options 3, Section 7(c).

²² See BX Options 2, Section 4.

²³ *Id.*

²⁴ The Exchange proposes to increase the Maker Rebates for Customer from \$0.90 to \$1.10 per contract and increase the Taker Fees for all Non-Customers from \$1.10 to \$1.25 per contract.

any options exchange is equitable and not unfairly discriminatory as all Non-Customers would be assessed a uniform routing fee. Additionally, Customers will be uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange notes that market participants may elect to market orders as Do Not Route to avoid any routing fees.

Options 7, Section 2(4)

The Exchange's proposal to amend its pricing related to execution of contracts on BX that generate an order exposure alert is reasonable. While the Exchange is increasing fees to respond to an order exposure alert, it is also increasing rebates that trigger an order exposure alert. The Exchange believes that this pricing will continue to provide incentives to Participants to utilize the order exposure functionality which facilitates the ability of the Exchange to bring together participants and encourage more robust competition for orders. For Penny Symbols and Non-Penny Symbols, increasing the Customer rebate for orders triggering order exposure alert, and offering higher Customer rebates as compared to Non-Customer rebates is reasonable because it encourages the desired Customer behavior by attracting Customer interest to the Exchange. Increasing the Customer, Lead Market Maker, Market Maker, and Non-Customer fees for orders responding to order exposure alerts in Penny Symbols and Non-Penny Symbols is reasonable because the associated revenue will allow the Exchange to maintain and enhance its services. Additionally, for Penny Symbols, Customers would pay the lowest fee for responding to order exposure alert while all Participants are assessed the same fee for Non-Penny Symbols.

The Exchange's proposal to amend its pricing related to execution of contracts on BX that generate an order exposure alert is equitable and not unfairly discriminatory. Customers are being paid higher Penny Symbol and Non-Penny Symbol rebates and lower Penny Symbols fees as compared to Non-Customers because Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market

participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange also is assessing the same Non-Penny Symbol fees uniformly to all Participants.

Options 7, Section 2(5)

The Exchange's proposal to amend its PRISM pricing is reasonable because the Exchange proposes to not assess an Initiating Order fee in Penny and Non-Penny Classes. Today, the Exchange assesses no PRISM Order fee to any Participant in Penny or Non-Penny Classes and assesses Non-Customers a \$0.05 per contract Initiating Order fee in Penny and Non-Penny Classes. The Exchange proposes to continue to assess no PRISM Order fee and also proposes to amend the Non-Customer Initiating Order Fees from \$0.05 to \$0.00 per contract. Today, Customers are not assessed an Initiating Order Fee in either Penny or Non-Penny Classes. With this proposed change, no Participant will be assessed an Initiating Order fee in Penny Classes and Non-Penny Classes. Further, the Exchange proposes to pay a Non-Penny Class PRISM Order rebate to a Customer of \$0.12 per contract. The Exchange believes that the proposed pricing will encourage BX Participants to submit a greater amount of PRISM Orders to BX as the Exchange will not assess PRISM Order or Initiating Order fees to any BX Participant and it will pay a Non-Penny Class PRISM Order rebate to a Customer of \$0.12 per contract. With respect to a PRISM Response to a PRISM Auction the Exchange's proposal to increase the \$0.49 per contract fee for Penny Classes, which is currently assessed to all Participants to \$0.50 per contract and the proposal to increase the \$0.94 per contract fee for Non-Penny Classes, which is currently assessed to all Participants, to \$1.25 per contract is reasonable because despite these increases, the Exchange believes that the pricing will continue to encourage Participants to send order to BX's PRISM Auction. Additionally, the proposed PRISM Response fees would be equivalent to the Penny Symbol Taker Fees in Options 7, Section 2(1) of \$0.50 per contract for Lead Market Makers, BX Options Market Makers and Non-Customers and \$0.40 per contract for Customers. Additionally, the proposed PRISM Response Fees would be equivalent to the Non-Penny Symbol Taker Fees in Options 7, Section 2(1) of \$1.25 per contract for Lead Market Makers, BX Options Market Makers and Non-Customers and \$0.79 per contract for Customers. The Exchange's proposal

harmonizes the PRISM Response fees for Penny and Non-Penny Classes so that they are the same as the Taker Fees assessed to each market participant when they remove liquidity from the order book. The Exchange believes that it is reasonable to assess Penny and Non-Penny Class PRISM Response Fees that are equivalent to those Taker Fees assessed to Participants for removing liquidity from the order book because orders resting on the order book may respond to PRISM Auctions similar to PRISM Responses entered during a PRISM Auction. The Exchange believes that despite the increase in these PRISM Response Fees, the fees remain competitive with the pricing to remove liquidity from the order book.

The Exchange's proposal to amend its PRISM pricing is equitable and not unfairly discriminatory. The Exchange will uniformly not assess a Penny Class or Non-Penny Class PRISM Order fee or Initiating Order Fee to any Participant. While Customers will receive a Penny Symbol PRISM Order rebate, the Exchange notes that Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. The proposed PRISM Response Fees would be equivalent to the Penny Symbol Taker Fees in Options 7, Section 2(1) of \$0.50 per contract for Lead Market Makers, Market Makers and Non-Customers and \$0.40 per contract for Customers. Additionally, the proposed PRISM Response Fees would be equivalent to the Non-Penny Symbol Taker Fees in Options 7, Section 2(1) of \$1.25 per contract for Lead Market Makers, Market Makers and Non-Customers and \$0.79 per contract for Customers. Assessing Customers a lower Response Fee as compared to Non-Customers is equitable and not unfairly discriminatory because Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. Further, assessing no fee to the Initiating Order and assessing Response Fees as described above to Participants that respond to the PRISM Auction is equitable and not unfairly discriminatory because the Exchange desires to encourage Participants to submit PRISM Orders to BX. Responders, similar to Participants that remove liquidity from the order book, may interact with the PRISM Order and receive an allocation. Of note, any BX Participant may respond to a PRISM

Auction. Similar to the manner in which the Exchange assesses fees to takers of liquidity in Options 7, Section 2(1), Participants who remove liquidity are assessed fees to interact with the liquidity. The Exchange incentivizes Participants that add liquidity on our markets by assessing lower fees and/or rebates to encourage order flow to be sent to BX. The Exchange believes that creating a similar model to encourage Participants to bring two-sided orders into the PRISM Auction and assessing higher fees for the Participants that interact with those orders is equitable and not unfairly discriminatory as well as consistent with the fee structure in place on BX today. Finally, BX Participants may elect not to utilize the PRISM Auction and only transact options on the order book, in which case they would not incur the Responder Fees.

Unrelated Market or Marketable Interest

The Exchange's proposal to amend the unrelated market or marketable interest rule text in Options 7, Section 2(5) to reflect the proposed changes to Options 7, Section 2(1) order book pricing and Options 7, Section 2(5) PRISM pricing is reasonable because the Exchange seeks to incentivize Participants to submit PRISM Auction Orders to receive a guaranteed execution, potential price improvement, and Customer rebates. The Exchange's PRISM pricing assesses fees to PRISM Responses and unrelated market or marketable interest that allocated in the PRISM Auction and rewards those BX Participants with a guaranteed execution and potential price improvement. The response fees assessed by the Exchange are intended to fund the Customer rebates paid by the Exchange which seek to incentivize increased Customer order flow to the PRISM Auction. While the Exchange's proposal increases these fees, the Exchange believes this pricing will continue to attract liquidity to BX and reward Participants differently for the order flow.

The Exchange's proposal to amend the unrelated market or marketable interest rule text in Options 7, Section 2(5) to reflect the proposed changes to Options 7, Section 2(1) order book pricing and Options 7, Section 2(5) PRISM pricing is equitable and not unfairly discriminatory. All BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction will be uniformly paid a Maker Rebate. The Exchange's proposal would treat BX Participants who submitted unrelated

market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who posted liquidity on the order book as they would both be considered makers of liquidity. Further, all Participants who submitted a PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction would be uniformly assessed a Taker Fee. The Exchange's proposal would treat BX Participants who submitted PRISM Order that executed against the unrelated market or marketable interest that posted to the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who removed liquidity from the order book as they would both be considered takers of liquidity.

Request for PRISM

The Exchange's proposal to amend pricing for PRISM Orders submitted via a Request for PRISM is reasonable. While the Exchange is increasing the Initiating order fees in Penny and Non-Penny Classes as well as the Responses to a PRISM Auction in Penny and Non-Penny Classes, the Exchange believes that this pricing will continue to incentivize BX Participants to utilize the Request for PRISM feature to obtain liquidity, potential price improvement, as well as a rebate for the PRISM Order. Further, the Exchange notes that it will continue to offer certain rebates to attract BX Participants to utilize the Request for PRISM mechanism. Further, the Exchange believes it is reasonable to assess a higher fee for the Initiating Order that was submitted with the Request for PRISM mechanism, where fees are the same as those assessed to responders in the PRISM Auction, because BX Participants are able to obtain immediate liquidity. The Request for PRISM mechanism is utilized by Participants as a liquidity seeking tool that if not available would require a BX Participant to source liquidity from third parties, expending time and potential additional cost. The Request for PRISM mechanism offers Participants the opportunity to immediately commence a PRISM Auction without the need to source liquidity. Liquidity providers that enter orders directly into PRISM and do not utilize the Request for PRISM mechanism have expended time sourcing liquidity with third parties outside of the Exchange. The Exchange believes that BX Participants benefit from the liquidity seeking mechanism that is being offered by the Exchange to

allow certain market participants to compete with other market participants whose business model is designed to source liquidity. The proposed fee for Initiating Orders who respond to a Request for PRISM, when the PRISM Order trades with an Initiating Order, would enable the Exchange to offer rebates to BX Participants submitting PRISM Orders into the Request for PRISM mechanism. The Exchange believes the fees for responders are reasonable because responders to a PRISM Auction would pay the same fee of \$0.50 per contract fee for Penny Classes and \$1.25 per contract fee for Non-Penny Classes regardless of whether the Request for PRISM mechanism was utilized to initiate a PRISM Auction or the PRISM Auction Order was entered directly into PRISM as a paired order.

The Exchange's proposal to amend pricing for PRISM Orders submitted via a Request for PRISM is equitable and not unfairly discriminatory because any BX Participant may utilize the Request for PRISM feature. Also, any BX Participant may respond to a PRISM Auction and all BX Participants benefit from the ability to interact with additional order flow.²⁸ The Request for PRISM mechanism provides greater flexibility for Participants submitting orders into PRISM, specifically providing an avenue for BX Participants desiring to send orders to the PRISM mechanism to locate an Initiating Order to pair their PRISM Order with and participate in a PRISM Auction. All Participants that enter a PRISM Order into the Request for PRISM mechanism are uniformly entitled to a rebate if the PRISM Order trades with the Initiating Order or if the PRISM Order trades with a PRISM Response. Also, all Participants that enter Initiating Orders into the Request for PRISM mechanism are uniformly assessed a fee provided the PRISM Order trades with the Initiating Order. The proposed fees for an Initiating Order entered into the Request for PRISM mechanism that trade with a PRISM Response are equivalent to the pricing for responders pursuant to Options 7, Section 2(5) because BX Participants benefit from the liquidity seeking mechanism that is being offered. The mechanism allows certain market participants to compete with other market participants whose business model is designed to source liquidity.

²⁸ The identity of the sender and the recipients are not known to any party.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice to initiate a price improvement auction. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

Options 7, Section 2(1)

The Exchange's proposal to reduce certain Penny Symbol Maker Rebates and Taker Fees and increase certain Non-Penny Symbol Maker Rebates and Taker Fees does not impose an undue burden on competition. With respect to the amendments to the Lead Market Maker and Market Maker Penny Symbol Maker Rebates, the Exchange notes that unlike other market participants, Lead Market Makers and Market Makers add value through continuous quoting and the commitment of capital.²⁹ Further, differentiating Lead Market Makers and Market Makers is equitable and not unfairly discriminatory because Lead Market Makers are subject to heightened quoting obligations³⁰ as compared to Market Makers. The higher rebate therefore recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Lead Market Makers. Overall, the Exchange believes that incentivizing both Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction. The

reduction of the Customer Penny Symbol Taker Fee from \$0.46 to \$0.40 per contract and the increase in the Non-Penny Symbol Maker Rebates for Customers from \$0.90 to \$1.10 does not impose an undue burden on competition because Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. The Exchange's proposal to increase the Non-Penny Symbol Taker Fees for all Non-Customers from \$1.10 to \$1.25 per contract does not impose an undue burden on competition because the Exchange will uniformly assess the Non-Penny Taker Fees to all Non-Customers.

With respect to note 1 of Options 7, Section 2(1), the Exchange's proposal to reduce the Customer Penny Symbol Taker Fee from \$0.40 to \$0.33 per contract for trades which remove liquidity in SPY and also extend this discount to Customer Penny Symbol Taker Fees that remove liquidity in QQQ and IWM does not impose an undue burden on competition because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Additionally, the Exchange will assess the lower Taker Fee uniformly to all Customer Penny Symbol Taker Fees in SPY, QQQ and IWM. Finally, the Exchange's proposal to reserve note 2 of Options 7, Section 2(1) does not impose an undue burden on competition because the Exchange would pay the same Penny Symbol Maker Rebates to Lead Market Makers and Market Makers for all other options symbols.

Options 7, Section 2(3)

The Exchange's proposal to assess a Non-Customer an increased routing fee of \$1.20 to route to another options exchange and a Customer a Fixed Fee of \$0.23 per contract, in addition to the actual transaction fee assessed by the away market, for routing contracts to any options exchange does not impose an undue burden on competition because all Non-Customers would be assessed a uniform routing fee. Additionally, all Customers will be uniformly assessed the same fee, regardless of the destination market. Customers will continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances market quality on the Exchange by providing more trading opportunities, which benefits all market participants. Finally, the Exchange

notes that market participants may elect to market orders as Do Not Route to avoid any routing fees.

Options 7, Section 2(4)

The Exchange's proposal to amend its pricing related to execution of contracts on BX that generate an order exposure alert does not impose an undue burden on competition. Customers are being paid higher Penny Symbol and Non-Penny Symbol rebates and lower Penny Symbols fees as compared to Non-Customers because Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange also is assessing the same Non-Penny Symbol fees uniformly to all Participants.

Options 7, Section 2(5)

The Exchange's proposal to amend its PRISM pricing does not impose an undue burden on competition. The Exchange will uniformly not assess a Penny Class or Non-Penny Class PRISM Order fee or Initiating Order Fee to any Participant. While Customers will receive a Penny Symbol PRISM Order rebate, the Exchange notes that Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. Additionally, the Exchange will uniformly assess the PRISM Response fee to all Participants. The proposed PRISM Response Fees would be equivalent to the Penny Symbol Taker Fees in Options 7, Section 2(1) of \$0.50 per contract for Lead Market Makers, Market Makers and Non-Customers and \$0.40 per contract for Customers. Additionally, the proposed PRISM Response Fees would be equivalent to the Non-Penny Symbol Taker Fees in Options 7, Section 2(1) of \$1.25 per contract for Lead Market Makers, Market Makers and Non-Customers and \$0.79 per contract for Customers. Assessing Customers a lower Response Fee as compared to Non-Customers is equitable and not unfairly discriminatory because Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. Further, assessing no fee

²⁹ See BX Options 2, Section 4.

³⁰ *Id.*

to the Initiating Order and assessing Response Fees as described above to Participants that respond to the PRISM Auction is equitable and not unfairly discriminatory because the Exchange desires to encourage Participants to submit PRISM Orders to BX. Responders, similar to Participants that remove liquidity from the order book, may interact with the PRISM Order and receive an allocation. Of note, any BX Participant may respond to a PRISM Auction. Similar to the manner in which the Exchange assesses fees to takers of liquidity in Options 7, Section 2(1), Participants who remove liquidity are assessed fees to interact with the liquidity. The Exchange incentivizes Participants that add liquidity on our markets by assessing lower fees and/or rebates to encourage order flow to be sent to BX. The Exchange believes that creating a similar model to encourage Participants to bring two-sided orders into the PRISM Auction and assessing higher fees for the Participants that interact with those orders is equitable and not unfairly discriminatory as well as consistent with the fee structure in place on BX today. Finally, BX Participants may elect not to utilize the PRISM Auction and only transact options on the order book, in which case they would not incur the Responder Fees.

Unrelated Market or Marketable Interest

The Exchange's proposal to amend the unrelated market or marketable interest rule text in Options 7, Section 2(5) to reflect the proposed changes to Options 7, Section 2(1) order book pricing and Options 7, Section 2(5) PRISM pricing does not impose an undue burden on competition. All BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction will be uniformly paid a Maker Rebate. The Exchange's proposal would treat BX Participants who submitted unrelated market or marketable interest which rested on the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who posted liquidity on the order book as they would both be considered makers of liquidity. Further, all Participants who submitted a PRISM Order that executed against the unrelated market or marketable interest

that posted to the order book *prior* to the commencement of a PRISM Auction in the same manner as other BX Participants who removed liquidity from the order book as they would both be considered takers of liquidity.

Request for PRISM

The Exchange's proposal to amend pricing for PRISM Orders submitted via a Request for PRISM does not impose an undue burden on competition because any BX Participant may utilize the Request for PRISM feature. Also, any BX Participant may respond to a PRISM Auction and all BX Participants benefit from the ability to interact with additional order flow.³¹ The Request for PRISM mechanism provides greater flexibility for Participants submitting orders into PRISM, specifically providing an avenue for BX Participants desiring to send orders to the PRISM mechanism to locate an Initiating Order to pair their PRISM Order with and participate in a PRISM Auction. All Participants that enter a PRISM Order into the Request for PRISM mechanism are uniformly entitled to a rebate if the PRISM Order trades with the Initiating Order or if the PRISM Order trades with a PRISM Response. Also, all Participants that enter Initiating Orders into the Request for PRISM mechanism are uniformly assessed a fee provided the PRISM Order trades with the Initiating Order. The proposed fees for an Initiating Order entered into the Request for PRISM mechanism that trade with a PRISM Response are equivalent to the pricing for responders pursuant to Options 7, Section 2(5) because BX Participants benefit from the liquidity seeking mechanism that is being offered. The mechanism allows certain market participants to compete with other market participants whose business model is designed to source liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³²

At any time within 60 days of the filing of the proposed rule change, the

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2023-031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-BX-2023-031. 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

³¹ The identity of the sender and the recipients are not known to any party.

³² 15 U.S.C. 78s(b)(3)(A)(ii).

submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BX-2023-031 and should be submitted on or before December 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Christina Z. Milnor,
Assistant Secretary.

[FR Doc. 2023-26112 Filed 11-27-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35053; 812-15509]

CAZ Strategic Opportunities Fund and CAZ Investments Registered Adviser LLC

November 21, 2023.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, pursuant to sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and pursuant to section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose early withdrawal charges and asset-based distribution and/or service fees.

APPLICANTS: CAZ Strategic Opportunities Fund and CAZ Investments Registered Adviser LLC.

FILING DATE: The application was filed on September 29, 2023 and amended on November 15, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission

by 5:30 p.m. on December 18, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Christopher Alan Zook, CAZ Strategic Opportunities Fund, *caz@cazinvestments.com*; with a copy to Thomas Friedmann, Dechert LLP, *thomas.friedmann@dechert.com*; Matthew Carter, Dechert LLP, *matthew.carter@dechert.com*; and Alexander Karamatsos, Dechert LLP, *alexander.karamatsos@dechert.com*.

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ application, dated November 15, 2023, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>.

You may also call the SEC’s Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-26116 Filed 11-27-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35052; File No. 812-15467]

Oxford Park Income Fund, Inc. and Oxford Park Management, LLC

November 21, 2023.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, pursuant to sections 6(c) and 23(c) of the Act for certain exemptions from rule 23c-3 under the Act, and pursuant to section 17(d) of the Act and rule 17d-1 thereunder.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose early withdrawal charges and asset-based distribution and/or service fees.

Applicants: Oxford Park Income Fund, Inc. and Oxford Park Management, LLC.

Filing Dates: The application was filed on May 16, 2023, and amended on June 14, 2023 and October 4, 2023.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 18, 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 emailing the Commission’s Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Jonathan H. Cohen, Oxford Park Income Fund, Inc., 8 Sound Shore Drive, Suite 255, Greenwich, CT 06830; Harry S. Pangas, Dechert LLP, *harry.pangas@dechert.com*; Philip T. Hinkle, Dechert LLP, *philip.hinkle@dechert.com*.

FOR FURTHER INFORMATION CONTACT: Chris Chase, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ second amended and

³³ 17 CFR 200.30-3(a)(12).

repeated application, dated October 3, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-26115 Filed 11-27-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20010 and #20011;
Illinois Disaster Number IL-20000]

Presidential Declaration of a Major Disaster for the State of Illinois

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-4749-DR), dated 11/20/2023.

Incident: Severe Storms and Flooding.
Incident Period: 09/17/2023 through 09/18/2023.

DATES: Issued on 11/20/2023.

Physical Loan Application Deadline Date: 01/19/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 08/20/2024.

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 President's major disaster declaration on 11/20/2023, 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.

Primary Counties (Physical Damage and Economic Injury Loans): Cook.

Contiguous Counties (Economic Injury Loans Only):

Illinois: DuPage, Kane, Lake, McHenry, Will
Indiana: Lake

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
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
<i>For Economic Injury:</i>	
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 200106 and for economic injury is 200110.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023-26156 Filed 11-27-23; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12270]

Designation of Akram al-Ajouri as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224, as amended ("E.O. 13224" or "Order"), I hereby determine that the person known as Akram al-Ajouri (also known as Akram al-'Ajuri, Akram Muhammad Salih al-Ajuri, Abu Muhammad al-'Ajuri, and 'Abd al-Karim Ahmad Hasan) is a leader of the Palestinian Islamic Jihad, an entity whose property and interests in property are currently blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized

in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: November 6, 2023.

Antony J. Blinken,
Secretary of State.

[FR Doc. 2023-26104 Filed 11-27-23; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice: 12274]

Action: Notice of an Opportunity To Apply for Membership on the Advisory Committee on Responsible Business Conduct

SUMMARY: The Department of State is seeking applications for membership for the 2023-2025 term of the Advisory Committee on Responsible Business Conduct (the "Committee"). The purpose of the Committee is to bring to the U.S. government a source of expertise, knowledge, and insight not available within the Department or elsewhere in the government on issues related to responsible business conduct (RBC), including business and human rights (BHR).

DATES: Applications for membership consideration are due by 5 p.m. Eastern Time (EDT) on December 29, 2023. After that date, the State Department will accept applications under this notice for up to two years from November 28, 2023 to fill vacancies, as applicable.

ADDRESSES: Please submit applications by email to RBCAdvisoryCommittee@state.gov attention: Leslie Taylor, Designated Federal Officer.

FOR FURTHER INFORMATION CONTACT: Leslie Taylor, Designated Federal Officer, Senior Foreign Affairs Officer, telephone: 202-663-2758, email: RBCAdvisoryCommittee@state.gov.

SUPPLEMENTARY INFORMATION: The Committee was established under the general authority of the Secretary of State as set forth in Title 22 of the United States Code, Sections 2651a and 2656 and consistent with the Federal Advisory Committee Act (5 U.S.C. 1001 et seq.).

The Department of State is accepting applications for Committee membership. The Committee shall provide information, analysis, and

recommendations to the Assistant Secretary of the Bureau of Democracy, Human Rights and Labor (DRL) related to opportunities and challenges regarding BHR, as well as RBC more broadly. The committee may provide advice and/or recommendations on topics, such as:

(a) Implementing the U.S. National Action Plan on Responsible Business Conduct (NAP).

(b) Access to remedy, forced labor, initiatives related to labor rights and supply chains, the U.S. National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, the legally binding instrument, and/or other specific topics related to BHR and RBC more broadly.

(e) The Department of State's role in advancing U.S. RBC, including BHR.

Committee Makeup: According to the Committee's Charter, the membership of the Committee consists of representatives of organizations, companies, associations, institutions and other relevant stakeholders having an interest in business and human rights and responsible business conduct, and may include representatives of business, labor unions, public interest groups, trade and professional associations, members of civil society organizations, academic representatives, or any other stakeholder related to RBC. Each Committee member shall serve in a representative capacity, representing the views and interests of their particular organization, institution, association, company, or industry sector.

Qualifications: The Department believes that the most effective member of the Committee will have:

- 10+ years of proven leadership and experience related to RBC, including BHR.
- Well-documented thought leadership.
- Ability to work across stakeholder groups.
- Broad perspective of RBC issues, including BHR.
- Understanding of how government functions.
- Internal approval from their company, organization, and/or institution.
- Time to dedicate to the Committee and/or sub-committees through up to four in-person and/or virtual meetings a year and related preparation.

Level of Seniority: The Department particularly seeks applicants who are executives and/or senior level leaders with decision-making authority; however, a person having substantial responsibility for shaping their organization's BHR and/or RBC activities may be considered. Once

appointed, each Committee member may identify up to two staff representatives from their organization to formally support their participation in the Committee.

Other: Members are not required to be a U.S. citizen or work for a U.S.-based organization; however, members may not be registered as a foreign agent under the Foreign Agents Registration Act. Additionally, no member shall represent a company that is majority owned or controlled by a foreign government entity or entities. Members of the Committee will be selected based on their expertise and experience as relevant to RBC, including BHR. In selecting members, DRL will strive for balance in terms of points of view, industry, demographics, geography, and organization and/or company size. Appointments to the Committee shall be made without regard to political affiliation. The Committee will meet, at a minimum, once a year.

Appointments: The DRL Assistant Secretary appoints the members of the Committee in consultation with the Bureau of Economic and Business Affairs. Members shall serve a term of two years, at the pleasure of the DRL Assistant Secretary.

Compensation: Committee members are not special government employees and will receive no compensation for their participation in Committee activities. Members participating in Committee meetings and events will be responsible for their travel, living, and other personal expenses.

Meetings: At least once annually, in Washington, DC, or virtually.

How To Apply: To be considered for membership, submit the following information by 5 p.m. ET on December 29, 2023, to the email address listed in the **ADDRESSES** section:

1. Name and title of the individual requesting consideration.
2. The applicant's personal resume and/or short bio (bio less than 300 words, please).
3. An affirmative statement that the applicant is not registered or required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Members of the Committee will be selected by the Bureau of Democracy Human Rights and Labor (DRL) in consultation with the Bureau of Economic and Business Affairs (EB). Committee members will include representatives from a range of business sectors, labor unions, civil society organizations, academia, as well as any others determined to be appropriate by DRL and EB.

Authorities: The information is sought pursuant to 22 U.S.C. 2651a (Organization of Department of State); 5 U.S.C. 1001 *et seq.* (Federal Advisory Committee Act); and 41 CFR part 102–3 (the FACA Final Rule).

Purpose: The information solicited on this application will be used to determine whether an individual should be considered for membership on the Advisory Committee on Responsible Business Conduct.

Routine Uses: Information on the Routine Uses for the system can be found in the System of Records Notice State–79, Digital Communication and Outreach.

Disclosure: Providing this information is voluntary. Failure to provide the information requested on this application may result in the applicant's inability to be considered for Committee membership.

Leslie B. Taylor,

Foreign Affairs Officer, Bureau of Democracy, Human Rights, and Labor, Office of Multilateral and Global Affairs, Department of State.

[FR Doc. 2023–26110 Filed 11–27–23; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice: 12271]

Designation of Kata'ib Sayyid al-Shuhada and Hashim Finyan Rahim al-Saraji as Specially Designated Global Terrorists

Acting under the authority of and in accordance with section 1(a)(ii)(A) of Executive Order 13224, as amended ("E.O. 13224" or "Order"), I hereby determine that the person known as Kata'ib Sayyid al-Shuhada (also known as KSS, Battalion of the Sayyid's Martyrs, The Master of the Martyrs Brigade, Kata'ib Abu Fadl al-Abbas, and Kata'ib Karbala) is a foreign person who has committed or attempted to commit, poses a significant risk of committing, or has participated in training to commit, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Additionally, under the authority of and in accordance with section 1(a)(ii)(B) of Executive Order 13224, I hereby determine that the person known as Hashim Finyan Rahim al-Saraji (also known as Hashim Bunyan al-Siraji, Hashim Banyan ul Awliya, Ali Abd-al-Zahra Hafiz al-Sarayji, and Abu Ala al Walai) is a leader of Kata'ib Sayyid al-Shuhada, an entity whose property and interests in property are concurrently

blocked pursuant to a determination by the Secretary of State pursuant to E.O. 13224.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: November 16, 2023.

Antony J. Blinken,
Secretary of State.

[FR Doc. 2023–26103 Filed 11–27–23; 8:45 am]

BILLING CODE 4710-AD-P

TENNESSEE VALLEY AUTHORITY

New Caledonia Generation Site Project

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: The Tennessee Valley Authority (TVA) intends to prepare an environmental assessment (EA) or an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) to address the potential environmental impacts associated with the proposed construction and operation of a Combustion Turbine (CT) Plant on a parcel of TVA-owned brownfield property in Lowndes County, Mississippi. The proposed New Caledonia Generation Site (NCG) would provide approximately 500 Megawatts (MW) of new generation capacity. The NCG CTs would be composed of six (6) natural gas-fired frame CTs. NCG would provide flexible and dispatchable transmission grid support and facilitate the integration of renewable generation onto the TVA bulk transmission system, consistent with the 2019 Integrated Resource Plan (IRP). Public comment is invited concerning the scope of the environmental review, alternatives being considered, and environmental issues that should be addressed. TVA is also requesting data, information, and analysis relevant to the proposed action from the public; affected Federal, State, Tribal, and local governments, agencies, and offices; the scientific community; industry; or any other interested party.

DATES: The public scoping period begins with the publication of this Notice of Intent in the **Federal Register**. To ensure consideration, comments must be postmarked, submitted online, or emailed no later than January 19, 2024. To facilitate the scoping process, TVA will hold an in-person public open house from 5 p.m. to 7 p.m. on January 8, 2024, at the Caledonia Community Center; see <https://www.tva.com/nepa> for more information on the meeting.

ADDRESSES: Written comments should be sent to Erica McLamb, NEPA Compliance Specialist, 1101 Market Street, BR 2C–C, Chattanooga, Tennessee 37402. Comments may also be submitted online at: <https://www.tva.com/nepa> or by email at nepa@tva.gov. The public meeting will be held at the Caledonia Community Center, located at 205 South St., Caledonia, Mississippi 39740.

FOR FURTHER INFORMATION CONTACT:

Erica McLamb by email to nepa@tva.gov, by phone at (423) 751–8022, or by mail at the address above.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing NEPA. TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. One component of this mission is the generation, transmission, and sale of reliable and affordable electric energy.

Background

TVA provides electricity for local power companies serving 10 million people in Tennessee and parts of six surrounding States, as well as directly to large industrial customers and Federal installations. TVA is fully self-financed without Federal appropriations and funds virtually all operations through electricity sales and power system bond financing. The dependable electrical capacity on the TVA power system is approximately 38,000 MW. TVA transmits electricity from generating facilities over 16,000 miles of transmission lines.

In June 2019, TVA published an IRP, which was developed with input from stakeholder groups and the public. The 2019 IRP evaluated six scenarios (plausible futures) and five strategies (potential TVA responses to those plausible futures) and identified a range of potential resource additions and

retirements throughout the TVA power service area, which encompasses approximately 80,000 square miles. The 2019 IRP identified the potential addition of up to 500 MW of demand response and 2,200 MW of energy efficiency (demand-side options); 4,200 MW of wind; 5,300 MW of storage; 8,600 MW of CT; 9,800 MW of combined cycle (CC); and 14,000 MW of solar by 2038. The 2019 IRP recommendation optimizes TVA's ability to create a more flexible power-generation system that can successfully integrate increasing amounts of renewable energy sources while ensuring reliability. Additionally, the 2019 IRP recommended a series of near-term actions, including evaluating engineering end-of-life dates for aging fossil units, to determine whether retirements greater than 2,200 MW would be appropriate to inform long-term planning. The strategic direction established by the 2019 IRP and results from recommended near-term actions formed the basis for TVA's asset strategy, which continues to support affordable, reliable, and cleaner energy for customers. As a result of resource changes outlined in the asset strategy, TVA has a plan for 70% carbon reductions by 2030, a path to an approximately 80% carbon reductions by 2035 and aspires to net-zero carbon emissions by 2050 (based on a 2005 baseline).

Since the pandemic, TVA has seen a strong increase in electric demand. Population in the TVA service region has grown 1.5%. TVA expects continued strong growth in annual electric demand through the middle of this decade. Forecasted electric demand is expected to grow more than one percent per year on average between 2023–2026. Current system modeling shows that with increased In-Valley residential migration and commercial development, TVA must add generation capacity to the system to maintain adequate operating reserves.

The NCG Site is an approximately 63-acre federally owned brownfield property managed by TVA in Lowndes, Mississippi, located approximately 10 miles northeast of Columbus. The NCG site was the location of a former CT facility, originally constructed in 1998 and operated for several years by a private company. The company decommissioned the facility in 2007, removing the existing six frame CTs from the site. The adjacent TVA Lowndes County 161 kV and 500-kV Substation is approximately 82 acres and has remained in-service. The study area for the proposed action is 145 acres and includes the entire combustion

turbine property as well as the adjacent substation property.

TVA is considering constructing and operating a combustion turbine facility (with generation capacity of approximately 500 MW) at the same brownfield location as the previously operated generating facility, which would allow TVA to utilize existing natural gas and transmission infrastructure.

Project Purpose and Need

The purpose of the proposed action is to help provide generation to support continued load growth in the TVA power service area and TVA's decarbonization goals. TVA needs flexible, dispatchable power that can successfully integrate increasing amounts of renewable energy sources while ensuring reliability. The need for the Proposed Action is to ensure that TVA can meet required year-round generation and maximum capacity system demands and planning reserve margin targets.

Preliminary Proposed Action and Alternatives

TVA anticipates that the scope of the EA or EIS will evaluate a No Action Alternative and an Action Alternative. The No Action Alternative provides a baseline for comparing against the Action Alternative. Under the No Action Alternative, TVA would not redevelop the TVA-owned brownfield property in Lowndes County for energy generation. The Action Alternative would evaluate the development of the NCG site for construction and operation of a CT. Whether these or other alternatives are reasonable warranting further consideration under NEPA would be determined in the course of preparing the EA or EIS.

Anticipated Environmental Impacts

The EA or EIS will include a detailed evaluation of the environmental, social, and economic impacts associated with implementation of the proposed action. Resource areas to be addressed in the EA or EIS include but are not limited to air quality; aquatics; botany; climate change; cultural resources; emergency planning; floodplains; geology and groundwater; land use; noise and vibration; health and safety; soil erosion and surface water; socioeconomic and environmental justice; threatened and endangered species; transportation; visual resources; waste; wetlands; and wildlife. Measures to avoid, minimize, and mitigate adverse effects will be identified and evaluated in the EA or EIS.

Anticipated Permits and Other Authorizations

TVA anticipates seeking required permits or authorizations, as appropriate. TVA's proposed action to construct a CT may also require issuance of an air permit under the Clean Air Act, an Individual or Nationwide Permit under section 404 of the Clean Water Act; section 401 Water Quality Certification; a Mississippi Large Construction Stormwater Permit; conformance with Executive Orders on Environmental Justice (12898), Wetlands (11990), Floodplain Management (11988), Migratory Birds (13186), and Invasive Species (13112); and compliance with Section 106 of the National Historic Preservation Act, section 7 of the Endangered Species Act, and other applicable local, Federal, and State regulations.

Public Participation and Scoping Process

Scoping, which is integral to the process for implementing NEPA, provides an early and open process to ensure that issues are identified early and properly studied; issues of little significance do not consume substantial time and effort; the draft EA or EIS is thorough and balanced; and delays caused by an inadequate EA or EIS are avoided. TVA seeks comment and participation from all interested parties for identification of potential alternatives, information, and analyses relevant to the proposed action in this EA or EIS. Public comments received during the scoping period will assist TVA in determining the appropriate level of NEPA review.

Information about this project is available at <https://www.tva.com/nepa>, which includes a link to an online public comment page. Comments must be received or postmarked no later than January 19, 2024. Federal, State, local agencies, and Native American Tribes are also invited to provide comments. Please note that any comments received, including names and addresses, will become part of the project administrative record and will be available for public inspection. To facilitate the scoping process, TVA will hold an in-person public open house from 5 p.m. to 7 p.m. on January 8, 2024, at the New Caledonia Community Center located at 205 South St., Caledonia, MS 39740; see the project website for more information on the meeting.

EA or EIS Preparation and Schedule

TVA will consider comments received during the scoping period and develop

a scoping report which will be published online. The scoping report will summarize public and agency comments that were received and identify the projected schedule for completing the environmental review process. TVA will post a draft EA or EIS for public review and comment on the project website. TVA anticipates holding a public open house after releasing the draft EA or EIS. TVA expects to release the draft EA or EIS in Spring or Summer 2024 and a final EA or EIS in late 2024. If an EIS is prepared, TVA would publish a Record of Decision at least 30 days after the release of the final EIS.

Authority: 40 CFR 1501.9.

Susan Jacks,

General Manager, Environmental Resource Compliance.

[FR Doc. 2023-26178 Filed 11-27-23; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Qualification and Transfer of Credit Under Sections 30D and 25E From the Taxpayer to an Eligible Entity

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 Revenue Procedure 2023-33 and subsequent procedures for making a transfer election under Internal Revenue Code (IRC) sections 30D and 25E, and qualifying vehicles under IRC section 30D.

DATES: Written comments should be received on or before January 29, 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. 1545-2311 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: Qualification and Transfer of Credit under Sections 30D and 25E from Taxpayer to Eligible Entity.

OMB Number: 1545–2311.

Abstract: Under the procedures prescribed in these revenue procedures, a dealer of a new clean vehicle or previously owned clean vehicle that wishes to partake in the advanced payment program under IRC sections 30D(g) and 25E(f) must register with the IRS through the IRS Identity Registration System and through the IRS Clean Vehicle Sales Portal. At the time of registration through the IRS Clean Vehicle Sales Portal, the dealer must provide certain information to the IRS and make certain certifications. After those are complete, the IRS will perform a tax compliance check to ensure the dealer is compliant with its tax obligations. After a taxpayer makes a transfer election under IRC sections 30D(g) or 25E(f) to the dealer, a dealer must upload certain information through the IRS Clean Vehicle Sales Portal, and the IRS, upon review, and if all conditions are met, will issue a payment to the dealer.

Qualified manufacturers who wish to have certain new clean vehicles qualify for the IRC section 30D credit in the subsequent year must submit certain information related to applicable critical minerals and battery components.

The IRS created a Clean Vehicles Sale Portal for qualified manufacturers, dealers, and sellers to register and provide the requisite information. The likely respondents are businesses and other for-profit entities.

Current Actions: There are changes to the existing collection. The IRS is revising this collection to add reporting obligations for qualified manufacturers to submit to the Department of Energy (DOE). This creates a modified collection obligation for qualified manufacturers related to applicable critical minerals and battery components. This modification provides that qualified manufacturers who wish to have certain new clean vehicles qualify for the IRC section 30D credit in the subsequent year must submit a report to the DOE that includes supporting documentation in relation to

battery components and applicable critical minerals, as well as associated constituent materials, contained in the battery from which the electric motor of the vehicle draws electricity; and submit attestations under penalty of perjury.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 440,050.

Estimated Time per Respondent: 7 hours, 23 minutes.

Estimated Total Annual Burden Hours: 3,247,250.

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: November 22, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–26155 Filed 11–27–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2024 as required by section 3241(d) of the Internal Revenue Code. Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2024 apply to compensation paid in calendar year 2024.

FOR FURTHER INFORMATION CONTACT:

Kathleen Edmondson, CC:EEE:EOET:ET1, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, Telephone Number (202) 317–6798 (not a toll-free number).

Tier 2 Tax Rates: The tier 2 tax rate for 2024 under section 3201(b) on employees is 4.9 percent of compensation. The tier 2 tax rate for 2024 under section 3221(b) on employers is 13.1 percent of compensation. The tier 2 tax rate for 2024 under section 3211(b) on employee representatives is 13.1 percent of compensation.

Rachel D Levy,

Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes).

[FR Doc. 2023–26101 Filed 11–27–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 15315

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 15315, Annual Certification for Multiemployer Defined Benefit Plans.

DATES: Written comments should be received on or before *January 29, 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. 1545–2111 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Ryan Mitchell (904) 661–3080, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through email at ryan.l.mitchell@irs.gov.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Annual Certification for Multiemployer Defined Benefit Plans.

OMB Number: 1545–2111.

Form Number: 15315.

Abstract: Internal Revenue Code section 432(b)(3) requires an actuarial certification of whether a multiemployer plan is in endangered status, and whether a multiemployer plan is or will be in critical status, for each plan year. This certification must be completed by the 90th day of the plan year and must be provided to the Secretary of the Treasury and to the plan sponsor. If the certification is with respect to a plan year that is within the plan's funding improvement period or rehabilitation period arising from a prior certification of endangered or critical status, the actuary must also certify whether the plan is making scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Actuaries submit Form 15315 to report the actuarial certification of a multiemployer plan's status.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions.

Estimated Number of Responses: 1,200.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 900.

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: November 21, 2023.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2023–26102 Filed 11–27–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 28, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622–1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. *Title:* Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in a U.S. Trade or Business.

OMB Control Number: 1545–2292.

Form Number: TD 9926.

Abstract: These final regulations under section 1446(f) provide guidance related to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in a trade or business within the United States. The final regulations affect certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in a trade or business within the United States, and persons that acquire those interests. The final regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

Current Actions: There is no change to existing regulation.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 76,000.

Estimated Time per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 50,920.

2. *Title:* Tax Return Preparer Complaint and Tax Return Preparer Fraud or Misconduct Affidavit.

OMB Number: 1545–2168.

Form Numbers: 14157 and 14157–A.

Abstract: These forms will be used by taxpayers to report allegations of misconduct by tax return preparers. The forms are created specifically for tax return preparer complaints and include items necessary for the IRS to effectively evaluate the complaint and route to the appropriate function.

Current Actions: There are no changes to the forms previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, businesses, and other for-profits.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 12 mins.

Estimated Total Annual Burden Hours: 1,593.

3. *Title:* Like-Kind Exchanges.

OMB Number: 1545–1190.

Form Number: Form 8824.

Abstract: Section 1031 of the Internal Revenue Code allows for the non-recognition of gain or loss on the exchange of business or investment property. Section 1043 allows for the non-recognition of gain from dispositions made by certain members of the executive branch of the Federal government because of a conflict of interest. Form 8824 provides taxpayers with an easy method of determining whether a transaction qualifies for like-kind exchange treatment, the gain or loss, if any recognized because of the exchange, and the basis in the new property received in the exchange.

Current Actions: Substantial changes are being made to the form and instructions, based on Regulations sections 1.1031(a)–1(a)(3) and 1.1031(a)–3 (and IRC 1031 as updated by Pub. L. 115–97 (TCJA), section 13303). These rules limit the property eligible for like-kind exchanges. Under these rules, only property meeting the definition of real property in IRC 1031 is like-kind property for purposes of like-kind exchanges.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institution.

Estimated Number of Respondents: 137,547.

Estimated Time per Respondent: 17 hrs., 11 min.

Estimated Total Annual Burden Hours: 2,364,433.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–26169 Filed 11–27–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a Department of Veterans Affairs National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is updating the monetary allowance payable for privately purchased outer burial receptacles for qualifying interments in a VA national cemetery that occur during calendar year (CY) 2024. The allowance is equal to the average cost of Government-furnished graveliners less any administrative costs associated with processing and paying the allowance. The purpose of this notice is to notify interested parties of the average cost of Government-furnished graveliners, associated administrative costs and the allowance amount payable for qualifying interments that occur in CY 2024.

DATES: This allowance amount is effective on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: William Carter, Chief of Budget Execution Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, telephone: 202–461–9764 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 2306(e)(3), (4) authorizes VA to provide a monetary allowance for the private purchase of an outer burial receptacle for casketed burials in a VA national cemetery. VA administers the outer burial receptacle allowance in accordance with 38 CFR 38.629, which specifies how the allowance amount is determined each year and requires VA to post the amount of the allowance in the Notices section of the **Federal Register**.

The allowance for qualified interments that occur during CY 2024 is equal to the average cost of Government-furnished graveliners in fiscal year (FY) 2023, less the administrative cost incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by

VA during that fiscal year. The calculation excludes both graveliners pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be \$420.00 for FY 2023.

The administrative cost is based on the costs incurred by VA during CY 2023 that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. This cost has been determined to be \$9.00.

The allowance payable for qualifying interments occurring during CY 2024, therefore, is \$411.00.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on November 21, 2023, 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.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–26140 Filed 11–27–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0786]

Agency Information Collection Activity: Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) Longitudinal Study Survey Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 29, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to “OMB Control No. 2900–0786” in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email maribel.aponte@va.gov. Please refer to “OMB Control No. 2900–0786” in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 112–256, section 221–225.

Title: Department of Veterans Affairs (VA) VR&E Longitudinal Study Survey Questionnaire.

OMB Control Number: 2900–0786.

Type of Review: Extension of a currently approved collection.

Abstract: As required by Public Law 110–389 section 334, VBA will continue to collect survey data with the revised questionnaire on individuals who began participating in the VR&E program

during fiscal years 2010, 2012, and 2014. VA will conduct a study of this data to determine the long-term positive outcomes of individuals participating in VBA’s VR&E program. The purpose of this study is to monitor the effectiveness of VR&E program, so that we can find ways to improve the program and increase the support VA provide to Veterans daily. The data collected in this study is integral to VA submitting a congressionally-mandated annual report on the long-term outcomes of Veterans who participate in the VR&E program.

Affected Public: Individuals.

Estimated Annual Burden: 2,695 hours.

Estimated Average Burden per

Respondent: 20 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 8,084.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–26141 Filed 11–27–23; 8:45 am]

BILLING CODE 8320–01–P



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Part II

Department of Agriculture

Agricultural Marketing Service

9 CFR Part 201

Transparency in Poultry Grower Contracting and Tournaments; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–FTPP–21–0044]

RIN 0581–AE03

Transparency in Poultry Grower Contracting and Tournaments

AGENCY: Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This final rule amends the regulations under the Packers and Stockyards Act, 1921 (Act), to add disclosures and information that live poultry dealers engaged in the production of broilers must furnish to poultry growers with whom dealers make poultry growing arrangements. The rule also establishes additional disclosure requirements for live poultry dealers engaged in the production of broilers who use poultry grower ranking systems to determine settlement payments for broiler growers. These requirements add targeted transparency to the market for grower services that will inhibit deceptive practices related to broiler contracting and performance. The Act protects fair trade, financial integrity, and competitive markets for livestock, meat, and poultry.

DATES: This final rule is effective February 12, 2024.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690–4355; or email: s.brett.offutt@usda.gov.

SUPPLEMENTARY INFORMATION: At the beginning of the 20th century, a small number of meat packing companies dominated the industry and engaged in practices that were deemed anticompetitive and harmful to livestock producers. In response, Congress enacted the Packers and Stockyards Act, 1921 (Act), 7 U.S.C. 181 *et seq.*, which seeks to promote fairness, reasonableness, and transparency in the livestock marketplace by prohibiting practices that are contrary to these goals. In the 100 years since the Act went into effect, livestock business practices have changed significantly, particularly in the poultry industry, for which provisions were added to the law in 1935 (Act of August 14, 1935, 49 Stat. 648).

Within the last 40 years, the poultry industry has become highly integrated,

with most live poultry dealers operating as “integrators” who frequently own or control all segments of the production process except growout, where poultry growers raise young poultry to harvest size under poultry growing arrangements (contracts). Most integrators employ a relative performance or grower ranking system to determine grower payment, as explained later in this section. Thus, AMS’s references to “integrator” in the discussion of this final rule refer specifically to those live poultry dealers who are vertically integrated and generally use a relative performance or grower ranking system to determine grower payment.

Over the same 40-year time span, the industry has also become more concentrated.¹ One measure of industry concentration is the four-firm concentration ratio, which is the combined market share of the four largest firms in the industry. A higher four-firm concentration ratio means a higher level of industry concentration. In 1963, the four firm concentration ratio for chickens was 14 percent.² By 1980, the four-firm concentration ratio for integrators processing broilers was 32 percent.³ By 2022, the four-firm concentration ratio increased to 57 percent.⁴ Concentration is even higher at the local level in which growers operate. In the last available survey of local markets, MacDonald and Key (2011) found that about one quarter of contract growers reported that there was just one live poultry dealer close enough to grow for; another quarter reported two; another quarter reported three; and the rest reported four or more.⁵

¹ One measures of industry concentration is the four-firm concentration ratio, which is the combined market share of the four largest firms in the industry. A higher four-firm concentration ratio means a higher level of industry concentration. Rapid increases in broiler productivity, an important factor driving consolidation, did not begin until after World War II. Charles R. Knoeber, “A Real Game of Chicken: Contracts, Tournaments, and the Production of Broilers,” *Journal of Law, Economics, & Organization*, Vol. 5, No. 2. (Autumn, 1989).

² Michael Ollinger, James MacDonald, and Milton Madison. *Structural Change in U.S. Chicken and Turkey Slaughter*. U.S. Department of Agriculture, Economic Research Service. Agricultural Economic Report No. 787, September 2000, p. 7.

³ John M. Crespi, Tina L. Saitone, and Richard J. Sexton. *Competition in U.S. Farm Product Markets: Do Long-Run Incentives Trump Short-Run Market Power?*, Applied Economic Perspectives and Policy (2012) volume 34, number 4.

⁴ WATT Poultry USA, March 2023. Companies ranked by weekly ready to cook pounds.

⁵ James M. MacDonald, *Technology, Organization, and Financial Performance in U.S. Broiler Production*, EIB–126, U.S. Department of Agriculture, Economic Research Service, June 2014: 30, https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=0.

There are approximately 16,500 broiler (chicken grown for meat) growers—those who actually raise the chickens from chicks, often under contract with live poultry dealers—in the U.S.⁶ Based on comments from the industry, broiler growers typically have no employees, but some may employ a handful of workers outside themselves and their families.⁷ According to annual reports filed with the Department of Agriculture (USDA), there were 42 live poultry dealers engaged in broiler production in the U.S. in their fiscal year 2021.⁸ Of those, 20 have fewer than 1,250 employees each, and have average annual sales of \$77 million.⁹ Fewer than 5 percent of approximately 20,000 U.S. broiler grower contracts are with these 20 dealers.¹⁰ More than 95 percent of broiler grower contracts are with the 22 larger live poultry dealer companies that employ more than 1,250 employees each and have average annual sales of \$3.6 billion.¹¹ Total U.S. chicken sales for these dealers was \$58.6 billion in 2019.

Most broiler growers raise poultry under a contractual growing arrangement commonly known as a tournament system.¹² Under this system, integrators use a relative performance or grower ranking system for settlement purposes, *i.e.*, to determine grower payment among a group of competing growers. Poultry growers in tournament systems find themselves competing for payment without access to information in the possession of the integrators that would allow growers to manage, as best they can, poultry production under the

⁶ USDA, NASS. 2017 Census of Agriculture: United States Summary and State Data. Volume 1, Part 51. Issued April 2019.

⁷ AMS has no exact data on grower revenues but assumes most broiler growers are small businesses as defined by the Small Business Administration (SBA), with annual sales of less than \$3.5 million.

⁸ All live poultry dealers are required to annually file PSD form 3002 “Annual Report of Live Poultry Dealers,” OMB control number 0581–0308. The annual report form is available to public on the internet at <https://www.ams.usda.gov/sites/default/files/media/PSF3002.pdf>.

⁹ Live poultry dealers annual report submissions PSD form 3002 “Annual Report of Live Poultry Dealers,” to AMS. OMB control number 0581–0308.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Citing data from the 2011 ARMS survey, MacDonald states “97 percent of broilers were grown under contract, 94 percent of contracts included payment incentives tied to grower performance, and 93 percent of those contracts tied the incentives to relative performance—that is, performance compared to other growers.” See MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production*, EIB–126, U.S. Department of Agriculture, Economic Research Service, June 2014: 27.

payment systems established by the integrators.

Live poultry dealers generally do not provide, and poultry growers and prospective poultry growers find themselves unable to negotiate access to, (1) critical information needed to properly assess farm revenue streams and the operation of poultry growing contracts, and (2) information related to the distribution of inputs delivered to growers affecting performance among tournament participants. Whether from a representation, omission or practice, the inability to secure this information exposes growers to deception and risks of deception that could be reduced or eliminated with the provision of the information. Additionally, live poultry dealers possess or are reasonably expected to possess this information and are able to provide it to growers with minimal costs. For more than two decades, USDA, through the Agricultural Marketing Service (AMS) and its Packers and Stockyards Division (PSD) which now administers the Act, and formerly through Grain Inspection Packers and Stockyard Administration (GIPSA), has received numerous complaints from poultry growers about poultry growing contracting in general and tournament systems particularly. While the complaints cover a range of concerns, a central concern is the gap between expected earnings and the ability to achieve those outcomes through reasonable efforts by the grower. This central concern is manifested specifically where live poultry dealers fail to make transparent the range of financial outcomes possible in these arrangements, where they exert high degrees of discretion that can and do adversely affect growers, and where they fail to provide information necessary for growers to understand and respond to changing factors (*i.e.*, input differences) in the operation of their contracts.

Among other things, the Act protects growers from deceptive practices wherein they can be misled through lack of information from live poultry dealers regarding both potential revenues and the risks growers assume in the course of making and operating their contracts. Accordingly, AMS is establishing rules that will increase transparency in broiler growing contracting, including tournament systems, targeted at key decision points for growers—at the time of contracting and housing upgrades, and at the provision of inputs during tournaments. These are points where live poultry dealers repeatedly and consistently either omit vital information or make misleading statements, which prevents

growers from understanding the risks they are taking on. Such misrepresentations may inhibit growers' ability to choose amongst competing live poultry dealers on a level playing field.

This rulemaking sets forth enforceable transparency requirements under section 202(a) of the Packers and Stockyards Act that will secure a more level playing field for growers and foster a marketplace with fairer contracts and the fairer operation of those contracts under the contract production model. Deception undermines the integrity of the market and deprives producers of the true value of their livestock.

In addition to the prohibitions on deceptive practices set forth this final rule, AMS is also evaluating additional specific prohibitions and regulatory limitations. To facilitate additional input, data, and ideas that may inform further efforts to regulate the poultry tournament system, USDA put forward an Advance Notice of Proposed Rulemaking seeking stakeholder input. Based on that input, AMS has included in the Office of Management and Budget's Spring 2023 Regulatory Agenda an upcoming proposed rule entitled "Poultry Grower Payment Systems and Capital Improvement Systems."¹³ AMS welcomes engagement with interested stakeholders around ideas to be developed in that further rulemaking on poultry tournaments.

I. Overview

On June 8, 2022, AMS published in the **Federal Register** (87 FR 34980; Docket No. AMS–FTPP–21–0044) a proposal to amend the regulations implementing the Packers and Stockyards Act. AMS solicited comments on the proposed rule for an initial period of 60 days and extended the comment period 15 days on August 8, 2022 (87 FR 48091) through August 23, 2022. AMS received 504 comments, some with multiple signatories, from individual poultry growers, trade organizations representing producers, poultry companies, the meat industry, State- and national-level agriculture groups, other associations, and non-profit organizations. After consideration of all comments, AMS adopts the proposed rule, with modification. Section V details the regulatory changes made by this final rule. Modifications to the proposed rulemaking are discussed in Section VI. Public comments are discussed by topic in Section VII.

¹³ RIN: 0581–AE18, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=0581-AE18>.

This rulemaking adds two new sections to PSD regulations under the Act, introducing new disclosure requirements that live poultry dealers engaged in the production of broilers must furnish to broiler growers with whom they establish broiler growing arrangements. In doing so, the final rule builds on existing disclosure concepts under the Act in 7 U.S.C. 197(a) through (c) and in the regulations that effectuate the Act at 9 CFR 201.55; 9 CFR 201.56(d); 9 CFR 201.99; and particularly 9 CFR 201.100, with respect to the poultry industry, which provide for a range of disclosures such as settlement sheets and establish other regulatory requirements. The current disclosure framework has improved transparency in poultry contracting and has helped close the asymmetric information gap between the parties, thus reducing the market failure caused by asymmetric information.¹⁴ However, the modern poultry industry, in particular the broiler chicken segment, now requires increasingly large capital investments; and under the tournament system, growers are subject to intense pressures to perform, as well as financial and operational risks that may exacerbate the dangers of deception.

Section 202(a) (7 U.S.C. 192(a)) of the Act prohibits live poultry dealers from engaging in deceptive practices. This rulemaking establishes prohibitions against specific deceptive practices, such as withholding important information on the economic, financial, and operational risks growers take when entering into and operating their growing agreements. Growers can make more informed business decisions when they know the economic, financial, and operational risks associated with poultry growing. A lack of transparency for growers in poultry growing arrangements also creates an environment where growers are more vulnerable to other marketplace abuses.

Live poultry dealers have possession of key information that is materially useful for growers as they make decisions. This information asymmetry can be exploited by dealers to impede growers' ability to understand, evaluate, and compare contracts offered by dealers, bargain efficiently with competing dealers where and to the extent possible given the highly concentrated nature of the poultry industry, and manage their farm effectively for the risks they confront.

¹⁴ The concept of asymmetric information and associated market failures is discussed in a seminal article: Akerlof, G.A. "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism." *The Quarterly Journal of Economics* Vol. 84, No. 3 (August 1970).

This type of deceptive conduct denies growers the benefits of market and the full value of their services, and results in misallocation of grower resources, heightened live poultry dealer bargaining power, and significant financial risk to growers.

This rule adds a new § 201.102 to the regulations, adding to the list of required disclosures a live poultry dealer must make to broiler growers and prospective broiler growers in connection with poultry growing arrangements. By obtaining these disclosures prior to making the underlying capital investment, growers are better positioned to understand and evaluate growing arrangements. The rule further requires live poultry dealers to specify additional terms in broiler growing contracts about variables that are highly correlated with grower annual revenue. This information is not routinely shared with growers. AMS intends for these new requirements to improve transparency and inhibit deceptive practices in poultry growing arrangements.

Additionally, this rule adds a new § 201.104 to the regulations to require live poultry dealers to provide information related to the integrator-controlled input distribution to poultry growers paid under grower ranking systems (tournaments), where growers are paid based on their performance relative to a grouping of other growers. These disclosures allow growers to evaluate the distribution of inputs affecting performance such as poultry breed, gender ratio, and flock health—of their own flock and as compared to flocks of all tournament participants. These new data points will help growers better understand, evaluate, and compare the relationships between inputs, flock performance, and payment under their poultry growing arrangement. The requirements in this rule are intended to provide greater transparency and inhibit deceptive practices in the operation of poultry grower ranking systems.

Finally, this rule makes conforming changes to the regulations by adding to the list of definitions in § 201.2 to define terms used in new § 201.102 and new § 201.104.

Specifically, this final rule requires the following of live poultry dealers engaged in the production of broilers:

1. A Live Poultry Dealer Disclosure Document (Disclosure Document), to be provided to prospective or current broiler growers that contains critical information about the broiler growing arrangement when seeking to establish, renew, revise, or replace a broiler growing arrangement with the grower,

including when a broiler growing arrangement would or might reasonably require a broiler grower to make an original or additional capital investment to comply with the live poultry dealer's housing specifications. A governance framework and CEO-certification enhances the accuracy and enforceability of the disclosures.

a. The Disclosure Document includes summaries of the dealer's litigation history with broiler growers and its bankruptcy filings over the past 5 years, the dealer's policies and procedures regarding sale of the grower's farm or assignment of the growing arrangement to another party, and the dealer's average annual turnover rate for broiler growers over the past five years.

b. The Disclosure Document describes the live poultry dealer's policies and procedures regarding certain instances of heightened discretion or unusual circumstances which would otherwise be opaque—specifically, increased layout times; sick or diseased flocks; natural disasters, weather-related events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events potentially resulting in massive depopulation of flocks affecting grower payments; feed outages including outage times; grower complaints relating to feed quality, formulation, or suitability; as well as any appeal rights growers may have relating to any of those items.

c. The Disclosure Document provides a more fulsome set of financial disclosures, including average annual gross payments to growers over the past 5 years broken out by quintiles to reflect the full range of outcomes, and a summary of information pertaining to grower variable costs inherent to broiler production.

2. Mandated disclosures in the contract that also set out the minimum number of placements to be delivered to the broiler grower's farm for each year of the broiler growing arrangement contract, as well as the minimum stocking density of each placement.

3. When a poultry grower ranking system is used, disclosures of critical information about the flock (e.g., stocking density, breed names and ratios, breeder facility identifiers, and breeder flock age) placed with the grower must be disclosed within 24 hours of delivery.

4. When a poultry grower ranking system is used, dealers must provide settlement disclosures regarding critical information about each grower's ranking within the system, in particular the nature of the inputs received (e.g., stocking density, breed names and

ratios, breeder facility identifiers, and breeder flock age) and housing specifications for each growout period, without the identities of the growers to each other.

II. Background

A. Demand for This Rulemaking

For more than two decades, poultry growers have complained to USDA of abuses that arise in the contracting process and the operation of those contracts under poultry grower ranking systems, also known as the tournament system, a payment method which dominates the broiler chicken industry. To address these longstanding concerns regarding the fairness and competitive functioning of the market, Executive Order 14036 “Promoting Competition in the American Economy” (86 FR 36987; July 9, 2021), directs the Secretary of Agriculture (Secretary) to consider rulemaking to address, among other things, unfair treatment of farmers arising from certain practices related to poultry grower ranking systems. AMS has considered that direction in undertaking this rulemaking, as well as in undertaking an Advance Notice of Proposed Rulemaking around ideas to be developed in further rulemaking on poultry tournaments.

USDA's efforts to address grower complaints of malfeasance and abuses in the broiler industry now span more than a decade.¹⁵ In 2010, USDA held a series of workshops in conjunction with the Department of Justice (DOJ) to hear from producers about concentration and trade practice issues in agriculture. At the workshop in Normal, Alabama, poultry growers complained that their success or failure is dependent on factors controlled by their integrators.¹⁶ Further, growers were troubled by the lack of alternative integrators in many regional relevant markets, which further heightens the bargaining position of integrators.¹⁷ Grower public comments at the workshop were consistent with numerous comments submitted to USDA in connection with previous rulemaking efforts, as well as on the June 8, 2022, proposed rulemaking.

Growers expressed concerns about contract dependency, uncertainty of

¹⁵ See, generally, Leonard, Christopher, *The Meat Racket* (2014).

¹⁶ Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010, Normal, Alabama (<https://youtu.be/j11GXzvA7u0?t=1822>).

¹⁷ See Domina, David A. and Robert Taylor, “The Debilitating Effects of Concentration Markets Affecting Agriculture,” *Drake Journal of Agricultural Law* 15 (May 2010): 61–108. See also Leonard, Christopher, *The Meat Racket* (2014).

pay, and informational asymmetries related to farm revenues and debt. Poultry growers have indicated they lack information about certain crucial production factors controlled by live poultry dealers, such as the anticipated frequency and density of flock placements and bird target weight under poultry growing arrangements, which heavily influence grower payments on an individual flock basis and over the long term.¹⁸

Growers cited the level of control and discretion reserved to integrators under their contracts, remarking how discretionary decisions controlled by integrators related to inputs quality, flock placements, housing specifications, tournament grouping, and other production factors can significantly affect grower revenue and profitability. Many growers were worried that contract terms did not cover the time required to repay the debt on their farms, noting that—sometimes unforeseen—additional capital investments, such as those necessitated by integrators' housing specifications, can plunge growers into further debt without assurances of adequate or stable returns.¹⁹ Growers indicated they do not have adequate information with which to assess original and additional capital investments because pay rates alone are insufficient for long-term revenue estimates without assumptions related to integrator discretionary production decisions.²⁰ Growers have also raised concerns regarding the use of overly rosy “pro forma” financial estimates, including income projections, during the contracting process, which in the growers' experience are not realized.²¹

Finally, poultry growers complained to USDA about being prohibited by dealers from asserting their rights under the current regulations to discuss poultry growing contracts with USDA

government representatives (including PSD), family members, lenders, and other business associates. Some growers allege they have been threatened or retaliated against by integrators for asserting those rights, including for responding to Federal Government requests for information—specifically, the 2010 DOJ Workshop.²² USDA also received comments to the proposed rule that alleged some growers were harassed, intimidated, and retaliated against for refusing to make expensive upgrades to their growing operations.

Similar to the comments received during the 2010 workshop, comments received in response to this proposed rule specifically reaffirmed that one prevalent deceptive practice involves live poultry dealers' omission of key information in the contracts with growers. This omission of information caused growers to believe that they were signing up for a contract that in practice they did not end up receiving or provide providing services under. Numerous comments to the proposed rule described how dealers provide growers with inadequate information on settlement sheets, particularly related to payment, and how, without this information, growers could not make sound business decisions.

Commenters have noted live poultry dealers do not provide critical information about—

- typical upfront associated costs;
- revenues and the full range of possible outcomes thereto;
- sale-of-farm policies;
- dealer bankruptcy and litigation history with poultry growers;
- grower turnover rate;
- how dealers handle—and growers are affected by—depopulation, sick chicks, natural disaster, weather-related events, and impairments to the physical infrastructure of the local complex or the grower's facility; feed outages; feed quality, formulation, and suitability; and appeals processes related thereto;
- minimum flock numbers and stocking densities;
- information about inputs and any differences between them, such as about the breeds, chick weights, breeder facilities, breeder flock age, and bird sexing—both at delivery and at settlement; and
- at settlement, information about housing type. Growers expressed a strong need for such information, as they could use it when deciding how to manage their farms, grow chicks, and

take on—or not take on—additional risks in growing broiler chicken.

B. Market Structure and Production Contracts

Integrated live poultry dealer firms typically own and manage local “complexes” of integrated operations that include hatcheries, feed mills, transportation systems, and processing facilities, and they contract with individual growers within a local region to raise birds for meat and hatchery eggs.²³ As explained earlier, these live poultry dealers that own and manage vertically integrated operations are referred to in the industry as “integrators.”

Through vertical integration, integrators control the complete supply chain from the genetics of breeder stock to slaughter. While integrators own most of the inputs and manage the operation of the supply chain, they outsource the function and major costs of raising poultry to broiler growers—and control much of that process through production contracts. Contracting with individual growers to grow out broilers, rather than procuring broilers from company-owned farms, is advantageous to integrators for two reasons: (1) the rapid pace of technological change in broiler production since the 1950s requires ongoing significant capital investments, and (2) the use of tournaments to compensate growers insulates growers from common production risks (such as disease and extreme weather) and lowers transaction costs.²⁴

Through the poultry growing arrangement, broiler growers provide the growout facilities and the equipment, labor, and management associated with those facilities. Broiler growers are typically responsible for utilities, fuel, maintenance, and repairs. Growers are responsible for ensuring the equipment functions properly and the environment inside the poultry house is satisfactory at all times throughout placement, including waste removal and disposal of deceased birds. These activities are subject to significant discretion and control by the integrator through contract terms and integrator-supplied supervisors or service technicians who oversee growers. Integrators exert significant power over contract poultry grower operations

¹⁸ United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010; Normal, Alabama (<https://youtu.be/8CvEGyMQ9v8?t=2156>).

¹⁹ United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshops May 21, 2010; Normal, Alabama (<https://youtu.be/j11GXzvA7u0?t=2422>) (<https://youtu.be/j11GXzvA7u0?t=3032>).

²⁰ United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshops May 21, 2010; Normal, Alabama (<https://youtu.be/j11GXzvA7u0?t=2453>).

²¹ United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshops May 21, 2010; Normal, Alabama (<https://youtu.be/8CvEGyMQ9v8?t=4226>; <https://youtu.be/j11GXzvA7u0?t=3084>; <https://youtu.be/j11GXzvA7u0?t=3091>).

²² United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshops May 2010; Normal, Alabama (https://youtu.be/8QJ_K06lp5M?t=1051).

²³ MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production*, EIB-126, U.S. Department of Agriculture, Economic Research Service, June 2014.

²⁴ Charles R. Knoeber. “A Real Game of Chicken: Contracts, Tournaments, and the Production of Broilers.” *Journal of Law, Economics, & Organization*, Vol. 5, No. 2. (Autumn, 1989).

through individual production contracts and payment systems.

Grower revenue is a function of payment per flock multiplied by the number of flocks over a time period. While the specific formula for flock payment varies among integrators, it typically involves the evaluation of three variables: payrate, farm weight, and feed consumed. Where used to allocate payment, the tournament system is supposed to essentially rank growers on their efficiency in production, with payrates adjusted up or down based upon the growers' deviation from average performance of all growers over the growout period.

Growers' annual revenues are heavily dependent upon the annual number of flock placements and stocking density²⁵ of each placement, which are typically discretionary functions controlled by the integrator. Empty poultry houses do not produce revenue. Additionally, under tournament contract payments, flock performance—and therefore per flock payments—can be influenced by integrator discretionary decisions related to variation in input distributions like poultry breeds,²⁶ bird sex,²⁷ breeder stock age,²⁸ stocking

density,²⁹ consistency of feed availability,³⁰ and the type and administration of veterinary medicines.³¹

Moreover, when integrators encounter problems in performing their contract obligation to provide inputs, they often seek to resolve them via discretionary functions reserved to the integrator under the contract. From growers' points of view, these are operational risks that can result in actual or perceived disparate treatment among growers. When natural disasters or weather events affect the integrators' ability to provide chicks and feed or other key physical infrastructure of the local complex or grower facility, growers are unlikely to be aware of the integrators' policies and procedures that dictate allocation of inputs or determine availability or supplemental pay. Similarly, if a disease outbreak or massive depopulation event affects growers, growers have a right to be informed of the policies and procedures that will be implemented to control the outbreak, assign payment, and reallocate inputs. As feed is a primary input for growout, growers must be made aware of policies and procedures to report issues of feed suitability and quality to company personnel. Integrators do not necessarily share these policies and procedures with growers and often use informal rules with respect to the above-mentioned issues. Without this critical information, growers' ability to understand and evaluate, as well as compare contracts among integrators, is impeded, and the potential for deception in contracting and deceptive practices in the operation of those contracts increases.

Due to market consolidation combined with certain natural factors (such as the fragility of birds, limiting their transport), many integrators

operate as monopsonists³² or oligopsonists³³ in their relevant regional market. Some research³⁴ shows a correlation in local markets between the number of available integrators and grower payments, with payments shrinking as the number of integrators decreases. In local markets, the lack of alternative integrators, coupled with integrator control and discretion over production contracts, leaves growers with little bargaining power to obtain reasonable contract assurances and transparency.

Under the existing poultry industry market structure, growers are dependent on a live poultry dealer and receive only nominal assurances related to production levels and the variables composing farm revenue, while integrators set those production levels and have significantly more data related to grower payment variables, which generate costs integrators seek to minimize. The failure to provide critical information is deceptive given the conditions of asymmetrical information that compound as growers accumulate debt and operate in a tournament they do not control, both of which are discussed in greater detail below.

C. Grower Debt and Hold-Up Risk

Poultry growout operations require significant financial investments on the part of poultry growers, who typically provide the facilities (poultry housing and necessary equipment), utilities (electricity, gas, and water), manure management, compliance with environmental regulations, labor, and day-to-day management of growing poultry. One of the costliest investments is in poultry housing and equipment, the requirements of which are dictated to the poultry grower by the live poultry dealer through the contract. Throughout the term of the contract, live poultry dealers may encourage, incentivize, or even require a poultry grower, at the grower's expense, to upgrade existing

²⁵ Often expressed as a ratio of birds per square foot, or pounds (target weight of poultry at harvest) per square foot, stocking density reflects the number of birds placed on a farm or in a poultry house.

²⁶ Muir, W.M. and SE Aggrey. *Poultry Genetics, Breeding, and Biotechnology* (2003).

²⁷ See Burke, William, and Peter J. Sharp. "Sex Differences in Body Weight of Chicken Embryos." *Poultry Science* 68.6 (1989): 805–810; and Beg, Mah, et al. *Effects of Separate Sex Growing on Performance and Metabolic Disorders of Broilers*. Diss. Faculty of Animal Science and Veterinary Medicine, Sher-e-Bangla Agricultural University, Dhaka, Bangladesh, 2016.

²⁸ See Washburn, K.W., and R.A. Guill. "Relationship of Embryo Weight as a Percent of Egg Weight to Efficiency of Feed Utilization in the Hatched Chick." *Poultry Science* 53.2 (1974): 766–769; Weatherup, S.T.C., and W.H. Foster. "A Description of the Curve Relating Egg Weight and Age of Hen." *British Poultry Science* 21.6 (1980): 511–519; Wilson, H.R. "Interrelationships of Egg Size, Chick Size, Posthatching Growth and Hatchability." *World's Poultry Science Journal* 47.1 (1991): 5–20; Goodwin, K. "Effect of Hatching Egg Size and Chick Size Upon Subsequent Growth Rate in Chickens." *Poultry Science* 40 (1961): 1408–1409; Morris, R.H., D.F. Hessels, and R.J. Bishop. "The Relationship Between Hatching Egg Weight and Subsequent Performance of Broiler Chickens." *British Poultry Science* 9.4 (1968): 305–315; Peebles, E. David, et al. "Effects of Breeder Age and Dietary Fat on Subsequent Broiler Performance. 1. Growth, Mortality, and Feed Conversion." *Poultry Science* 78.4 (1999): 505–511. AMS notes additionally that research in this and related areas has limitations. It is older and results are mixed. AMS is concerned that publically available research has stagnated, despite the introduction of new breed strains in the intervening years. Because integrators now own the genetics companies, AMS has additional concerns that research has, in effect, been privatized, creating informational asymmetries. Based on regulatory experience and

on public comments, growers believe these factors affect performance, highlight its value to growers from disclosure.

²⁹ Dozier III, W.A., et al. "Stocking Density Effects on Growth Performance and Processing Yields of Heavy Broilers." *Poultry Science* 84 (2005): 1332–1338; Puron, Diego et al. "Broiler performance at different stocking densities." *Journal of Applied Poultry Research* 4.1:55–60 (1995).

³⁰ Dozier III, W.A., et al. "Effects of Early Skip-A-Day Feed Removal on Broiler Live Performance and Carcass Yield." *Journal of Applied Poultry Research* 11.3 (2002): 297–303.

³¹ Treatments may be necessary to mitigate disease within a single poultry house or an entire flock, or to boost the performance of suboptimal progeny from impaired breeder flocks, as described above. These treatments may affect the flock's growth rate or mortality. See Wells, R.G., and C.G. Belyawin. "Egg quality-current problems and recent advances." *Poultry science symposium series*. No. 636.513 W4. 1987. (citing Spackman, D. "The Effects of Disease on Egg Quality.")

³² Merriam-Webster online dictionary: A monopsonist is one who is a single buyer for a product or service of many sellers. <https://www.merriam-webster.com/dictionary/monopsonist>; accessed 3/8/2022.

³³ Merriam-Webster online dictionary: Oligopsony is a market situation in which each of a few buyers exerts a disproportionate influence on the market. An oligopsonist is a member of an oligopsonistic industry or market. <https://www.merriam-webster.com/dictionary/oligopsonist>; accessed 3/8/2022.

³⁴ MacDonald, James M., and Nigel Key. "Market Power in Poultry Production Contracting? Evidence from a Farm Survey". *Journal of Agricultural and Applied Economics* 44 (November 2012): 477–490. See also, MacDonald, James M. *Technology, Organization, and Financial Performance in U.S. Broiler Production*, EIB-126, U.S. Department of Agriculture, Economic Research Service, (June 2014): 29–30.

housing or equipment in order to renew or revise an existing contract. Revenue instability and continuing debt accumulation may explain the low returns to equity³⁵ in this space.

1. Construction Costs

A 2011 study estimated a cost of \$924,000 for site preparation, construction, and necessary equipment for four 25,000-square-foot poultry houses (or \$231,000 per house) in rural Georgia at that time, independent of the cost for the land.³⁶ Costs for establishing poultry houses have increased substantially since 2011, due to the advancement of new technologies in poultry housing and the increased cost of materials. AMS estimates current construction costs at nearly \$500,000 per poultry house.³⁷

Poultry growers can incur considerable debt to make the investments necessary for poultry production. Most new broiler housing is debt-financed. According to MacDonald, U.S. contract poultry growers' total debt amounted to \$5.2 billion, or 22 percent of the total value of their assets, in 2011.³⁸ The research cited here found that debt loads—and exposure to liquidity risks, should flock placements and revenues fall—are closely related to the age of the operation, with newer farmers carrying greater debt relative to the value of farm assets. Farmers with fewer than six years of experience in broiler production carried debt equal to 51 percent of assets, on average, and one quarter of those farmers carried debt equal to at least 77 percent of assets.

The weight of poultry grower debt load can be exacerbated by three additional factors: (1) the length, in terms of time, of a poultry growing arrangement is rarely long enough to cover the grower's debt repayment period, and can be as short as one flock; (2) growers may be encouraged or required by live poultry dealers to invest in facility upgrades, which may lead to additional debt; and (3) poultry housing is a specific-use asset with little

salvage or repurpose value.³⁹ In other words, the grower is unlikely to be able to use or sell the facilities for a different purpose should the poultry growing contract be terminated. These “term,” “upgrade,” and “specific use” problems are rooted in asymmetrical information problems at the contracting stage, where live poultry dealers have knowledge and control of production and technical/equipment needs over the useful life of the poultry farm and growers do not. Combined, these factors create classic hold-up risk, where live poultry dealers make contract renewal dependent on further grower investments not disclosed at the time of the original agreements.⁴⁰

Grower debt problems are exacerbated by the limited number of live poultry dealers in most localities and by complex dealer-specific requirements that inhibit grower movement between dealers, particularly for growers with older poultry houses. For example, a grower who currently produces smaller birds for one live poultry dealer may desire to move to a different dealer that wants larger birds. The grower could be required to upgrade their poultry growing facility to include more cooling capacity in order to accommodate larger birds. However, such upgrades may not be economically feasible for the grower, so the grower stays with their current live poultry dealer. Growers also may encounter problems trying to sell their farm to exit the industry. Banks commonly require that a prospective buyer secures a contract with a live poultry dealer to be approved for financing the farm, making the availability of the poultry growing contract a critical element to the farm's sale. Growers have often expressed frustration with live poultry dealer refusals to offer contracts to interested buyers, thwarting farm sales. Growers need to understand how live poultry dealer policies and procedures affect their ability to sell their poultry operation.

Grower debt and dependence on live poultry dealers contribute to additional risks that are enhanced by other

informational disparities. For example, dealers are not required to provide growers information related to the financial condition of the dealer or complex. Complexes that are underperforming financially may be subject to closure or reduced production levels, resulting in negative effects on grower revenue and potential contract termination. Growers also lack insight into other growers' satisfaction with a dealer and how often growers and dealers are involved in disputes, legal or otherwise. Dissension between a grower and their dealer can often result in contract termination and/or litigation between the parties. Dealers have readily available access to information concerning their financial health, grower churn,⁴¹ and frequency of litigation with growers. Disclosure of these items is critically useful information for growers to understand and evaluate risk and compare contracts among competing live poultry dealers. A live poultry dealer's failure to disclose this information to growers is deceptive.

2. Returns to Equity

The substantial debt accumulation, hold-up risk, and lack of competition for grower services, in an environment of opacity and asymmetrical information, is reflected in low grower returns to equity. In 2011, data drawn from a nationally representative sample of growers showed that the median payment received by contract growers was 5.55 cents per pound of farm weight. However, 10 percent of growers earned at least 7.02 cents per pound, while 10 percent earned less than 4.32 cents per pound.⁴² The sample data ranged across all growers and all contract types, but research has also shown that payments can range widely within specific contract types and within individual grower pools, creating revenue uncertainty for growers.⁴³

Perhaps even more concerning than the range of grower contract payments are the low returns on equity for poultry operations. According to USDA's Economic Research Service (ERS),⁴⁴ a

³⁵ MacDonald (June 2014) Op. Cit., pp. 38–40. Data from the *Agricultural Resource Management Survey—Version 4, Financial and Crop Production Practices, 2011*, and U.S. Census Bureau, 2011 Quarterly.

³⁶ Cunningham, Dan L., and Brian D. Fairchild. “Broiler Production Systems in Georgia Costs and Returns Analysis 2011–2012.” *UGA Cooperative Extension Bulletin* 1240 (November 2011), University of Georgia Cooperative Extension.

³⁷ See, for example, Cunningham and Fairchild (November 2011) Op. Cit.; Simpson, Eugene, Joseph Hess and Paul Brown, *Economic Impact of a New Broiler House in Alabama*, Alabama A&M & Auburn Universities Extension, March 1, 2019 (estimating a \$479,160 construction cost for a 39,600 square foot broiler house).

³⁸ MacDonald (June 2014) Op. Cit.

³⁹ Poultry growing facilities are often characterized by certain expensive attributes, such as temperature and other habitat control systems. A fully equipped poultry growing facility repurposed, for example, as a hay barn or other storage is unlikely to generate the revenue necessary to meet a grower's \$400,000 mortgage obligation. Nor is repurposing it for an alternative livestock usage, such as hogs or dairy cows, possible, at least without retrofitting that would essentially demolish the growout facility. The grower's return on investment is tied to using the facility as intended.

⁴⁰ Vukina, Tom, and Porametr Leegomonchai. “Oligopsony Power, Asset Specificity, and Hold-Up: Evidence from the Broiler Industry.” *American Journal of Agricultural Economics* 88 (2006).

⁴¹ Grower churn refers to changes in grower make up at a given complex. This metric reflects growers who have been terminated or left on their own accord.

⁴² MacDonald (June 2014) Op. Cit.

⁴³ Knoeber, Charles R. and Walter N. Thurman. “Testing the Theory of Tournaments: An Empirical Analysis of Broiler Production.” *Journal of Labor Economics* 12 (April 1994). Levy, Armando and Tomislav Vukina. “The League Composition Effect in Tournaments with Heterogeneous Players: An Empirical Analysis of Broiler Contracts.” *Journal of Labor Economics* 22 (2004).

⁴⁴ MacDonald (June 2014) Op. Cit., pp. 38–40.

Data from the *Agricultural Resource Management*

Continued

special survey conducted in 2011 showed mean returns on equity were negative for operations with one to two poultry houses, and increased with the size of the operation to positive 2.7 percent among operations with six or more houses. These figures were below mean rates of return on equity for large and midsize U.S. farms.⁴⁵ In AMS's experience, growers are experiencing the ongoing harm of contracting practices that omit critical information, such as certain dealer policies and procedures, input differences, information needed to evaluate returns across quintiles, and more.

D. Tournaments

The majority of growers producing poultry under production contracts are paid under a poultry grower ranking or "tournament" pay system.⁴⁶ Under poultry grower ranking systems, the contract between the live poultry dealer and the poultry grower provides for payment to the grower based on a grouping, ranking, or comparison of poultry growers delivering poultry to the dealer during a specified period based on metrics⁴⁷ created by the integrator. Per flock performance payments under tournament contracts generally depend on three variables: pay rate, farm weight, and feed consumed. In a simplified example, the live poultry dealer places flocks with ten growers under contract to deliver the same size of finished poultry to the dealer's processing plant at the end of a specified growout period. Upon harvest, each grower's performance (e.g., farm weight and feed conversion) is determined by an integrator-determined formula. The integrator then compares individual grower results against average results for all growers in the group, and ranks individual growers according to their relative performance within the group of ten growers. Grower contract payrate is adjusted up or down in relation to the grower's deviation from the average within the tournament grouping for that specific growout period.

Grower experience and skill, the technical specifications and relative sophistication of the housing, and other factors, such as the makeup of tournament groupings or inconsistent grower effort, may all affect performance. However, integrator decisions about inputs provided to tournament growers can also impact growers' relative performance.

Under the tournament system, integrators control the source of inputs and the distribution of those inputs to growers. Key inputs provided by the integrator are not always uniform with respect to quality characteristics across complexes or across time, and variation in these quality characteristics may impact grower performance. Based on AMS's experience, live poultry dealers will select strategies around broad types of inputs to grow at certain complexes, in general, to target customer preferences or to meet product requirements relating to growout or slaughter efficiency. For example, certain genetically tailored birds will be used to grow out more meat in certain areas or with uniformity in larger or smaller sizes to help live poultry dealers tailor their production. Similarly, feed inputs may be tailored based on the availability of grains or to achieve other animal health goals. However, within these broader strategies, there are a wide range of differences to the inputs that growers state are material to the growout process—such as the sex and age of the chicks, age and health of breeder flocks, the feed mix overall based on different grain availability, and more. Timely performance by live poultry dealers and dispute resolution are also relevant to the growout process. For example, improper delivery of feed mix designed for different stages of growout or delayed delivery or pickup of inputs are all potentially relevant.

In comments, dealers have denied or downplayed the significance of input variability and its effect on bird performance. Grower commenters are concerned about input differences and prefer some level of parity in input allocations, or at least mitigation of any disparities. Growers, however, unlike integrators, do not have direct access to the specific input differences, which makes it difficult if not impossible for them to evaluate whether their compensation is related to management and skill or correlated with "favorable" inputs. The lack of information further enables an opaque market environment where integrators may provide different inputs with little check on those actions.

The omission of this known information by integrators—impedes

growers' ability to understand, evaluate, and adjust their performance, management, and skill as growers. In the absence of this information, growers are deprived of known information necessary to understand their performance and payment in operation under contract.

E. Addressing the Omission of Information

As described above, live poultry dealers have engaged in a series of omissions in the contracting process and operation of those contracts that deprives growers of the ability to make contracting and investment decisions and manage the operation and risks of their farms. This rule addresses that deceptive practice with regulatory transparency mandates enforceable under the Act. Eliminating deception will increase the intensity of competition amongst live poultry dealers to the benefit of growers. Growers need this information to understand the market for grower services, to understand and evaluate their performance under the terms of the contract, and to make decisions about their investments and operations of their farms that may improve performance or mitigate risks under those contracts. The additional information will intensify competition in the market for grower services. As a result of more complete and transparent information for all market participants, live poultry dealers will have to compete more vigorously for grower services, allowing growers to benefit from the competition in the market.

The lack of this information further contributes to an opaque market environment that exposes growers to greater risks from actions by live poultry dealers. The deprivation of this information is a deceptive practice under the Act. The final rule addresses that ongoing deception with specific transparency requirements in the contracting process and during the ongoing operation of those contracts, consistent with the FTC's approach to similar problems in franchising. These transparency requirements, together with a governance framework designed to enhance the reliability of the disclosures, are enforceable under the Act by AMS and by growers under section 202(a)'s prohibition on live poultry dealers engaging in deceptive practices.

III. Authority

Congress enacted the Act to promote fairness, reasonableness, and transparency in the marketplace by prohibiting practices that are contrary to

Survey—Version 4, *Financial and Crop Production Practices, 2011*, and U.S. Census Bureau, 2011 Quarterly Financial Report (QFR): Manufacturing, Mining, Trade, and Selected Service Industries. <https://www2.census.gov/econ/qfr/pubs/qfr11q4.pdf>; accessed 1/19/2022.

⁴⁵ MacDonald (June 2014) Op. Cit. p. 40.

⁴⁶ MacDonald (June 2014) Op. Cit. See footnote 20 on page 27 citing ARMS data from 2011 that reported 97% of broilers are grown under contract, with 93% of contracts tied to relative performance.

⁴⁷ Metrics are typically associated with "costs". Formulas to calculate the metric vary among integrators. A high "cost" grower would be a poor performance, as a low "cost" grower would have performed well.

these goals. In 1921, the Act's stated purpose was to "regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs." At that time, poultry was included in the definition of a "packer." Amendments to the law in 1935 added a new type of entity under its jurisdiction, the "live poultry dealer." The poultry industry of that time involved marketing of live animals in large population centers, accompanied by various unfair, deceptive, and fraudulent practices. The 1935 amendments required that live poultry handlers be licensed, and subjected them to criminal penalties for violations. Congress also made sec. 202 (7 U.S.C. 192) applicable to live poultry dealers.⁴⁸ The Poultry Producers Financial Protection Act of 1987 (Pub. L. 100-173), modified and replaced parts of the 1935 amendments. The new provisions further protected growers of live poultry by adding payment provisions (sec. 410), trust provisions (sec. 207), and adding and modifying the liability provisions (secs. 411, 412, and 308), including creating a private cause of action for violations of sec. 202 of the Act.

AMS authority to regulate deception and deceptive practices is well-established.⁴⁹ Sec. 202(a) of the Act (7 U.S.C. 192(a)) prohibits live poultry dealers, with respect to live poultry, from engaging in or using deceptive practices or devices. Further, sec. 410(a) of the Act (7 U.S.C. 228b-1(a)) requires live poultry dealers obtaining live poultry under a poultry growing arrangement to make full payment for such poultry to the poultry grower from whom the dealer obtains the poultry on a timely basis. Sec. 407(a) of the Act (7 U.S.C. 228(a)) authorizes the Secretary to make rules and regulations as necessary to carry out the provisions of the Act. Such regulations are found, in part, at 9 CFR part 201.

Disclosure is a key component of the current regulations in place pursuant to the Act. The current regulations require disclosure of weights in the settlement of sales of livestock and live poultry,⁵⁰ disclosure of certain potential conflicts of interest in the consignment of

livestock at auction,⁵¹ and disclosures for poultry growers at contracting and on settlement, including the payment formula, performance plans, grading certificates, and more.⁵²

Like sec. 202(a) of the Act, sec. 5 of the Federal Trade Commission (FTC) Act also prohibits deceptive practices.⁵³ The FTC has long implemented disclosure requirements under sec. 5 of the FTC Act for the purpose of providing adequate information necessary for parties in imbalanced business relationships to inhibit deceptive practices. In 1981, the FTC adopted a policy statement summarizing its longstanding approach to deception cases, which AMS takes notice of.⁵⁴ For example, FTC's Franchise Rule requires the franchising industry to provide prospective purchasers of franchises information necessary to weigh the risks and benefits of an investment by providing required disclosures in a uniform format.⁵⁵ This rule is designed to similarly provide current and prospective poultry growers with sufficient information prior to entering into an agreement.

Additionally, disclosure requirements are commonly utilized in the regulation of financial markets, housing consumer protection, and other complex markets with significant information imbalances, to prevent deception and other abuses.⁵⁶ In those markets, disclosure commonly yields multiple benefits, starting with correcting the specific information asymmetries that give rise to deception.⁵⁷ For example, disclosure can also function to create reputational disincentives to counter potentially problematic behavior. This rule is designed in part with that in mind. Given the longstanding set of grower complaints about input differences, costly capital investments, and other problematic practices arising from live poultry dealers' high degree of control over growers under a poultry growing arrangement, transparency can

reasonably be expected to contribute, at least in part, to improvements in fair dealing by market participants. Overall, disclosure is recognized as a cost-effective tool to prevent deception and improve market integrity.

IV. Summary of the Proposed Rule

In the June 2022 proposal, AMS proposed to revise current regulations in 9 CFR 201.100 regarding the timing and contents of poultry growing contracts. Currently, that section sets forth the disclosures a live poultry dealer must make to poultry growers and prospective poultry growers in connection with poultry growing arrangements. The proposal would have revised § 201.100 by requiring dealers to disclose additional information to poultry growers and prospective poultry growers in connection with poultry growing arrangements. In the proposal, the regulations also would have required live poultry dealers to specify additional terms in poultry growing contracts to improve transparency and forestall deception in the use of poultry growing arrangements.

AMS also proposed to add a new § 201.214 to the regulations to require live poultry dealers to provide certain information to poultry growers in tournament pay systems about integrator-controlled inputs related to the poultry flocks growers receive for growout. Proposed new § 201.214 also would have added a new level of transparency to grower ranking sheets. The proposal was intended to enable poultry growers to evaluate the distribution of inputs among all tournament participants in order for poultry growers to assess the effect on grower payment.

Finally, AMS proposed to add to the list of definitions in § 201.2 to define terms used in the proposed revisions to § 201.100 and proposed new § 201.214.

Upon consideration of public comments on the proposed rule, AMS modified some of its proposed provisions in this final rule. An overview of the new or revised rule provisions follows in Section V, a discussion of changes from the proposed rulemaking is in Section VI, and a discussion of the public comments on the proposed rulemaking is in Section VII.

V. New or Revised Provisions

AMS addresses concerns related to market power imbalance and asymmetric information in poultry grower contracting by adding two new sections to 9 CFR part 201 that implements the Act. The first section addresses the lack of transparency and

⁴⁸ An Act to Amend the Packers and Stockyards Act, S. 12, 74th Cong. (1935).

⁴⁹ See, e.g., . . . *Philson v. Cold Creek Farms, Inc.*, 947 F. Supp. 197, 201 (E.D.N.C. 1996) ("[T]he violation of a regulation such as 9 CFR 201.82 is indisputably prohibited by the PSA"); see also *Stafford v. Wallace*, 258 U.S. 495, 515, 42 S. Ct. 397, 401, 66 L. Ed. 735 (1922) (finding the Act Constitutional); *O V Handy Bros Co v. Wallace*, 16 F. Supp. 662, 666 (E.D. Pa. 1936) (finding the regulation of live poultry dealers Constitutional).

⁵⁰ 9 CFR 201.55 and 9 CFR 201.99.

⁵¹ 9 CFR 201.56(d).

⁵² 9 CFR 201.100(a).

⁵³ For a discussion of the Act in relation to the FTC Act, see, e.g., Kades, Michael. "Protecting Livestock Producers and Chicken Growers," Washington Center for Equitable Growth, May 2022, <https://equitablegrowth.org/research-paper/protecting-livestock-producers-and-chicken-growers/>.

⁵⁴ Federal Trade Commission, Policy Statement on Deception, 1983, available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

⁵⁵ 16 CFR part 436; 84 FR 9051 (May 2019).

⁵⁶ D.W. Carlton and J.M. Perloff, *Modern Industrial Organization* (1994): 624.

⁵⁷ Paula J. Dalley, "The Use and Misuse of Disclosure as a Regulatory System," 34 *Fla. St. U. L. Rev.* 1089 (2007). <https://ir.law.fsu.edu/lr/vol34/iss4/2>.

associated deceptive practices in broiler grower contracting. The second section addresses the lack of transparency and associated deceptive practices in the use of poultry grower ranking systems to determine tournament grower payment settlements for broiler growers. In both cases, live poultry dealers are required to make disclosures that provide broiler growers more information with which to evaluate poultry growing arrangements.

This rule will better balance the quantity, quality, and type of critical information broiler growers, prospective broiler growers, and live poultry dealers engaged in the production of broilers have as they enter and operate under broiler growing arrangements. Through this rulemaking, the agency requires dealers to provide growers with critical information during the contracting process. This rule gives growers the ability to understand and evaluate contracts from dealers. The rule enhances the integrity of the marketplace overall, helps reduce the risk of other forms of problematic market practices, such as the inappropriate provision of different inputs to different growers, and prevents certain deceptive practices by dealers.

AMS also made conforming changes and changes for clarity in § 201.2, § 201.100(a), and § 201.100(b). This section provides an overview of the new and revised provisions.

A. Definitions

This rule amends § 201.2 by removing the paragraph designations within the section, reorganizing the definitions alphabetically, and adding definitions for new terms. The new terms are: *breeder facility identifier*, *breeder flock age*, *broiler*, *broiler grower*, *broiler growing arrangement*, *complex*, *gross payments*, *grower variable costs*, *housing specifications*, *inputs*, *letter of intent*, *Live Poultry Dealer Disclosure Document*, *minimum number of placements*, *minimum stocking density*, *number of placements*, *original capital investment*, *placement*, *poultry grower ranking system*, *poultry growout*, *poultry growout period*, *prospective broiler grower*, *prospective poultry grower*, and *stocking density*. Additionally, this rule incorporates into § 201.2 the statutory definitions of: *commerce*, *live poultry dealer*, *poultry grower*, and *poultry growing arrangement*.

B. Disclosure

To address concerns related to deception and deceptive practices by dealers in contracting for broiler growing arrangements and in the

operation of such contracts, this final rule adds new, enforceable transparency requirements on live poultry dealers for the benefit of growers. Specifically, it adds a new section at § 201.102,—disclosures for broiler production, and makes conforming changes to § 201.100(a) and (b). Currently, 9 CFR 201.100 describes the documents that live poultry dealers must provide to poultry growers within certain timeframes. Paragraph (a) of § 201.100 requires a dealer to provide the grower with a true written copy of the offered poultry growing arrangement on the date the dealer provides poultry housing specifications to the grower. The final rule retains the requirement for all live poultry dealers but revises the language in paragraph (a) for clarity by replacing “house specifications” with “housing specifications,” replacing the personal pronoun “you” with “the dealer,” and by removing the word “as” from the beginning of the paragraph. Paragraph (b) of § 201.100 requires live poultry dealers to allow growers to discuss the terms of poultry growing arrangement offers with a Federal or State agency, the growers’ legal and financial advisors and lenders, other growers for the same dealer, and family members or other business associates with whom growers have valid business reasons for consulting about the offered poultry growing arrangements. This final rule retains the requirement but revises the language to clarify that the right to discuss the terms of the poultry growing arrangement offer also applies to prospective poultry growers and, if applicable, to the accompanying Disclosure Document described in § 201.102. This rule also revises the language to remove the personal pronoun “you” and replace “must allow poultry growers to discuss the terms of a poultry growing arrangement offer” with “may not prohibit a poultry grower or prospective poultry grower from discussing the terms of a poultry growing arrangement offer” for clarity. The rest of § 201.100 remains unchanged.

This final rule adds new § 201.102—Disclosures for broiler production—establishing new disclosure requirements in addition to those required by § 201.100 for live poultry dealers engaged in the production of broilers. This rule adds new definitions to § 201.2 for: *broiler*, meaning any chicken raised for meat production; *broiler grower*, meaning a poultry grower engaged in the production of broilers; *broiler growing arrangement*, meaning a poultry growing arrangement pertaining to the production of broilers;

and *prospective broiler grower*, meaning a person or entity with whom the live poultry dealer is considering entering into a broiler growing arrangement.

New paragraph 201.102(a)—Obligation to furnish information and documents—requires the live poultry dealer engaged in the production of broilers (“dealer”) to provide the prospective or current broiler grower with the Disclosure Document, as described in paragraph (b) of the section, in addition to the true written copy of the broiler growing arrangement, under three different scenarios.

First, under § 201.102(a)(1), a live poultry dealer engaged in the production of broilers seeking to renew, revise, or replace an existing broiler growing arrangement or to establish a new broiler growing arrangement that does not contemplate modifications to existing housing specifications will be required to provide both the broiler growing arrangement and the Disclosure Document to the grower at least 14 calendar days before the dealer executes the broiler growing arrangement, provided that the grower may waive up to 7 calendar days of that time period. *Housing specifications* is defined as a description of—or a document relating to—a list of equipment, products, systems, and other technical poultry housing components required by a live poultry dealer for the production of live poultry. A live poultry dealer will likely have multiple housing specifications that operate in concert to create housing tiers at a given complex. The housing specifications document or list should accurately reflect the minimum requirements for qualification under a specific housing tier. Growers agree to provide housing that meets the minimum requirements of a live poultry dealer.

Second, under § 201.102(a)(2), a live poultry dealer that requires the grower to make an original capital investment to comply with the dealer’s housing specifications will be required to provide the grower simultaneously with four relevant documents. These documents are a true written copy of the broiler growing arrangement, the housing specifications, the Disclosure Document, and a letter of intent that can be relied upon to obtain financing for the original capital investment.

Finally, under § 201.102(a)(3), a live poultry dealer engaged in the production of broilers seeking to offer or impose modifications to existing housing specifications that could reasonably require the grower to make an additional capital investment will be required to provide the grower

simultaneously with four relevant documents. These documents are a true written copy of the broiler growing arrangement, modified housing specifications, the Disclosure Document, and a letter of intent that can be relied upon to obtain financing for the additional capital investment. AMS expects most growers will seek financing for additional capital investments. The simultaneous production of the three other documents will: (1) provide growers with improved information with which to assess the new capital investment and (2) allow growers to establish appropriate timelines for contemplating the investment.

The required contents and format of the Disclosure Document cover pages are provided in § 201.102(b)—Prominent disclosures. Paragraph 201.102(b) specifies the required elements for the cover pages of the Disclosure Document, including basic information about the live poultry dealer, key points in the broiler growing arrangement, and precise language for certain notices the dealer must make to the grower. AMS has developed downloadable instructions that contain the language required by § 201.102(b) for live poultry dealers. The instructions (Form PSD 6100 (Live Poultry Dealer Disclosure Document Form Instructions, OMB Control No. 0581–0308)) are intended to simplify compliance with these notification requirements and provide guidance for complying with § 201.102(c) and (d). Under § 201.102(b)(1), the required Disclosure Document cover page must include the title “LIVE POULTRY DEALER DISCLOSURE DOCUMENT” in capital letters and bold type. Section 201.102(b)(2) requires live poultry dealers engaged in the production of broilers to list their name, type of business organization, principal business address, telephone number, email address, and if applicable, primary internet website address.

Paragraph 201.102(b)(3) requires the dealer to specify the length of the term of the broiler growing arrangement. Including this information at the front of the Disclosure Document clearly identifies for growers the live poultry dealer and the associated broiler growing arrangement under consideration.

Under § 201.102(b)(4), the live poultry dealer engaged in the production of broilers must include a notice to the grower that highlights that grower income may be significantly affected by decisions made by live poultry dealers, and encourages growers to carefully review the information in the Disclosure

Document. Then, under § 201.102(b)(5), the dealer must state the minimum number of poultry placements on the broiler grower's farm annually and the minimum stocking density for each flock to be placed under the broiler growing arrangement. The minimum stocking density is the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

New broiler growers may not understand how the discretionary actions of live poultry dealers affect grower payments. Many broiler growers are paid based on farm weight multiplied by a feed conversion variable. A live poultry dealer exercising discretion in placements, stocking density, and target weight is directly affecting that farm weight basis. Cautioning growers about the potential impact of dealer-controlled inputs and providing growers with the minimum number of flocks and minimum stocking density of flocks to be placed with the grower annually under the broiler growing arrangement will help growers assess the projected baseline value of their broiler growing arrangement.

Under § 201.102(b)(6), the live poultry dealer engaged in the production of broilers must include one of two alternative statements depending on whether the offered broiler growing arrangement includes housing specifications that require or could reasonably require an original or additional capital investment. If the new, renewed, revised, or replacement broiler growing arrangement does not contemplate modifications to existing housing specifications, the dealer must include the statement in § 201.102(b)(6)(i) in the Disclosure Document cover pages. The dealer's statement explains the grower's right to read the Disclosure Document and all accompanying documents carefully, and notes that the live poultry dealer is required to provide the current or prospective broiler grower with the Disclosure Document and a copy of the broiler growing arrangement at least 14 calendar days before the dealer executes the broiler growing arrangement, provided that the grower may waive up to 7 calendar days of that time period. This timing has been amended to match the revised timing in the final rule, as explained above. Alternatively, if the dealer offers a new broiler growing arrangement that requires the current or prospective broiler grower to make an original capital investment, as in § 201.102(a)(2), or offers or imposes modifications to existing housing specifications that could reasonably

require the current broiler grower to make an additional capital investment, as in § 201.102(a)(3), the dealer must include the statement in § 201.102(b)(6)(ii).

The statement in § 201.102(b)(6)(ii) explains the grower's right to read the Disclosure Document and all accompanying documents carefully, and notes that the live poultry dealer engaged in the production of broilers is required to simultaneously provide the broiler grower with the Disclosure Document, a copy of the broiler growing arrangement, the new or modified housing specifications, and the letter of intent. These required statements in the Disclosure Document cover pages will notify broiler growers of their rights under the regulations and indicate what documents they must receive from the live poultry dealer within the described timeframes.

Under § 201.102(b)(7), the live poultry dealer engaged in the production of broilers must include a statement notifying the broiler grower that the terms of the broiler growing arrangement will govern the grower's relationship with the live poultry dealer's company. The statement further notifies broiler growers of their right, notwithstanding any confidentiality provision in the broiler growing arrangement, to discuss the terms of the broiler growing arrangement and the Disclosure Document with a Federal or State agency; the grower's financial advisor, lender, legal advisor, or accounting services representative; other growers for the same live poultry dealer; and a member of the grower's immediate family or a business associate. The statement explains that a business associate is a person not employed by the broiler grower, but with whom the current or prospective grower has a valid business reason for consulting when entering into or operating under a broiler growing arrangement.

Finally, § 201.102(b)(8) requires the live poultry dealer engaged in the production of broilers to include the following statement in bold type in the Disclosure Document cover pages: “Note that USDA has not verified the information contained in this document. If this disclosure by the live poultry dealer contains any false or misleading statement or a material omission, a violation of Federal and/or State law may have occurred.” With this language, this rule clarifies that the Disclosure Document is not subject to agency review prior to submission to broiler growers, and that legal recourse may be available for some present and future controversies related to the

Disclosure Document and the broiler growing arrangement.

Paragraph 201.102(c)—Required disclosures following the cover page—specifies the information the live poultry dealer engaged in the production of broilers must provide in the Disclosure Document following the cover pages. Under § 201.102(c)(1), the dealer must provide a summary of litigation over the previous 5 years between the live poultry dealer and any broiler grower, including the nature of the litigation, its location, the initiating party, a brief description of the controversy, and any resolution. Information about a live poultry dealer's litigation with poultry growers within the relevant period, particularly the basis of the litigation and the volume of litigation relative to the number of growers with whom the dealer contracts, will help growers identify conflict origins and better assess potential risk of conflict.

Paragraph 201.102(c)(2) requires the live poultry dealer engaged in the production of broilers to provide a summary of all bankruptcy filings in the previous 5 years by the dealer and any parent, subsidiary, or related entity of the live poultry dealer. Bankruptcy of the live poultry dealer poses a very real financial risk to grower financial returns. Recent or current bankruptcy filing is an indicator of the financial health of the live poultry dealer, which a broiler grower may need to consider when deciding whether to enter or continue a contractual relationship with the dealer.

Paragraph 201.102(c)(3) requires the live poultry dealer engaged in the production of broilers to provide a statement that describes the dealer's policies and procedures regarding the potential sale of the broiler grower's farm or assignment of the broiler growing arrangement to another party. This information is important for broiler growers to have when considering a broiler growing arrangement because growers may choose or be forced to exit poultry farming for various reasons, such as the death or disability of the grower or the prospect of other occupational opportunities. However, in some situations, farm sales and assignments might be contingent on approval from the live poultry dealer. Growers informed of these policies and procedures can develop a coherent strategy, should they desire to exit poultry farming.

Paragraph 201.102(c)(4) contains new requirements for the live poultry dealer engaged in the production of broilers to disclose their policies and procedures, as well as any appeal rights, arising

from increased lay-out time; sick, diseased, and high early mortality flocks; natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events potentially resulting in massive depopulation of flocks affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability. If no policy or procedure exists, the live poultry dealer must acknowledge "no policy exists" for each item listed in § 201.102(c)(4)(i)–(vi). The rule is not intended to require live poultry dealers to have policies for every listed occurrence, nor is the rule intended to have a legal consequence for simply not having a policy. Disclosing, however, that no policy exists is important to the poultry grower for risk assessment during the contracting process, and for protection against arbitrary undisclosed policies or procedures when the listed situations arise during the operation of the contract. The live poultry dealer will also be required to describe any policies on grower appeal rights associated with these events should a grower disagree with the live poultry dealer's actions or determinations.

Paragraph 201.102(c)(5) adds a new requirement for live poultry dealers engaged in the production of broilers to disclose broiler grower turnover data. Specifically, the live poultry dealer will be required to provide a table showing the average annual broiler grower turnover rates for the previous calendar year and the average broiler grower turnover rates of the 5 previous calendar years at both a company level and a local complex level. The broiler grower turnover rate is the number of grower separations during the time period divided by the average number of growers during the same period. The broiler grower turnover rate relates to the general risk of contracting with a live poultry dealer. Growers may compare the turnover rates of multiple live poultry dealers as a consideration in assessing relative risk when making contracting decisions. Instructions for calculating and normalizing table values are provided on Form PSD 6100 (OMB Control No. 0581–0308).

Under § 201.102(d)—Financial disclosures—live poultry dealers engaged in the production of broilers must provide certain additional information in the Disclosure Document. Under § 201.102(d)(1), live poultry dealers will be required to provide in the Disclosure Document tables showing quintiles of average annual gross payments to broiler growers at the local complex for each of

the previous 5 years.⁵⁸ If there are nine or fewer growers at a local complex, live poultry dealers will not be required to report quintiles of average annual gross payments as this would result in the disclosure of the unique payment information of one or more growers. Unique payment information is considered confidential business information. For local complexes with nine or fewer growers, live poultry dealers will be required to report only the mean and one standard deviation from the mean of the average annual gross payment to growers at the local complex. Average payments must be shown in U.S. dollars per farm facility square foot. Further, the required tables must be organized by year, housing specification tier, and quintile or mean and standard deviation.⁵⁹ Instructions for calculating and normalizing table values are provided in Form PSD 6100. This rule adds to § 201.2 a definition for *complex*, meaning a group of local facilities under the common management of a live poultry dealer. The definition states that a complex may include, but not be limited to, one or more hatcheries, feed mills, slaughtering facilities, or poultry processing facilities.

The required disclosure of historical revenue information relating to growers in the same local complex will give the current or prospective broiler grower considering entering into a broiler growing arrangement a clear and accurate picture of potential earnings under the arrangement and help the grower evaluate whether those earnings are sufficient. Providing insights into the variability of cash flow within any given year will enable growers to make informed business decisions, manage risk, and improve farm management.

Paragraph 201.102(d)(2) provides that, if the housing specifications for poultry growers under contract with the live poultry dealer in the local complex are modified so that an additional capital

⁵⁸ The word "local" in this discussion is used to differentiate between the complex with which the grower may be considering a contract and all the other complexes a dealer may own.

⁵⁹ Most dealers do not own or operate growout and breeder facilities, but they do own everything else around which the growout facilities are organized—i.e., the complex. The complex commonly includes the processing plant and feed mill and may include other production facilities. Growers produce for a particular local complex, even though the dealer may own more than one local complex and other complexes around the country. Depending on the technical needs for optimizing poultry growth for each product type, the dealer may have multiple different housing specifications for growers who produce different products for the complex. Therefore, the required table will show average payments to growers in each of the different housing specifications at the complex.

investment may be required, or if for some other reason annual gross payment averages for the previous 5 years do not accurately represent expected future grower payment averages, the Disclosure Document must provide additional information. The additional information includes annual payment projections by quintile or mean and standard deviation (depending on the number of growers at the local complex). The projections must reflect anticipated payments to growers under contract with the complex with the same housing specifications for the term of the applicable broiler growing arrangement. The dealer also must explain why the historical data does not provide an accurate representation of future earnings. Live poultry dealers engaged in the production of broilers considering or undertaking actions related to discretionary functions, such as changes in pay rates, pay systems, housing specifications, growout models, stocking densities, or number of annual placements, must provide grower payment projections to allow growers to determine the financial feasibility of the upgrades and make better-informed business decisions. Standardized grower payment projections will include realistic expectations about future earnings.

Paragraph 201.102(d)(3) requires the live poultry dealer engaged in the production of broilers to provide a summary of any information the dealer collects or maintains pertaining to grower variable costs inherent to broiler production. A conforming change, for clarity and emphasis purposes, to § 201.2 adds a definition for *grower variable costs* to mean those costs related to poultry production that may be borne by the poultry grower, which may include, but are not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance. The modified language is intended to help improve readability; the listed costs are not required to be treated as grower variable costs under a poultry growing arrangement if the parties choose to contract for them in some other manner. Receiving information on grower variable costs will allow broiler growers to make informed decisions about their participation in the broiler production business.

Finally, under § 201.102(d)(4), the live poultry dealer engaged in the production of broilers must supply the contact information for the State university extension service office or the county farm advisor's office that can provide relevant information to the current or prospective broiler grower about grower costs and broiler farm

financial management in the grower's geographic area.

Paragraph 201.102(e)—Small live poultry dealer financial disclosures—exempts from the requirement to provide the Disclosure Document required under § 201.102(a)(1) live poultry dealers engaged in the production of broilers that, together with all companies controlled by or under common control with the dealer, slaughter fewer than 2 million live pounds of broilers weekly (104 million pounds annually). The exemption applies to these small operators as long as their housing specifications are static. If their housing specifications are modified, requiring an additional capital investment from growers, these smaller operators will be required to provide the complete Disclosure Documents, as specified in § 201.102(a)(2) or (a)(3), to balance any financial risk of the new investment. AMS proposed—and retains this exemption in the final rule—because, in general, smaller operators are in discrete market segments and not engaged in the same market practices that are as likely to deceive as larger live poultry dealers' practices, which reduces the risks to growers and the need for the disclosures mandated in this rule. Examples of such market practices include allowing growers to be responsible for providing some inputs (e.g., feed), allowing growers to use older growout facilities, or granting growers more discretion in production decisions. Additionally, AMS will continue to monitor the impact of this rule on small businesses to ensure that its analysis is correct and to determine whether enforcement discretion may be appropriate.

This final rule adds new § 201.102(f)—Governance and certification, which requires the live poultry dealer engaged in the production of broilers to establish, maintain, and enforce a governance framework designed to review and ensure the accuracy and completeness of the Disclosure Document, and ensure the live poultry dealer's compliance with all its obligations under the Act and its regulations. The governance framework and anti-fraud protections require oversight by corporate officers and ensure legal accountability. Under § 201.102(f), the framework must be reasonably designed to audit the accuracy and completeness of disclosures under the Disclosure Document and ensure compliance with the Act and associated regulations. The principal executive officer of the live poultry dealer's company, or a person performing similar functions, must certify that the company complies with

the governance framework requirement and that the Disclosure Document is accurate and complete. The certification requirement is tailored to ensure the soundness and accuracy of the procedures used to produce the Disclosure Document and the information contained therein.⁶⁰

The framework requirement helps ensure that the company has in place specific steps that it will take to comply with this rule. It seeks to balance effectiveness at providing the internal controls necessary for reliable disclosure with some degree of flexibility to enable dealers to design a framework appropriate to manage the risks relating to the preparation of complete and accurate disclosures given their own particular operations.

As explained earlier, to simplify compliance with this requirement, AMS has developed instructions for compiling the Disclosure Document, Form PSD 6100, with standardized language that live poultry dealers can use. The language includes a certification statement the principal executive officer of the live poultry dealer's company, or a person performing similar functions, must sign.

Section 201.102(g)—Receipt by growers—requires a live poultry dealer engaged in the production of broilers to include in the Disclosure Document a signature page. The signature page includes a statement highlighting the requirements for timely delivery of the disclosure document, potential liability for a false or misleading statement or a material omission, and how to contact USDA to file a complaint at its website or by telephone.

The live poultry dealer must also obtain the current or prospective grower's dated signature on the signature page, or obtain alternative documentation to evidence delivery and that the dealer used best efforts to obtain grower receipt according to the specified timeframes. The dealer must provide a copy of the dated signature page or alternative documentation to the grower and retain a copy of the dated signature page or alternative documentation in the dealer's records

⁶⁰ Certification of regulatory compliance requirements is found in several regulatory regimes involving important market compliance protocols. These include section 302 of the Sarbanes-Oxley Act (Pub. L. 107-204; 116 Stat. 745) and Title XIII of the Bank Holding Company Act (12 U.S.C. 1851 *et seq.*) and regulations thereunder, commonly known as the Volcker Rule, including revisions designed to simplify the rule. See "Subpart D—Compliance Program Requirements" (12 CFR 248.20 and discussion in 79 FR 5535); "Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds" (84 FR 61974).

for 3 years following expiration, termination, or non-renewal of the broiler growing arrangement. Including the required statement informs growers that false or misleading statements or material omissions contained in the Disclosure Document may form a basis for legal action. Requiring live poultry dealers to collect and retain proof of compliance will ensure compliance with the regulation.

Paragraph 201.102(g) also contains new clear language and translation requirements for the document. Under § 201.102(g)(3), the Disclosure Document must be presented in a clear, concise, and understandable manner for growers, and it references Form PSD 6100 for guidance on the presentation of the information and required calculations. Under § 201.102(g)(4), the live poultry dealer must make reasonable efforts to ensure that growers are aware of their right to request translation assistance, and to assist the grower in translating the Disclosure Document at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement that does not contemplate modifications to the existing housing specifications (provided that the grower may waive up to 7 calendar days of that time period). For a broiler growing arrangement that does contemplate modifications to the existing housing specifications, the translation assistance must be provided when the live poultry dealer provides the Disclosure Document to the grower.

Reasonable efforts include but are not limited to providing current contact information for professional translation service providers, trade associations with translator resources, relevant community groups, or any other person or organization that provides translation services in the broiler grower's geographic area. Reasonable efforts may also include allowing additional time to review the translated Disclosure Document. A live poultry dealer may not restrict a broiler grower or prospective broiler grower from discussing or sharing the Disclosure Document for purposes of translation with a person or organization that provides language translation services.

AMS also added a provision to § 201.100 preventing live poultry dealers from restricting growers from sharing the Disclosure Documents with legal counsel, accountants, family, business associates, and financial advisors or lenders.

Nothing in the rule prevents companies from providing a translation, provided it is complete, accurate, and not misleading. As indicated previously, this rule is intended to improve

transparency in poultry production contracting by providing poultry growers with relevant information to make more informed business decisions. These new requirements will enable the prospective or current poultry grower to better understand the information provided in the disclosures.

C. Contract Terms

Currently, § 201.100(c)—Contracts; contents—specifies certain information that must be included in a poultry growing arrangement. The live poultry dealer is required to specify the duration of the contract and conditions for termination of the contract by each of the parties, all terms relating to the poultry grower's payment, and information about a performance improvement plan for the grower, if one exists. In the final rule, AMS did not reduce the requirements in § 201.100(c) for all live poultry dealers. AMS adds new § 201.102(h)—Contract terms—introducing additional requirements that apply exclusively to live poultry dealers engaged in the production of broilers. Paragraph 201.102(h) requires live poultry dealers engaged in the production of broilers to specify the minimum number of placements to be delivered to the broiler grower's farm annually in each year of the contract, as well as the minimum stocking density of each of those placements. The minimum number of placements and the minimum stocking density of each placement under the broiler growing arrangement directly impact broiler grower revenues. Both figures are crucial to a current or prospective grower's ability to evaluate potential earnings under the contract and their ability to meet financial obligations. Requiring live poultry dealers engaged in the production of broilers to include this information in broiler growing contracts will improve growers' ability to understand and evaluate contracts offered by dealers, and prevent deceptive practices in the contracting process. Providing such information may also allow lenders and guarantors to better evaluate the desirability of broiler loans they are asked to consider.

D. Poultry Grower Ranking Systems

AMS adds a new § 201.104—Disclosures for broiler grower ranking system payments. This new section applies exclusively to live poultry dealers engaged in the production of broilers who use a poultry grower ranking system to calculate broiler grower payments. New § 201.104 specifies the recordkeeping and disclosure requirements for such dealers. AMS amends § 201.2 to add

definitions for terms used in new § 201.104. In addition, § 201.100(f) of the current regulations, which contains requirements for grouping or ranking sheets and which AMS proposed to remove in the proposed rule, is retained in the final rule to reflect that the existing grouping or ranking sheet requirements continue to apply to all live poultry dealers, while the additional grouping or ranking sheet requirements at § 201.104(c) apply exclusively to live poultry dealers engaged in the production of broilers.

Currently, live poultry dealers are required under the regulations at § 201.100(d) to furnish poultry growers in poultry grower ranking systems with settlement sheets that show the grower's precise position in the ranking for that tournament. AMS adds a requirement in new § 201.104(a)—Poultry grower ranking system records—that requires a live poultry dealer engaged in the production of broilers who calculates payment under a poultry grower ranking system to produce and maintain records showing how certain inputs were distributed among participants. Further, the dealer must maintain those records for 5 years. Maintaining records allows USDA or any other party with the proper legal authority to collect the records and access to records during an investigation or legal action. AMS adds to § 201.2 the term *poultry grower ranking system*, meaning a system where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period. AMS also adds the term *inputs* to § 201.2. *Inputs* is defined as the various contributions to be made by the live poultry dealer and the poultry grower as agreed upon by both under a poultry growing arrangement. The definition also states that such inputs may include, but are not limited to, animals, feed, veterinary services, medicines, labor, utilities, and fuel.

Paragraph 201.104(b)—Placement disclosure—requires a live poultry dealer engaged in the production of broilers who uses a poultry grower ranking system to calculate broiler grower payments to provide certain information about the flock placed with the broiler grower within 24 hours of the placement on the grower's farm. Specifically, the dealer must provide the flock's stocking density, expressed as the number of poultry per facility square foot; the names and ratios of breeds of the flock delivered; the ratios of male and female birds in the flock if the sex had been determined; the breeder

facility identifier; the age of the egg-laying breeder flock from which each broiler grower's placement is produced; information regarding any known health impairments of the breeder flock and of the poultry delivered to the broiler grower; and what, if any, adjustments will be made to grower pay to reflect any of these inputs. As explained earlier in this document, each of these inputs may influence farm weight and feed conversion. In some cases, a broiler grower may adjust management practices in response to potential impacts of inputs on flock performance. This requirement provides the broiler grower with basic, accurate information about the placement at the outset of each growout period that may inform the grower's management decisions during growout. Armed with this information, growers may be better able to efficiently allocate resources during flock growout and maximize their individual profitability.

This rule adds definitions to § 201.2. *Breeder facility identifier* is defined as the identification a live poultry dealer permanently assigns to distinguish among breeder facilities supplying eggs for the poultry placed at the poultry grower's facility. As permanent identifiers, these identifiers must be consistent flock to flock. Identifiers that remain the same from one growout period to the next allow growers to observe patterns, if any, related to the performance of flocks originating with different breeders. Live poultry dealers may assign alphabetic, numeric, or other identifiers to each farm to keep the identity of individual breeder facilities private.

Breeder flock age means the age in weeks of the egg-laying flock that is the source of poultry placed at the poultry grower's facility. Depending on the type and breed of poultry being raised, the age of the breeder flock producing the eggs from which poultry for growout are produced may influence the grower's production decisions, for example, whether additional monitoring is necessary, or determining the appropriate height of waterers and feeders.

Under § 201.104(c)—Poultry grower ranking system settlement documents—a live poultry dealer engaged in the production of broilers employing a poultry grower ranking system to calculate settlement payments for broiler growers must provide every grower within the tournament ranking system with settlement documents that show certain information about each grower's ranking within the system, as well as the inputs each broiler grower received, for each growout period.

Paragraph 201.104(c)(1) requires live poultry dealers engaged in the production of broilers to show the housing specifications for each grower grouped or ranked in the system during the specified growout period.

Paragraph 201.104(c)(2) requires live poultry dealers engaged in the production of broilers to make visible to all grower participants in the poultry grower ranking system the distribution of dealer-controlled inputs provided to all participants. Specifically, dealers must disclose the stocking density at each grower's placement, expressed as the number of poultry per facility square foot. The dealer must: disclose the names and ratios of the breeds of poultry and the ratios of male and female poultry, if the sex of the poultry has been identified (*i.e.*, "sexed"), placed at each broiler grower's farm; indicate with the use of breeder facility identifiers the source of poultry placed at each broiler grower's farm; disclose the age of the egg-laying breeder flock from which each broiler grower's placement is produced; and, report the number of feed disruptions of 12 hours or more each grower experienced during the growout period.

As mentioned above, live poultry dealers are currently required to provide settlement sheets showing each grower's ranking within the poultry grower ranking system and to show the actual figures used to rank poultry growers for settlement purposes. However, poultry growers, in particular broiler chicken growers, have complained to USDA that the limited information they receive does not allow them to effectively evaluate their performance compared to others because they do not know how the inputs they receive compare to the inputs other growers receive. Nor do they know how their performance relates to housing specifications. Further, some growers believe other growers within the same poultry grower ranking system receive superior inputs to their own.

The placement and settlement information required under § 201.104 will enable broiler growers to make factual comparisons about their performance relative to other growers' performance within the poultry grower ranking system.

E. Severability

AMS considers some but not all of the provisions of this final rule to be severable. Specifically, changes to § 201.100—Records to be furnished poultry growers and sellers, and the provisions of new §§ 201.102—Disclosures for broiler production, and 201.104—Disclosures for broiler grower

ranking system payments, are generally severable within themselves and from each other. Thus, if a court were to find any of, some combination of, or some portion of those provisions to be unlawful or unenforceable, AMS intends that all other provisions as set forth in this rule would remain in effect to the maximum possible extent.

For example, if a court were to find one of the required disclosure items in § 201.102(c) or (d) unlawful, AMS would nevertheless intend the remaining disclosure requirements in § 201.102 to stand. However, provision of those disclosures to broiler growers is dependent upon the requirement to do so in § 201.102(a), so AMS would intend that paragraph (a) in § 201.102 is not severable from paragraphs (c) or (d). In another example, AMS intends that the reference to Form PSD 6100 instructions in § 201.102 (g)(3) is severable from the requirement in the same paragraph to present Disclosure Document information in a clear, concise, and understandable manner. Thus, if the reference to Form PSD 6100 were to be invalidated, live poultry dealers would nevertheless be required to include all the elements of the Disclosure Document as described § 201.102 in a clear, concise, and understandable manner.

AMS considers the provisions of § 201.104 to be severable, except that the requirement to maintain records related to broiler grower production for 5 years in § 201.104(a) is not intended to be severable from either paragraph (b) or (c) of that section. Records pertaining to the disclosures required in § 201.104(b) and (c) must be maintained and available to PSD for compliance and enforcement purposes.

AMS considers the changes to § 201.1—Terms defined, to be inseverable, inasmuch as the newly defined terms in that section are necessary for the clear application of the provisions of new §§ 201.102 and 201.104. The new definitions clarify the fundamental application of the rule to live poultry dealers, and cannot be severed from the policy effect of the rule.

VI. Changes From the Proposed Rule

After consideration of public comments, AMS determined to adopt the proposed changes with modification. This section provides an overview of how the final rule differs from the proposed rule. Additional discussion about AMS's consideration of public comments is presented in Section VII.

Two significant changes between the proposed rule and the final rule pertain

to the application of the new disclosure requirements and the placement of the new requirements within 9 CFR part 201. Under the proposed rule, AMS proposed additional disclosures that all live poultry dealers would be required to furnish to poultry growers with whom dealers make poultry growing arrangements. AMS also proposed to establish additional disclosure requirements for live poultry dealers who use a poultry ranking system to calculate grower payments. However, comments received noted that the proposed rule was largely based on research into the broiler industry and would be extremely difficult for turkey companies to implement due to differences between turkey and chicken production. AMS subject matter experts analyzed turkey production contracts from across the country and found more variability among them than in broiler contracts.⁶¹ The variability reflects the biological differences found in turkeys and longer placement times with growers, which can impact outcomes for producers.⁶² The variability in contracts results in less uniformity of grower compensation models in the turkey industry. Often, turkey grower compensation models are predicated on static square footage payments, and/or two-stage production, which reduce payment volatility and mitigate input variability. Much of the disclosed information would not be applicable or of significant value to turkey growers. While other turkey compensation models tend to rely on a relative ranking component similar to that for broilers, the benefit of disclosure is diluted, as discretionary dealer actions currently may have less impact on grower payments. As well, grower ranking systems account for a smaller percentage of grower payments.

Other commenters stated the new disclosure requirements are largely meant for the broiler industry where most complaints arise. AMS has received few turkey grower complaints. Other (non-broiler chicken) poultry growers have similarly not expressed

concerns regarding practices in their industry. AMS will continue to evaluate the presentation and operation of contracts and pay systems in the turkey industry, and other forms of poultry production to ensure growers can understand, evaluate, and compare contracts. However, AMS has determined that additional proposed disclosure requirements are not warranted for all live poultry dealers at this time.⁶³ Thus, this final rule's new disclosure requirements cover only live poultry dealers engaged in the production of broiler chickens.

In the final rule, AMS did not revise § 201.100 to require all live poultry dealers to provide certain additional disclosures to prospective or current growers. Instead, disclosure requirements for dealers engaged in broiler production are provided in new § 201.102—Disclosures for broiler production—which applies exclusively to live poultry dealers engaged in the production of broilers. The final rule adds language in § 201.102(a) clarifying that in addition to complying with the existing requirements in § 201.100, live poultry dealers engaged in the production of broilers must comply with additional disclosure requirements in new § 201.102.

The proposed rule in § 201.100(a) would have required a live poultry dealer engaged in the production of broilers seeking to renew, revise, or replace an existing broiler growing arrangement or to establish a new broiler growing arrangement that does not contemplate modifications to existing housing specifications to provide both the broiler growing arrangement and the Disclosure Document to the grower at least 7 calendar days before the dealer executes the broiler growing arrangement. Several commenters from the grower and advocacy sectors said that this time period was inadequate, and urged AMS to require that the documents be provided 14 days or 30 days in advance of the broiler growing arrangement's execution, to enable adequate time for growers to review and act upon the information provided in the documents. AMS also identified ambiguity in whether 7 days was business days or calendar days.

This final rule revises the timing in § 201.102(a)(1) to require that live

poultry dealers provide growers with the required documents at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement, provided that the grower may waive up to 7 calendar days of that time period. AMS is making this change in response to some grower comments stating that growers need additional time to adequately review the documents. A central purpose of the Disclosure Document is to improve the understanding of production agreements to thwart deception, and adequate time to review the document is essential to the rule fulfilling its purpose. The 7-day waiver addresses other grower commenter concerns related to continuity of production. AMS does not wish to inadvertently insert unnecessary time delays into the grower's planning process during contracting, in particular as this provision exclusively addresses the circumstance where the grower is not contemplating modifications to the farm housing specifications. The final rule seeks to maximize the grower's ability to determine the length of time necessary to review the documents, whether that be a full 14 calendar days or a shorter time period if the grower determines that is more appropriate. The rule revises the review period to 14 calendar days, but provides growers the option to waive 7 of those days if they prefer. Seven calendar days remains the minimum review time to provide growers with a guaranteed time to review the documents and thus protects growers from coercion by live poultry dealers—a risk also identified by commenters. Absent the provision, live poultry dealers could press growers to waive their entire review period rights. In AMS's estimation, a 14-calendar-day period is useful to some growers to review and have the time to act on the documents in the circumstance of no contemplated housing modification, and that a 7-calendar-day period is minimally sufficient to enable growers to review the Disclosure Documents, and reduce the potential for coercive behavior where growers so choose that shorter time period.

Where a live poultry dealer contemplates modifications to the housing specifications—such as in the circumstance of a new or additional capital investment or a modification to the housing specification—this rule provides the grower with significantly more time to review the contract and the Disclosure Document than current practice. Currently, growers commonly do not receive their contract until after a capital investment has occurred. In this rule, by requiring notice to the

⁶¹ This corresponds with Hyaena, *et. al.*, who state "There is . . . more variation among production contracts with respect to division of risks and profits from growing turkeys than in the broiler industry." See M. Hayenga, T. Schroeder, J. Lawrence, D. Hayes, T. Vukina, C. Ward, and W. Purcell, "Meat Packer Vertical Integration And Contract Linkages in the Beef and Pork Industries: An Economic Perspective" (2003), available at <http://econ2.econ.iastate.edu/faculty/hayenga/AMJfullreport.pdf> (last accessed April 2023).

⁶² Turkey growers may only produce two flocks per year while broiler growers may produce five or more. See Poultry Industry Manual (2013) available at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/emergency-management/CT_fadprep_Industry_Manuals.

⁶³ AMS underscores that the principles of full and fair disclosure by live poultry dealers to avoid deceptive practices apply throughout the industry, including with respect to turkey growers. Although the specific disclosure mandates of this rule will, at this time, apply only to the broiler chicken segment, AMS intends to continue to monitor the entire industry.

grower at the same time as the new housing specification, growers receive the critical information embedded in the contract and Disclosure Document *before* the grower decides to engage in any construction or borrowing to make the necessary housing modifications. Capital investments generally take months, not days, and the grower is well positioned to control his or her review of the documents in the course of making any decisions regarding whether to engage in borrowing, construction, or contracting in relation to the potential broiler growing arrangement.

Under proposed § 201.214, AMS proposed to establish recordkeeping and disclosure requirements for all live poultry dealers who use a poultry grower ranking system to calculate grower payments. Again, AMS determined the disclosure requirements proposed in § 201.214 are not warranted for all live poultry dealers who use a poultry grower ranking system to calculate grower payments based on its analysis of poultry contracts and grower complaints, as previously discussed. Therefore, in the final rule, AMS modified the proposed requirements to apply exclusively to live poultry dealers engaged in the production of broilers who use a poultry grower ranking system to calculate grower payments, moved the requirements from proposed new § 201.214 to new § 201.104, and renamed the section “Disclosures for broiler grower ranking system payments.” AMS also retained the requirements in § 201.100(f) of the current regulations, which it had proposed to move to new § 201.214 and modify in the proposed rule. AMS added language to § 201.104(c) to indicate that in addition to complying with the requirements of § 201.100, live poultry dealers engaged in the production of broilers who use a poultry grower ranking system to calculate grower payments must provide additional information in accordance with new § 201.104.

To limit §§ 201.102 and 201.104 in the final rule to broiler contracts, AMS added to § 201.2 the definitions of *broiler* to mean any chicken raised for meat production, *broiler grower* to mean a poultry grower engaged in the production of broilers, *broiler growing arrangement* to mean a poultry growing arrangement pertaining to the production of broilers, and *prospective broiler grower* to mean a person or entity with whom the live poultry dealer is considering entering into a broiler growing arrangement.

AMS proposed in § 201.100(b)(5) to require live poultry dealers to include in the Disclosure Document the minimum

number of placements on the grower’s farm annually and the minimum stocking density of each flock. In the final rule, AMS moved this requirement to § 201.102(b)(5), which only applies to live poultry dealers engaged in the production of broilers. AMS also revised the introductory statement in § 201.102(b)(5) of the final rule to add clarifying language.

AMS proposed to require live poultry dealers to disclose a summary of all litigation with any poultry grower over the prior 6 years, as well as of all bankruptcy filings over the prior 6 years for the dealer and any parent, subsidiary, or related entity. However, commenters representing the poultry industry noted that the 6-year disclosure period associated with these requirements was inconsistent with other disclosure requirements covering the prior 5 years. Therefore, to ensure the uniformity of recordkeeping obligations and to reduce the burden on regulated entities, AMS revised §§ 201.102(c)(1) and (2) to require live poultry dealers engaged in the production of broilers to disclose litigation with any broiler grower over the prior 5 years, as well as bankruptcy filings in the prior 5 years by the dealer and any parent, subsidiary, or related entity.

The proposed rule would have required live poultry dealers to make various financial disclosures to poultry growers, including a table showing “average annual gross payments” made to growers at all complexes owned or operated by the live poultry dealer for the previous calendar year, as well as to growers at the local complex. Poultry and meat trade associations suggested AMS require dealers to disclose average annual gross payments only for the grower’s local complex. These commenters noted that complexes in different geographic areas face different economic conditions, arguing that information about payments at other complexes would not be useful and would potentially confuse growers. This final rule does not include the proposed requirement to disclose payment information for all complexes owned or operated by the dealer. This final rule does maintain the proposed requirement for live poultry dealers engaged in the production of broilers to disclose payment information only relating to the broiler grower’s local complex at § 201.102(d)(1).

Both growers and live poultry dealers also requested that AMS provide more specificity on how to calculate average annual gross payments. While the proposed rule provided detail on calculations, the commenters felt the

instructions lacked sufficient specificity to assure that live poultry dealers could comply and that poultry growers received adequate data on which to base business decisions. Therefore, AMS developed more in-depth instructions on how to calculate average annual gross payments, which are included in Form PSD 6100. This final rule provides that, if there are nine or fewer growers at a local complex, live poultry dealers will be required to report only the mean and one standard deviation from the mean of the average annual gross payment to growers at the local complex rather than average annual gross payments distributed by quintile. This modification from the proposed rule is necessary because disclosing average annual gross payments distributed by quintile in these circumstances would result in disclosure of the unique payment information of one or more growers, which AMS considers to be confidential business information.

AMS added to § 201.2 the definition of *gross payments* to mean the total compensation a poultry grower receives from the live poultry dealer, including but not limited to base payments, new housing allowances, energy allowances, square footage payments, extended lay-out time payments, equipment allowances, bonus payments, additional capital investment payments, poultry litter payments, etc., before deductions or assignments are made.

In the proposed rule, AMS requested comment on proposed disclosures regarding the financial health and integrity of the live poultry dealer, and whether those were adequate to enable growers to make sound business decisions. Commenters suggested that growers could utilize other information in addition to information specified in the proposed rule in making their business decisions. Specifically, commenters recommended that AMS also require disclosure of grower turnover data. Grower turnover rates are among the data growers may find valuable when making business decisions, as they relate to the risk of termination or non-renewal when contracting with a live poultry dealer. Just as growers will be able to rely on other required disclosures to contemplate their production and financial risks, this information would allow growers to compare the turnover rates of multiple live poultry dealers as a risk factor when making contracting decisions. Because grower turnover rates can be used in a manner similar to other required disclosures, AMS added a provision at § 201.102(c)(5) of the final rule requiring live poultry dealers engaged in the production of broilers to

disclose average annual broiler grower turnover rates for the previous calendar year and the average of the 5 previous calendar years at both the company level and the local complex level. Instructions for how to calculate average annual broiler grower turnover rates are included in Form PSD 6100.

AMS proposed requirements for several disclosures of specific data and information advising growers of their rights. AMS did not specifically propose to require live poultry dealers to disclose their policies on grower payment with respect to increased lay-out time, diseased flocks, natural disasters and other depopulation events, feed issues or outages, or policies on grower appeal rights and processes, although in the proposed rule, AMS asked whether the final rule should require disclosures on these types of topics. Multiple commenters suggested AMS include these disclosures. The commenters stated that these disclosures would aid growers in decision making and reduce confusion during times of disease or other disaster. Therefore, this final rule requires live poultry dealers engaged in the production of broilers to disclose policies and procedures on increased lay-out time; sick, diseased, or high early-mortality flocks; natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability, as well as any appeal rights arising out of these events.

The proposed rule proposed to exempt live poultry dealers, including all parent and subsidiary companies, slaughtering fewer than 2 million live pounds of poultry weekly (104 million pounds annually) from the Disclosure Document requirements if the new, renewed, or replacement contract offered by one of these dealers does not include revisions to existing housing specifications that would require the grower to make new or additional capital investments. This final rule limits the proposed exemption to clarify that the exemption applies if the live poultry dealer engaged in the production of broilers that together with all companies controlled by or under common control with the dealer slaughter fewer than 2 million live pounds of poultry weekly (104 million pounds annually).

The proposed rule would have required dealers to establish, maintain,

and enforce a governance framework reasonably designed to audit the accuracy and completeness of the disclosures in the Disclosure Document, which must include audits and testing, as well as reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers. AMS determined that the requirement in § 201.102(f)(2) for the principal executive officer or officers to certify the governance framework and the accuracy of the Disclosure Document adequately covers the intended requirement for officers of this level to be focused on the effectiveness of the governance framework. AMS concluded that this level of detail about the audit process for the Disclosure Document was not necessary, because AMS finds the certification requirement regarding the governance framework to be sufficient to ensure a reasonable level of accuracy of these statements. The company will still need to maintain a governance framework for ensuring the reliability of the statements, which the certification attests to. The principal executive officer will need to tailor the framework to the particular levels of complexity of the company and its poultry business, its approach to internal controls, and other factors such as its track record of regulatory compliance, to ensuring the accuracy of statements.

In some circumstances, audit, testing, and reviews by senior officers may be necessary to ensure compliance, but that may not be the case in all circumstances. The requirements of this final rule place the opportunity—and the responsibility—on the principal executive officer to tailor the needs of the compliance program to the particulars of the business and its own compliance culture, as reflected in the governance framework. A “reasonably designed” framework depends on the particular facts and circumstances of the poultry company and its growers, with larger, more complex processors adopting more comprehensive systems appropriate to the scope of their operations. AMS will evaluate the effectiveness of the governance framework in part through examining the reliability of producing accurate disclosures but may also examine a dealer’s internal controls and other factors relevant to the facts and circumstances of the dealer, such as its recent track record of compliance with relevant laws and regulations.

AMS will investigate questions of statement inaccuracy and may take enforcement actions against companies that do not maintain sufficient governance frameworks. Violations may

result in issuance of a Notice of Violation or referral to the Attorney General of the United States for prosecution pursuant to Section 404 of the P&S Act, 7 U.S.C. 224. Growers may also bring private cases in response to inaccurate or misleading disclosures under the Act or under other laws. Therefore, AMS removed the requirement proposed in § 201.100(f)(1)(i) for audit, testing, and reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers.

The proposed rule would have required dealers to include a statement on the Disclosure Document’s grower signature page advising growers that a dealer’s failure to deliver the document within the required timeframe, as well as false or misleading statements or material omissions within the Disclosure Document, may violate Federal and State laws, and that such violations could be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Act. The proposed statement further informed growers that allegations of such violations could be reported to AMS’s PSD. The final rule retains the required advisory statements; however, they have been modified to inform growers they may submit complaints to USDA’s Farmer Fairness portal at <https://www.usda.gov/farmerfairness> or by telephone at 1–833–DIAL–PSD (1–833–342–3773) if they suspect a violation of the Act or any other Federal law governing fair and competitive markets, including contract growing, of livestock and poultry.

The proposed rule would have required live poultry dealers to obtain a poultry grower’s signature to verify delivery of the Disclosure Document. Live poultry dealers noted that there may be instances in which obtaining a grower signature is not possible, such as grower unavailability or refusal to sign. AMS recognizes there is no mechanism to require growers to sign for receipt of the Disclosure Document. Commenters said it is appropriate in these instances to have other means available for the live poultry dealer to verify delivery of the Disclosure Document to the grower. AMS agrees it is necessary to have alternative methods of compliance. Therefore, this final rule allows flexibility for live poultry dealers engaged in the production of broilers to have alternative means to prove delivery and to demonstrate that best efforts were used to obtain grower receipt. In those circumstances, this final rule does not require a specific method of delivery but requires dealers to obtain and maintain evidence that the live poultry dealer

delivered the Disclosure Document to the grower or prospective grower in the required timeframe and that best efforts were used to obtain grower receipt.

Based on its experience, AMS expects live poultry dealers to engage in personal communications with the growers in the course of the contracting process, and so expects that best efforts include personal communication with growers in the course of delivering the Disclosure Document and seeking grower receipt. Where a grower refuses to sign or has made him or herself unavailable to the live poultry dealer, alternative documentation includes proof of delivery and statements or affidavits to support the communication and grower's refusal to sign receipt, or the circumstances of the grower's unavailability. AMS expects unavailability to be a rare circumstance requiring exceptional justification, given the nature of the contracting process between live poultry dealers and growers. The proof of delivery and best-efforts requirement, as an alternative, provide the best assurance possible in those circumstances that the grower receives and is able to evaluate in a timely manner the Disclosure Document. The grower receipt requirement, and this alternative, is important to AMS achieving the purposes of the rule because it minimizes the risk that live poultry dealer may deliver the Disclosure Document through means that may, in practice, not be read or noticed by the grower under the time frames provided, and so obstruct the purposes of ensuring the grower can evaluate the information before the grower makes significant decisions. AMS notes that grower and advocacy commenters supported the retention of the grower receipt requirement principally for those purposes.

The proposed rule would have required live poultry dealers to make several disclosures to poultry growers but did not include the exact language and wording they should use. Numerous commenters from the grower and live poultry dealer sectors said that these provisions should be in plain and unambiguous language to avoid discrepancies in interpretation among the various parties, regulators, and courts. One purpose of the Disclosure Document is to improve the understanding of production agreements to thwart deception; thus clear, concise, and understandable language is necessary. Therefore, this final rule adds a new § 201.102(g)(3) to the final rule to require live poultry dealers engaged in the production of broilers to present the information in the Disclosure Document

in a clear, concise, and understandable manner for growers. Paragraph § 201.102(g)(3) also notes that dealers may refer to Form PSD 6100 for further instructions on the presentation of information and certain calculations.

Some commenters also indicated a need to ensure growers who are not native speakers of English can understand the disclosures. As noted by multiple commenters, non-native speakers of English are engaged in poultry growing. For example, in the early 2000s, large numbers of first-generation immigrant Hmong people, many of whom had been farmers in their native Laos, moved from urban areas in California, Minnesota, and North Carolina to the Ozark region in and around southwest Missouri and started growing poultry. Pew Research Center studies show that the English proficiency of the Hmong population in the U.S. in 2019 was only 68% and, among foreign-born Hmong, English proficiency is just 43%.⁶⁴ Data supports the concerns expressed by commenters regarding providing poultry growers information in a manner growers are able to understand. AMS agrees that providing documents in the language growers best understand ensures fairness and reduces the risk of deception. Therefore, AMS added new § 201.102(g)(4) to the final rule to require that live poultry dealers must make reasonable efforts to ensure that growers are aware of their right to request translation assistance and to assist the grower in translating the Disclosure Document. This must be provided at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement that does not contemplate modifications to the existing housing specifications (provided that the grower may waive up to 7 calendar days of that time period). Where modifications to the existing housing specifications are contemplated, it must be provided when the live poultry dealer provides the grower with the Disclosure Document. The timing requirement aligns with the provision of the Disclosure Document by the live poultry dealer as set forth in § 201.102(a) as discussed above. Although they are not required to do so, nothing in the rule prevents companies from providing a translation, provided it is complete, accurate, and not misleading.

⁶⁴ Abby Budimen, "Hmong in the U.S. Fact Sheet," *Pew Research Center's Social & Demographic Trends Project* (May 24, 2022), available at <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-hmong-in-the-u-s/> (last accessed April 2023).

The final rule makes several other changes to the definitions proposed in § 201.2 of the proposed rule. It revises the definitions of *grower variable costs*, *growout*, and *growout period* and changes the latter two terms to *poultry growout* and *poultry growout period*.

The proposed rule would have defined *grower variable costs* as "those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance." Commenters representing the grower sector shared concern that the definition would mandate that the costs listed were the only ones to potentially be borne by the grower. Commenters stressed that these costs are often the subject of negotiation between grower and live poultry dealer, with some costs being paid by the live poultry dealer. Therefore, AMS modified the definition in § 201.2 of the final rule to replace the words "including, but not limited to" with the words "which may include, but are not limited to." While this does not substantively change the legal standard, this modification emphasizes that these are examples of costs, yet still retains a definition that allows the listed costs to be treated as grower variable costs under a poultry growing arrangement if the parties choose to contract for them in some other manner.

AMS also proposed to define *growout* as "the process of raising and caring for livestock or poultry in anticipation of slaughter" and *growout period* as "the period of time between placement of livestock or poultry at a grower's facility and the harvest or delivery of such animals for slaughter, during which the feeding and care of such livestock or poultry are under the control of the grower." However, a commenter said the references to "livestock or poultry" in the proposed definition of *growout period* may have unintended consequences across other segments of the protein industry that do not use tournament pay systems, as the definition of *livestock* in the Act includes "cattle, sheep, swine, horses, mules, or goats." Therefore, in the final rule, AMS modified the definitions of these two terms to remove references to livestock. In addition, AMS revised these terms to refer to *poultry growout* and *poultry growout period* to clarify that it intends these definitions to apply only in the poultry context for the purposes of this rule.

AMS also made a few minor changes for clarification purposes. One change is found in § 201.104(a), substituting the word "these" for "such" in reference to poultry growing ranking system records.

The change was made to add specificity for the records that are required to be maintained by live poultry dealers. Another change was made in § 201.102(b)(8), substituting the word

“statement” for “sentence”. This is a clarifying change to both maintain uniformity in the language used throughout the regulatory text and to ensure dealers understand the entire

statement provided by 201.102(b)(8) must be disclosed to growers.

Table 1 summarizes key differences between the proposed rule and the final rule.

TABLE 1—KEY DIFFERENCES BETWEEN THE PROPOSED RULE AND FINAL RULE

Provision	Proposed rule	Changes to final rule
Applicability	All proposed requirements related to disclosures and contract terms are in § 201.100—<i>Disclosures and records to be furnished poultry growers and sellers</i> (existing section with proposed revision of heading). § 201.100(a) All live poultry dealers must provide Live Poultry Dealer Disclosure Document and related documents to prospective or current poultry growers. Removes § 201.100(f)—<i>Grouping or ranking sheets</i> of existing rule. § 201.100(a)(1) <i>When no modifications to housing specifications are contemplated, a live poultry dealer must provide the poultry growing arrangement and the Disclosure Document at least 7 days before the live poultry dealer executes the poultry growing arrangement.</i> § 201.100(h) Clarifies that the right to discuss the terms of the poultry growing arrangement offer also applies to prospective poultry growers and to the accompanying Disclosure Document. § 201.100(i)(2) All live poultry dealers must include minimum annual flock placements and minimum stocking density in contract. All provisions related to disclosures upon flock placement or settlement are in proposed new § 201.214—<i>Transparency in poultry grower ranking pay systems.</i> § 201.214(b) All live poultry dealers who use a poultry grower ranking system to calculate grower payments must provide certain disclosures upon flock placement. § 201.214(c) All live poultry dealers who use a poultry grower ranking system to calculate grower payments must provide certain disclosures upon settlement. § 201.214(c)(1) Live poultry dealers who use a poultry grower ranking system to calculate grower payments must provide the grower a copy of a grouping or ranking sheet showing the grower's precise position for that period. This sheet does not need to show the names of other growers, but must show their housing specification and the actual figures the grouping or ranking for each grower in the group during the period is based on. Terminology throughout rule refers to poultry, poultry growers, poultry growing arrangements, prospective poultry growers, and live poultry dealers.	Creates new section § 201.102—<i>Disclosures for broiler production</i> covering requirements for live poultry dealers engaged in the production of broilers, while retaining requirements in current § 201.100 for all live poultry dealers. § 201.102(a) Changes requirements to apply only to live poultry dealers engaged in the production of broilers. Adds wording to emphasize that these requirements apply in addition to the existing requirements in § 201.100(a) for live poultry dealers engaged in the production of broilers. Retains § 201.100(f). § 201.102(a)(1) <i>Changes the timing to 14 calendar days, provided that the grower may waive up to 7 calendar days of that time period.</i> <i>Conforming changes made to the prominent disclosures to be provided the grower and to receipt by growers.</i> § 201.102(b)(6)(i), § 201.102(g)(4). § 201.100(b) Revises wording to emphasize that the right for poultry growers or prospective poultry growers to discuss the terms of the poultry growing arrangement offer applies to the Disclosure Document if that document is applicable. § 201.102(h) Moves requirements to § 201.102 and revises them to apply only to live poultry dealers engaged in the production of broilers. Renumbers section and revises heading to § 201.104—<i>Disclosures for broiler grower ranking system payments.</i> § 201.104(b) Changes requirements to apply only to live poultry dealers engaged in the production of broilers. § 201.104(c) Changes requirements to apply only to live poultry dealers engaged in the production of broilers. Clarifies that these dealers also must comply with the existing grouping or ranking sheet requirements in retained § 201.100 and that disclosures need not show the names of other growers. § 201.104(c)(1) Removes requirements duplicated in retained § 201.100(f), leaving only the requirement for grouping or ranking sheets to show each grower's housing specification as applicable exclusively to live poultry dealers engaged in the production of broilers. Updates terminology to specifically refer to broilers, broiler growers, broiler growing arrangements, prospective broiler growers, and live poultry dealers engaged in the production of broilers where necessary to describe which entities must comply with new requirements.
Required Disclosures Following the Cover Page (§ 201.102(c)).	§ 201.100(c)(1) Live poultry dealers must disclose summary of litigation with any poultry grower over the prior 6 years. § 201.100(c)(2) Live poultry dealers must disclose summary of bankruptcy filings by dealer and any parent, subsidiary, or related entity over the prior 6 years. Not in proposed rule	§ 201.102(c)(1) Live poultry dealers engaged in the production of broilers must disclose summary of litigation with any broiler grower over the prior 5 years. § 201.102(c)(2) Live poultry dealers engaged in the production of broilers must disclose summary of bankruptcy filings by dealer and any parent, subsidiary, or related entity over the prior 5 years. § 201.102(c)(4) Adds requirement that live poultry dealers engaged in the production of broilers must include description of policies, procedures, and appeal rights in Disclosure Document.

TABLE 1—KEY DIFFERENCES BETWEEN THE PROPOSED RULE AND FINAL RULE—Continued

Provision	Proposed rule	Changes to final rule
	Not in proposed rule	§ 201.102(c)(5) Adds requirement that live poultry dealers engaged in the production of broilers must include grower turnover rate data in Disclosure Document. Removed from final rule.
Financial Disclosures (§ 201.102(d)).	§ 201.100(d)(1) As part of required financial disclosures, live poultry dealers must provide 1 year of average annual gross payments to growers for all complexes the dealer owns or operates.	§ 201.102(d)(1) Revises paragraph to specify that live poultry dealers engaged in the production of broilers must only calculate average annual gross payments for growers at the local complex distributed by quintiles for complexes with 10 or more growers, and for complexes with nine or fewer growers, must calculate the mean payment and one standard deviation from the mean.
Small Live Poultry Dealer Financial Disclosures (§ 201.102(e)).	§ 201.100(e) A live poultry dealer, including all parent and subsidiary companies, slaughtering fewer than 2 million live pounds of poultry weekly (104 million pounds annually) is exempt from Disclosure Document requirements if contract does not contemplate revisions to existing housing specifications that would require poultry grower to make capital investments.	§ 201.102(e) Revises provision to provide that exemption applies for live poultry dealers engaged in the production of broilers if the dealer together with all companies controlled by or under common control with the dealer slaughters fewer than 2 million live pounds of broilers weekly (104 million pounds annually).
Governance and Certification (§ 201.102(f)).	§ 201.100(f)(1)(i) Live poultry dealer governance framework must include audits, testing, and review of sample of Disclosure Documents.	Removed from final rule.
Receipt by Growers (§ 201.102(g)).	§ 201.100(g)(1) Disclosure Document must include grower signature page containing specific statement regarding grower rights related to document.	§ 201.100(g)(1) Adds language to statement regarding grower rights to state that growers may report potential violations to USDA and DOJ portal at https://www.farmerfairness.gov or by phone at 1-833-DIAL-PSD (1-833-342-3773) and obtain further information on rights and responsibilities under the Act at www.ams.usda.gov .
	§ 201.100(g)(2) Live poultry dealers must verify grower receipt by obtaining grower's dated signature on signature page of Disclosure Document.	§ 201.102(g)(2) Adds provision allowing live poultry dealers engaged in the production of broilers to obtain alternative documentation to evidence delivery and that best efforts were used to obtain grower receipt.
	Not in proposed rule	§ 201.102(g)(3) Adds requirements for live poultry dealers engaged in the production of broilers to ensure that the Disclosure Document is written in clear, concise, and understandable manner for growers.
	Not in proposed rule	§ 201.102(g)(4) Adds requirement that the dealer must make reasonable efforts to ensure that growers are aware of their right to request translation assistance, and to assist the grower in obtaining a translation or understanding the Disclosure Document at least 14 calendar days before executing a growing arrangement that does not contemplate modifications to the existing housing specifications (provided that the grower may waive up to 7 calendar days of that time period). Where modifications to the existing housing specifications are contemplated, it must be provided when the live poultry dealer provides the grower with the Disclosure Document.
	Not in proposed rule	Adds definitions for <i>broiler</i> , <i>broiler grower</i> , <i>broiler growing arrangement</i> , and <i>prospective broiler grower</i> .
	Not in proposed rule	Adds definition for <i>gross payments</i> .
	<i>Grower variable costs</i> is defined as those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance.	Revises definition to refer to costs "which may include, but are not limited to" the listed costs rather than "including, but not limited to," these costs.
Terms Defined (§ 201.2).	<i>Growout</i> is defined as the process of raising and caring for livestock or poultry in anticipation of slaughter.	Revises definition to refer to term as <i>poultry growout</i> and exclude livestock.
	<i>Growout period</i> is defined as the period of time between placement of livestock or poultry at a grower's facility and the harvest or delivery of such animals for slaughter, during which the feeding and care of such livestock or poultry are under the control of the grower.	Revises definition to refer to term as <i>poultry growout period</i> and exclude livestock.

VII. Comment Analysis

AMS received 504 comments on the proposed rule, some with multiple signatories. Comments received were generally more supportive of the proposed rule than opposed. Many commenters generally agreed with the proposed rule's justification and implementation. These commenters stated that the proposed rule would be helpful because it would provide for fairer treatment of growers and enable growers to better understand, evaluate, and compare contracts among dealers, enhancing growers' ability to bargain efficiently. Commenters stated further that the proposed rule would reduce the power of large corporations in the industry, improve public trust in agriculture, and increase transparency regarding food products.

Other commenters were generally critical of the proposed rule. These commenters expressed general disagreement with AMS proposing a rule at all, arguing the current system is fair and efficient and that the tournament system rewards growers for efficiency, innovation, and raising the best birds possible. Several commenters stated the proposed rule is not fair and would result in a less efficient industry because it would reward less productive growers, disincentivize hard work, and add more paperwork.

The public comments are summarized by topic below and include AMS's responses.

A. Proposed Definitions

AMS proposed to revise § 201.2 containing relevant definitions by removing the paragraph designations within the section, reorganizing the definitions alphabetically, and adding definitions for new terms used in the proposed rule. In addition, to ensure a common understanding of the use and meaning of certain terms already used in the regulations and included in the revisions, AMS proposed to incorporate the statutory definitions for those terms.

Grower Variable Costs

AMS proposed defining *grower variable costs* as "those costs related to poultry production that may be borne by the poultry grower, including, but not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance."⁶⁵

Comment: Some commenters shared concern that the definition of *grower*

variable costs creates the impression that it is a regulatory requirement or expectation that the costs listed therein are to be borne by the grower, thereby harming growers' ability to negotiate those terms. Commenters stressed that these costs are sometimes the subject of negotiation between grower and live poultry dealer, with some costs being paid by the live poultry dealer.

AMS response: AMS modified the definition of *grower variable costs* to replace the words "including, but not limited to" with the words "which may include, but are not limited to." The modification in the definition, in particular the use of the term "may," underscores that the requirement to provide transparency for any grower costs, including those listed in the definition, do not create a mandate upon the live poultry dealer or grower with respect to who bears any of the specific listed costs. In many, if not most contracts today, based on AMS's experience, the listed examples would be considered grower variable costs.⁶⁶ But the rule does not prevent the parties from negotiating other arrangements, such as the live poultry dealer accepting responsibility for the payment of those cost items. This approach is consistent with the rule's general approach of enhancing transparency.

AMS considered whether to remove the list of potential variable costs, as requested by the commenter. AMS rejected that approach because it poses a risk of complexity or confusion in compliance, as live poultry dealers may not know which types of grower variable costs are generally required to be disclosed under most contracts today. AMS notes that the listing of any particular grower variable cost does not prevent the parties from contracting for other arrangements regarding who bears the burden of any particular grower variable costs.

Growout and Growout Period

AMS proposed to define *growout* as the process of raising and caring for livestock or poultry in anticipation of slaughter and *growout period* as the

period of time between placement of livestock or poultry at a grower's facility and the harvest or delivery of such animals for slaughter, during which the feeding and care of such livestock or poultry are under the control of the grower.

Comment: A meat and poultry industry trade association made up of processors commented that the references to "livestock or poultry" in the proposed definition of *growout period* may have unintended consequences across other segments of the protein industry that do not use tournament pay systems, as the definition of *livestock* in the Act includes "cattle, sheep, swine, horses, mules, or goats." The commenter stated that it is not aware of uses of the tournament system in the production of these species and AMS has not provided any facts to suggest that those species have a *growout period* as the term would be employed in the poultry industry. The commenter recommended AMS revise this definition to eliminate "livestock" and review all definitions to avoid unintended consequences for other protein segments.

AMS response: This final rule modifies the proposed definitions for *growout period* and *growout* to apply only to poultry. The references to livestock in the proposed definitions were offered to provide a more generally applicable definition but are not needed at this time and are therefore removed. To improve clarity, we also changed the proposed terms *growout* and *growout period* in § 201.2 to instead refer to *poultry growout* and *poultry growout period*, respectively.

Housing Specifications

AMS proposed to define *housing specifications* as a description of—or a document relating to—a list of equipment, products, systems, and other technical poultry housing components required by a live poultry dealer for the production of live poultry.

Comment: A poultry industry trade association commented that the proposed definition of *housing specifications* is unnecessarily vague and lends itself to multiple interpretations. The commenter said there are endless combinations of equipment, products, systems, and other technical poultry housing components that could result in dealers having to organize dozens of housing specifications, adding significant complexity for the dealer, and creating confusion for the grower. The commenter stated that because farms are built with the technology in use at the time, the housing types and technology

⁶⁵ Liability insurance may be a fixed cost for many growers, but we include it here because that may not be so in all circumstances, while the purpose of this rule is to provide enhanced information to all growers.

⁶⁶ See Jennifer Rhodes, Extension Educator, et al., University of Maryland, "Broiler Product Management for Potential and Existing Grower," Tables 1 and 2, available at Poultry Budgets, Enterprise Budgets, Agricultural and Resource Economics, North Carolina State University Extension, <https://cals.ncsu.edu/are-extension/business-planning-and-operations/enterprise-budgets/poultry-budgets/> (last accessed April 2023). Also see Dan L. Cunningham and Brian D. Fairchild, University of Georgia Cooperative Extension, "Broiler Production Systems in Georgia Costs and Returns Analysis 2011–2012," Bulletin 1240, and Tomislav Vukina, "Vertical Integration and Contracting in the Poultry Sector," Journal of Food Distribution Research (July 2001).

in use generally correlate with the age of the facility.

To simplify the categorization of housing specifications in Disclosure Documents and settlement sheets, the commenter recommended that AMS revise the definition to clarify that live poultry dealers are permitted to devise their own categories of housing specification for the purposes of the Disclosure Documents and settlement sheets, which will allow dealers to prepare and present data based on the types of housing that their growers use to raise birds for them. The commenter noted, at the least, AMS should revise the definition to narrow the housing specification to key elements of housing, namely, the type of ventilation (for example, curtain or tunnel ventilation) and whether the house is a brood and growout house or only accommodates the growout stage.

AMS response: AMS does not agree and will not revise the proposed definition of *housing specifications* in response to this comment. The definition does not limit dealers' ability to categorize poultry housing. Dealers are free to list the minimum or required equipment or technical specifications that would qualify under a given housing specification category.

Poultry Grower Ranking System

AMS proposed to define *poultry grower ranking system* as a system where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period.

Comment: Several commenters argued that the proposed definition of *poultry grower ranking system* lacks sufficient flexibility. These commenters stated that the regulations appear to contemplate only two contract types—flat payment or a tournament system—and do not encompass the many forms of contracting in use in today's market, let alone innovative contracting arrangements.

Comments recommended that AMS revise the definition to exclude from the scope of the proposed rule poultry grower compensation systems where there is a fixed base pay, regardless of how any incentive-based bonus may be calculated. They recommended revising the definition of *poultry grower ranking system* to mean "a system where the contract between the live poultry dealer and the poultry grower provides for base payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers

delivering poultry during a specified period."

AMS response: AMS has fully considered the applicability of "poultry grower ranking system" to a wide range of possible compensation systems and intends for the relevant provisions of this rule governing comparisons to be applied broadly. AMS recognizes that certain designs of grower comparisons may provide more desirable outcomes for contracting participants in different circumstances, and in issuing this final rule, AMS is creating transparency in payment systems. However, commenters' recommendation would limit the disclosures of this rule only to those instances of variable base pay, even when comparison rankings affect performance pay in a manner that, under current conditions, is opaque and misleading to the grower. Addressing this widespread deceptive practice is squarely the purpose of this final rule.

The definition was developed to be consistent with the approach set forth in current § 201.100(f)—Growing or ranking sheets, that has been in place since 1989,⁶⁷ and provides transparency to growers who are paid based on the live poultry dealer's grouping or ranking of poultry growers delivering poultry during a specified period.

AMS does not agree that it is necessary or appropriate to distinguish between types of ranking systems for the purposes of this rule. Commentors asserted that fix-based pay systems that included bonuses for better rankings are distinguishable from systems that have a variable base pay established by the grower's ranking. Their proposal would limit the disclosures of this rule to those instances of variable base pay, even when there are other comparison rankings. In AMS's view, any comparison of growers is a ranking system because when growers are compared to each other, the basis for grower payment is changed. No longer is payment based only upon the intrinsic work of one particular grower. Instead, payment is based upon a relative outcome between growers, where similarities or differences between them become especially important. For example, under any system of grower ranking, comparative information about inputs may illuminate and magnify differences where those differences can impact performance and payment.

In particular, AMS rejects the suggested limitation of grower ranking systems either to the calculation of base-pay-plus-incentive payment or entirely to base pay. In either circumstance,

growers are exposed to comparisons in the context of performance payments, which could make up a sizable, if not an overwhelming, portion of their compensation and be subject to significant variability for reasons outside of their control or awareness. Regardless of what type of ranking system is used, growers are entitled to know the reasons behind payment differences that may relate to inputs or other important differences affecting the outcome because that information is necessary to avoid deception for the reasons described throughout this final rule.

AMS recognizes that payment systems may evolve and that parties may wish to innovate in payment systems to the extent those systems are transparent and free of potential deception.

Transparency is fully compatible with such innovation because it encourages a responsible, accountable form of that innovation. The rule's required disclosures regarding input differences provide growers with the information they need to be able to adjust to any input differences that may exist, including in advance of input delivery and over time when comparing outcomes of a series of growouts. Accordingly, AMS is not changing the definition of *poultry grower ranking system* as proposed based on these comments. Poultry companies and growers should contact AMS to discuss questions about compensation systems.

AMS provides an estimate of the value of improved transparency in the regulatory analysis section.

Other Comments on Definitions

Comment: Several non-profit organizations suggested AMS add several new definitions to § 201.2. First, the commenters noted that the proposed rule, as well as current regulations under the Act, appear to use the term "facility" to refer to a poultry grower's poultry houses collectively, rather than individually. Therefore, they recommended that AMS add a definition for *poultry house* to allow for clarity in circumstances where it needs to refer to individual poultry houses. Second, the commenters noted that the proposed rule uses the term "tournament system" in a manner that appears to be synonymous with "poultry grower ranking system." Therefore, they recommended that AMS define *tournament system* to be synonymous with *poultry grower ranking system*.

AMS response: This rule applies at the farm level and therefore does not require specification of a separate term to refer to an individual poultry house

⁶⁷ 54 FR 16356, April 24, 1989.

beyond that already provided by *housing specification*. In addition, the term “tournament system” does not appear in the rule text itself. Therefore, AMS made no changes to the definition of *poultry grower ranking system* in the final rule.

B. Applicability

AMS proposed to revise § 201.100(a) to require a live poultry dealer to provide certain documents to a prospective poultry grower when the live poultry dealer seeks to establish a poultry growing arrangement, or to a current poultry grower when a live poultry dealer seeks to modify an existing poultry growing arrangement. AMS proposed to apply this Disclosure Document requirement to live poultry dealers in all segments of the poultry production industry. Poultry is defined in section 182(6) of the Act to include chickens, turkeys, ducks, geese, and other domestic fowl. AMS requested comments on whether the disclosure requirements should apply to all segments of the poultry production industry, or if the requirements should be limited to broiler and turkey production.

Comment: Comments received stated that the disclosure requirements should only apply to contractual agreements within the tournament system of growing poultry and noted the disclosures are largely meant for the broiler industry, where many of the complaints arise.

An association representing the turkey industry noted the provisions of the proposed rule were not based on substantial research into the turkey industry and asserted many of the provisions would be difficult or impossible for turkey companies to implement, citing differences in turkey growing cycles, flock densities, bird gender distributions, and other factors dissimilar to those involved in broiler production.

AMS response: As discussed previously, AMS subject matter experts analyzed turkey production contracts from across the country and found more variability than in broiler contracts. The variability reflects the biological differences found among turkey breeds and longer placement times of turkeys with growers that can impact payments to producers. AMS has not received many complaints from turkey growers. Similarly, other (non-broiler chicken) poultry growers have not expressed concerns regarding practices in their industry. AMS determined it is appropriate at this time to limit the scope of the disclosure requirements in this rule to apply only to broiler

production under a poultry growing arrangement.

This final rule contains a new section § 201.102 containing these disclosure provisions and specifying that they apply exclusively to live poultry dealers engaged in the production of broilers, while maintaining the current requirements at § 201.100, which continue to apply to all live poultry dealers. This rule also makes conforming changes to § 201.2 to define *broiler* as “any chicken raised for meat production,” *broiler grower* as “a poultry grower engaged in the production of broilers,” *broiler growing arrangement* as “a poultry growing arrangement pertaining to the production of broilers,” and *prospective poultry grower* as “a person or entity with whom the live poultry dealer is considering entering into a broiler growing arrangement.” This final rule further clarifies that the right of current or prospective poultry growers to discuss the terms of a poultry growing arrangement offer applies to the Disclosure Document in circumstances that require dealers to provide this document. All poultry growers are protected by the Act’s prohibitions on deceptive practices, and AMS has the authority to address instances or circumstances where poultry growers are not provided sufficient information to make informed decisions on poultry growing arrangements or changes thereto, including additional capital investments.

Because this final rule limits all the new disclosure requirements to broiler production, this rule modifies the proposed requirement for live poultry dealers to include in their contracts the minimum number of flock placements to be delivered to growers annually and the minimum stocking density of those placements, applying it exclusively to live poultry dealers engaged in the production of broilers. This final rule also changes the proposed requirement in § 201.214 to apply exclusively to live poultry dealers engaged in the production of broilers who use a poultry grower ranking system to calculate grower payments. AMS retains the current grouping or ranking sheet requirements for all live poultry dealers in § 201.100(f) of the current rule.

Comment: Several commenters said the rule should apply to pullet and breeder hen growers as well as broiler growers because pullet and breeder hen production is also controlled by live poultry dealers.

AMS response: Although live poultry dealers may control pullet and breeder hen production, those birds are typically raised for egg and chick

production and not for slaughter purposes. The Act’s poultry provisions cover only poultry raised for slaughter. Because there is no provision for doing so under the Act, AMS is not making this rule applicable to pullet and breeder hen production.

C. Disclosure Document and Letter of Intent

AMS proposed to amend § 201.100 to revise the list of disclosures and information live poultry dealers must provide to poultry growers and sellers with whom dealers make poultry growing arrangements. Currently, when a live poultry dealer offers an arrangement with a poultry grower, the dealer must furnish a true written copy of the growing arrangement. In the proposed rule, AMS proposed to require a live poultry dealer who seeks to establish a new growing arrangement; renew, revise, or replace an existing arrangement; or enter an arrangement with a poultry grower or prospective poultry grower that will require original capital investment to also provide a Disclosure Document that contains specific information. When the arrangement requires an original capital investment or modifications to existing housing specifications that could require the poultry grower to make an additional capital investment, AMS proposed to require the dealer to provide a letter of intent that can be relied upon by the grower to obtain additional capital investment.

Utility of Information Provided

Comment: AMS asked whether the information in the proposed rule’s required disclosures would help poultry growers make informed business decisions and better understand poultry growing arrangements, or otherwise better address deceptive practices faced by poultry growers. Most commenters supported requiring the Disclosure Document information as proposed, saying the information will help poultry growers make more informed business decisions and reduce risks of deception. However, some commenters said the rule will be costly and will confuse poultry growers. These commenters stated that relevant information is already provided to growers and the additional proposed disclosures would not be helpful.

AMS response: AMS does not agree with the comments received in opposition to the proposed information disclosures. Requirements for disclosing information to broilers are not new to live poultry dealers. The current regulations at § 201.100 already require disclosures from live poultry dealers.

This final rule expands the information that live poultry dealers are required to provide to broiler growers. AMS's experience in reviewing live poultry dealers' records suggest that live poultry dealers already keep records of most of the information that the final rule would require them to disclose. Although the final rule does impose additional costs on live poultry dealers, the additional costs associated with the disclosures consist primarily of assembling the information and distributing it to growers. AMS expects that the additional costs that live poultry dealers would face will amount to \$2.43 million in the first year and \$6.04 million over ten years.

AMS expects that the benefits or utility of the information disclosed to broiler growers will outweigh the costs of producing and distributing the information. AMS estimated the benefits to broiler growers from reduced revenue uncertainty to be \$2.7 million in the first year and \$26.9 million over ten years. Comments received from growers indicated that with additional information, they might have made different business decisions with regard to poultry growing arrangements.⁶⁸ Further, the information provided in the disclosures should not confuse those currently in the business of growing broilers, provided it is explained in clear language. Prospective broiler growers are expected to benefit from the disclosed information as they more fully appreciate and consider aspects of the business that need their careful attention. Accordingly, AMS made no changes to the rule as proposed based on these comments.

Partial Exemption for Small Dealers

In proposed § 201.100(e)—Small live poultry dealer financial disclosures—AMS proposed to exempt live poultry dealers who, in conjunction with any parent and subsidiary companies, slaughter fewer than 2 million live pounds of poultry weekly (104 million pounds annually) from the requirement to provide the Disclosure Document under proposed § 201.100(a)(1). As proposed, the exemption would apply only if the new, renewed, or replacement contract offered by one of

these dealers does not include revisions to existing housing specifications that would require the grower to make new or additional capital investments. AMS requested comments on the proposed partial exemption, including whether AMS should consider other approaches, such as different thresholds, for applying the small live poultry dealer partial exemption.

Comment: Some commenters said they opposed the proposed rule's partial exemption from the disclosure requirements for live poultry dealers that slaughter fewer than 2 million live pounds of poultry weekly because it would exempt almost half of the live poultry dealer industry from these requirements, arguing that growers and flocks involved with small dealers could suffer the same disadvantages as others in the industry without receiving the benefits of the rule. These commenters noted that, according to AMS's analysis, the exemption would apply to 47 out of 89 live poultry dealers.

AMS response: The total production volume exempted, rather than the number of live poultry dealers, provides a better picture of the extent to which portions of the industry will be affected by the exemption. The exemption pertains to only 0.20% of total broiler production volume and 2.0% of total broiler contracts, as calculated for broiler firms filing an annual report with PSD in 2021.⁶⁹ In § 201.102(e) of the final rule, AMS maintains the partial exemption for small live poultry dealers but revises the language originally proposed to clarify that the partial exemption applies to a live poultry dealer engaged in the production of broilers that, together with all companies controlled by or under common control with the live poultry dealer, slaughters fewer than 2 million live pounds of broilers weekly (104 million pounds annually).

Comment: A meat industry trade association said the partial exemption for small live poultry dealers would result in a non-level playing field based on a live poultry dealer's size. A poultry industry trade association asserted if the need for the rule is valid, then no live poultry dealer should be exempt. This commenter expressed concern that the exemption could result in poultry growers leaving larger live poultry dealers that comply with the rule to join smaller live poultry dealers that do not need to comply. One commenter

representing the turkey sector indicated it had no objection to this provision. One poultry grower commenter said small live poultry dealers should not be exempt, but that there should be a revenue threshold tailored to small dealers because of the expense of recordkeeping.

AMS response: In the spirit of the Regulatory Flexibility Act, AMS is attempting to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.⁷⁰ AMS intends for the exemption to reflect the fact that deceptive practices are less likely to be observed among smaller live poultry dealer operations in AMS experience. The exemption is also expected to ease the regulatory compliance burden on live poultry dealers with lower production volume, as described in the previous comment response. Based on AMS's experience, smaller operators tend not to compete directly with the larger live poultry dealers, often have smaller grower pools, generally dictate less complicated or expensive housing requirements, and use different business models.⁷⁰ These smaller dealers tend to fall into two types. In the first type, these smaller operators rely on growers whose facilities have been used in production for many years and who are not usually required to make changes. The growout services they require of their growers are commonly more intermittent. In the other type, specialized operators—often start-ups or companies that focus on certain high-end products—serve discrete markets where dealers often have higher profit margins, which reduces the need for ongoing grower financial investment on the part of growers to achieve greater efficiency, and as a result rely less on certain poultry growout arrangements that have been associated with the types of deception addressed by this rule. Neither commonly employs contracts or practices that require growers to invest in particularized housing specifications—a key reason why the small operator exemption does not include those who do. Also, neither tends to deploy the degree of dealer discretion in the provision of inputs or other operational matters common to larger, more commoditized operations.

⁶⁸ Comments on Proposed Rule: Transparency in Poultry Grower Contracting and Tournaments, (Aug. 2022), <https://www.regulations.gov/comment/AMS-FTTP-21-0044-0479> (See, for instance, Background section in this rulemaking, which cites comments from numerous growers about how they lacked important information to make informed growing decisions and about how required disclosure of such information would greatly benefit them. Moreover, integrators typically already collect such information for their own use without disclosing it to growers.).

⁶⁹ All live poultry dealers are required to annually file PSD form 3002 "Annual Report of Live Poultry Dealers," OMB control number 0581-0308. The annual report form is available to the public at <https://www.ams.usda.gov/sites/default/files/media/PSF3002.pdf>.

⁷⁰ For example, a small organic chicken company started in Virginia using old growout houses that were no longer suitable for use in larger operations. See Andrew Jenner, "In Virginia, an organic chicken empire is growing—using old barns big poultry companies left empty," *The Counter*, (March 9, 2020) available at <https://thecounter.org/organic-chicken-contract-farming-shenandoah-valley/> (last accessed April 2023).

These simpler, more straightforward growing arrangements have less grower payment variability and fewer financial and other risks relating to dealer discretion in the operation of the poultry growing arrangement. As a result of the differences in these markets, growers for these smaller live poultry dealers tend to face reduced risk of deception. Current market realities would not, at present, seem to justify the effort and expense to develop the Disclosure Document required of larger business entities.

To ensure that this smaller business exception captures only the two types of smaller live poultry dealers discussed above, this rule only exempts smaller live poultry dealers from disclosure where no capital investments are contemplated. Based on AMS's experience, the need for original or additional capital investment on the part of the grower suggests the presence of the more intensive performance-based economic pressure from the live poultry dealer on the grower, which in turn characterizes a market where the dealer will exert greater discretion in the operation of the contract and where grower outcomes are more variable due to factors outside of their control and knowledge. The presence of capital investments also raise the risks to growers from any deception that may arise by subjecting growers to debt burdens and making it more difficult for them to change poultry-processing companies. Under the regulation, smaller live poultry dealers face the same disclosure obligations as larger ones when dealing with a new poultry growing arrangement that will require an original capital investment or modifications to existing housing specifications that would reasonably require an additional capital investment.

AMS rejects the argument that the exemption could result in poultry growers leaving larger live poultry dealers that comply with the rule to join smaller live poultry dealers that do not need to comply. The commenter does not provide evidence that this would occur in markets that, in AMS's experience, are structured differently and respond to different incentives. To the extent it did occur in one or more places, some dealers may also grow to become covered by the rule. Regardless, AMS will remain attentive to potential instances of deceptive practices across the poultry industry.

Changes to Requirements

Comment: In the proposed rule, AMS asked what items might be added to or deleted from the Disclosure Document.

Several industry commenters said AMS should not require disclosures for any item that would be included in the poultry grower contract arrangement, as providing information about these items in the Disclosure Document as well would be an unnecessary burden. A commenter noted the live poultry dealer's name, type of business, organization, principal business address, telephone number, primary internet website address, and the length of the term of the arrangement are already provided in dealer contracts. Several non-profit organizations said AMS should require disclosure of all possible variables that could affect a contract grower's settlement pay, along with whether and how the tournament ranking formula compensates for such variables. These commenters also said AMS should require additional disclosures for live poultry dealers proposing or requiring modification to existing infrastructure. A farm bureau commenter said AMS should add language preventing live poultry dealers from requiring name-brand equipment for an equipment mandate when poultry housing is modified, unless the live poultry dealer can demonstrate the mandate is scientifically justified.

AMS response: Together, the Disclosure Document and production agreement will ensure growers are better informed of their obligations and risks. The Disclosure Document refers to and highlights information also contained in the production agreement to emphasize selected important information contained there. Requiring name and contact information assures the grower the Disclosure Documents pertain to the poultry growing arrangement in question, highlights points of contact and their contact information, and underscores certain basic information in the contract, such as its length of term. Providing such information, which is readily available to the live poultry dealer and already included in the contract itself, is not an overly burdensome requirement.

AMS recognizes that the Disclosure Document cannot list all potential variables in poultry production nor properly assess the industry burden of disclosing how the tournament formula compensates for each of those variables. However, AMS has targeted the requirements to disclosure of variables most frequently cited by industry commenters and what the agency understands to be most useful to growers to assess their risks, in the context of the dependent nature of their contractual relationship with live poultry dealers. This includes disclosures at tournament settlement of

information regarding inputs and housing specifications to enable growers to assess the relationship between inputs and housing specifications. AMS intends to monitor the market and may examine in the future whether any additional information may be useful to help growers understand what factors affect tournament outcomes, whether located in the Disclosure Document or in settlement disclosures.

This final rule does not require additional disclosures beyond the requirements of the Disclosure Document for live poultry dealers proposing or requiring modification to existing infrastructure. Nor are we addressing whether requiring name brand equipment without scientific justification is permissible or not, as that would fall outside the scope of this transparency rule. However, AMS is sensitive to grower concerns in these areas and notes that equipment limitations are subject to review under additional capital investment criteria in current § 201.216. Additionally, AMS is considering future rulemaking to address capital improvement programs in poultry growing contracts, as explored in the Advanced Notice of Proposed Rulemaking "Poultry Growing Tournament Systems: Fairness and Related Concerns." (See 87 FR 34814; June 8, 2022.) Accordingly, AMS is making no changes to this transparency rule as proposed based on these comments.

In related comments, grower groups expressed a desire for a disclosure that communicates information about the rate of grower turnover, or grower churn, for live poultry dealers. AMS agrees that knowing the dealer's recent history with respect to grower churn would give current and prospective growers a decision-useful data point with which to evaluate the stability of the live poultry dealer's grower roster, which may serve as an imperfect but adequate proxy for grower satisfaction. Some dealers may be prone to engage in practices that growers broadly dislike, creating dissension between growers and dealers, and often resulting in contract termination and/or litigation between the parties, which is reflected in the turnover rate. Accordingly, in response to comments on the proposed rule, we modified the proposal by adding the requirement in § 201.102(c)(5) of the final rule that dealers must disclose average annual broiler grower turnover rates for the previous calendar year and the 5 previous calendar years at a company level and a local complex level.

Burdens to Dealers

Comment: In the proposed rule, AMS asked what burdens or challenges dealers could face in collecting and disseminating information to include in the Disclosure Document and whether these burdens would require dealers to modify their business model. Multiple poultry industry commenters said live poultry dealers would need to develop new recordkeeping systems, hire additional employees, and implement archival systems to maintain the required records under the rule, leading to increased administrative costs. Commenters argued these burdens will make the U.S. poultry industry less competitive in the global marketplace. An academic institution said large poultry companies may choose to increase prices for consumers to recoup administrative costs associated with the rule but noted the large poultry companies have benefited from their market power and have been making record profits despite global disruptions.

AMS response: AMS does not agree that the recordkeeping required will lead to meaningfully increased administrative costs. Further, AMS does not expect any cost increases from the rule, including recordkeeping costs, to impact consumer chicken prices because the increases in costs are immeasurably small compared to industry revenues. AMS notes in the Regulatory Impact Analysis that Chicken sales in the U.S. for 2019 were approximately \$58.6 billion and that the total quantified cost of §§ 201.102 and 201.104, including recordkeeping costs is estimated at \$3.4 million when it is greatest in the first year, or 0.0006 percent of revenues.

In USDA's extensive experience with live poultry dealer business practices indicates most of this information is already routinely collected by live poultry dealers. The information contained in the Disclosure Document is designed to aid poultry growers in making business decisions by allowing growers to better understand, evaluate, and compare contracts. Information relating to performance and payments of all growers at a particular complex is useful to growers in reducing deceptive practices and allows growers to make more informed business decisions.

Timeline To Provide Disclosure Document

Comment: AMS proposed in § 201.100(a)(1) to require live poultry dealers to provide the Disclosure Document to current or prospective poultry growers at least 7 calendar days

before executing a poultry growing arrangement in several circumstances. These disclosure requirements apply when the live poultry dealer seeks to renew, revise, or replace an existing arrangement or to establish a new arrangement that does not contemplate modifications to the existing housing specifications. Several commenters advocated for lengthening this timeline. These commenters said the 7-day timeline does not give growers enough time to review the contract and consult as needed with relevant entities. One of these commenters suggested AMS implement a 14-day timeline, while another suggested a 30-day timeline.

AMS response: AMS underscores the importance of giving growers the opportunity to meaningfully review and understand the disclosures, as that is an essential part of achieving the purposes of the rule to reduce deception and empower growers to make effective decisions. At the same time, we recognize the importance to both growers and dealers of keeping existing poultry houses in production. The time-based requirement of § 201.102(a)(1) only applies when capital investment is not contemplated; other situations where required investment would expose growers to new risks have different requirements due to the necessary lending and investment process and those timelines (which commonly occur over several months and are more controlled by the grower's decisions around any lending and construction). In most cases, growers considering a new, renewed, revised, or replacement poultry growing arrangement that does not contemplate modifications to existing poultry housing already have a relationship with the live poultry dealer and know whether or not they wish to continue that relationship.

AMS agrees with the comments from the grower and advocacy sectors that said at least 14 calendar days in advance of the broiler growing arrangement's execution would provide a more appropriate length of time for some growers to adequately review and act upon the information provided in the documents. At the same time, AMS recognizes that growers in some circumstances may be under pressure by dealers to execute a contract without fully considering its contents and implications. For instance, AMS is aware that some dealers currently provide only 3 business days for growers to review a contract.

Furthermore, where a grower may be switching dealers without a capital investment, dialogue can be expected to be ongoing. In addition, sec. 208 of the

Act gives poultry growers 3 business days after a poultry growing arrangement is executed to cancel the arrangement.

AMS also recognizes that broiler growers have an interest in continuity of production, and does not wish to inadvertently insert unnecessary time delays into the grower's planning process during contracting, in particular as this provision exclusively addresses the circumstance where the grower is not contemplating modifications to the housing specification of the grow house. Lengthy waiting periods as suggested by some commenters may result in delayed placements and idle farms, and may also expose both dealers and growers to other financial risks relating to changing economic circumstances.

The final rule seeks to maximize the grower's ability to determine the length of time necessary to review the documents. It provides a of full 14 calendar days of notice unless the grower elects to waive 7 calendar days of the period. It also retains the 7-calendar-day minimum review period to mitigate the potential for coercive behavior. Growers expressed that they need more time to review the disclosure, which is a valid concern in some situations, but we are concerned that the additional time might prevent other growers from receiving timely placements in other situations, while the default is now a 14-day period for disclosure, we are allowing growers to elect to reduce that period to 7 calendar days for their convenience. Because we think live poultry dealers may apply undue pressure if the rule permitted a period of less than 7 calendar days, AMS is not permitting growers to waive notice entirely. Accordingly, this final rule revises § 201.102(a)(1) to require that live poultry dealers provide growers with the required documents at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement, provided that the grower may waive up to 7 calendar days of that time period.

Comment: A poultry industry trade association said AMS should require live poultry dealers to furnish the Disclosure Document at the initial signing of a poultry growing arrangement, and then on a periodic basis, such as every year.

AMS response: AMS designed the proposed rule to specifically prevent deception at the time of contracting and thus intends for disclosure information to be tied to the production contract. That is, a new disclosure is required whenever production contracts change, without regard to how much time has passed since any prior disclosures. This

gives the grower a chance to evaluate dealer disclosures in connection with the new, renewed, or revised contract before taking action on it. Requiring dealers to provide the Disclosure Document on a periodic schedule, regardless of whether changes are made to an existing contract, would be unnecessarily burdensome to dealers. Therefore, in the final rule, AMS maintains the requirement for live poultry dealers to furnish the Disclosure Document whenever production contracts change rather than on a periodic basis.

Comment: A poultry industry trade association said AMS should provide additional clarity on how, and in what timeframe, live poultry dealers should communicate changes in disclosure information to growers. For example, this commenter asked whether a change to the placement or stocking density resulting from disease, weather, or changed economic demand would require the live poultry dealer to provide a new Disclosure Document and what the required timeframe would be for providing the document.

AMS response: AMS requires that live poultry dealers provide a new Disclosure Document when a live poultry dealer seeks to renew, revise, or replace an existing broiler growing arrangement, or to establish a new broiler growing arrangement. This is important for providing growers with the information they need because it ties disclosure requirements to the production contract. As dealers must include placements and densities in the contracts, any changes to these terms would necessitate changes to the contracts, and thus the provision of a new Disclosure Document. The provision of such information up front is important for prospective growers, and for current growers that may be making a change based on a new housing specification, to understand, evaluate, and compare contracts. Updating disclosures when there are changes in the production contract provides similar protections for growers when contracts may change. To the extent that growers may not wish to accept the contract, for example, where they may consider growing for another live poultry dealer, the additional transparency at those times is useful. Additionally, while growers may not, as a practical matter, have a choice regarding certain changes to ongoing poultry production contracts, the additional transparency provided by the disclosures will enable growers to better

plan their management of those contracts.⁷¹

Additional Advisories

Comment: In response to AMS's request for information regarding whether additional changes to the Disclosure Document would be appropriate, several non-profit organizations said AMS should require live poultry dealers that revise a signed contract to compensate poultry growers if the revisions lead to losses for the growers. The commenters said the point of the disclosures is to provide transparency about the arrangement; therefore, any changes to the arrangement at the expense of the poultry grower should be compensated or considered fraudulent.

AMS response: The scope of this rule is transparency in agreements between live poultry dealers and poultry growers with whom they contract. AMS recognizes the issue raised by the commenters is a concern because growers rely upon the contract terms when entering the agreement, and it is problematic if subsequent revisions result in financial losses that presumably would not have occurred under the original terms. However, the remedy proposed by the commenters is not within the scope of this rule. If a live poultry dealer deceives a grower through a "bait and switch" agreement as described, remedies may exist through enforcement by USDA and DOJ, or in private actions by the grower in Federal or state court. Therefore, AMS made no changes to the rule as proposed based on these comments.

Readability of Disclosure Document and Provision in Additional Languages

Comment: In the proposed rule, AMS asked whether the wording of the Disclosure Document was clear and what changes could be made to improve clarity. Several groups representing poultry growers said AMS should ensure the Disclosure Document and other disclosures are in plain language and understandable to a wide range of poultry growers. They said the language should also be unambiguous to avoid discrepancies in interpretation between the agency and other regulators, the courts, and live poultry dealers.

AMS also asked whether there are circumstances in which live poultry dealers should be required to provide the Disclosure Document in a language other than English. Commenters representing both poultry growers and

live poultry dealers supported providing disclosures in the preferred language of poultry growers who are not native speakers of English. A commenter said the grower or prospective grower should have the right to request that the dealer provide the Disclosure Document in their primary language and that all time limits be tolled until the dealer provides an adequate translation, noting the burden on non-native English speakers to navigate the arrangement in English is significantly greater than the burden on a dealer to provide the information in the grower's language. Commenters noted the substantial number of farmers who speak languages other than English and stressed the importance of making sure language barriers do not prevent poultry growers from fully understanding the potential costs and benefits of a poultry growing arrangement. In addition, several commenters recommended that AMS provide educational outreach to non-English-speaking communities in their native languages.

AMS response: This rule is intended to promote transparency in poultry production contracting and give poultry growers and prospective poultry growers relevant information with which to make more informed business decisions. For the disclosure information to have value and be of use to a poultry grower, the poultry grower must have basic comprehension of the information's meaning so that the provision of this information can reduce the potential for deception.

Accordingly, in response to comments, AMS added § 201.102(g)(3), which requires live poultry dealers to present Disclosure Document information clearly, concisely, and understandably for growers. More generally, standard plain language practice is to write informational materials in plain, easy to understand language appropriate for the subject and for the intended audience. We expect dealers to ensure that growers can easily understand the disclosures, and in our examinations may test that to determine whether dealers are complying with § 201.102(g)(3). Further, in response to comments, AMS added a requirement in § 201.102(g)(4) that in the event a prospective or current broiler grower notifies the live poultry dealer that they have limited proficiency in the disclosure's written language, or in the event the dealer is already aware of such limited proficiency, the live poultry dealer must make reasonable efforts to assist the grower in translating the Disclosure Document at least 14 calendar days before the live poultry

⁷¹ See <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-chair-lina-m-khan-files-comment-supporting-proposed-usda-protections-poultry-farmers>.

dealer executes the broiler growing arrangement, provided that the grower may waive up to 7 calendar days of that time period.⁷²

As noted by commenters, non-English speaking growers, including U.S. natives and immigrants, have played important roles in the poultry growing market in multiple localities. Grower groups have noted concerns over many years regarding non-English speaking growers' ability to understand and evaluate their contracts and the risks they are taking in poultry growing.⁷³ The intention of this rule is to assist all broiler growers in understanding the information about their poultry growing arrangement. This includes providing the information to growers in a language with which they are familiar. Under this final rule, the live poultry dealer must make reasonable efforts to ensure that growers are aware of their right to request translation assistance, and to assist the grower in translating the Disclosure Document at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement (provided that the grower may waive up to 7 calendar days of that time period). The timing aligns with the requirements on the live poultry dealer under § 201.102(a) to provide the contract and Disclosure Document to the grower. Reasonable efforts include but are not limited to providing current contact information for professional translation service providers, trade associations with translator resources, relevant community groups, or any other person or organization that provides translation services in the broiler grower's geographic area. A live poultry dealer may not restrict a broiler grower or prospective broiler grower from discussing or sharing the Disclosure Document for purposes of translation with a person or organization that provides language translation services. Live poultry dealers, as parties regularly engaged in executing poultry growing arrangements, can be expected to be able to identify for growers affordable translation services in a timely manner, which will assist the grower in

obtaining any necessary translation services quickly.

AMS is requiring that live poultry dealers take reasonable efforts to ensure that growers are made aware of their right to request translation assistance so that growers can reasonably access the assistance with limited risks of prejudice or discrimination. AMS is not requiring dealers to provide a translation because it would be costly and could deter poultry companies from working with non-English speaking growers. Instead, the requirement to assist growers in obtaining translation services is a more cost-effective and flexible approach that conforms with existing regulatory requirements that protect growers' ability to access other services, such as accounting, financial, and legal advisors, that growers may engage to meet their needs in reviewing what can be multi-hundred-thousand or million-dollar investments and business risks. Accordingly, to ensure grower access to those services, § 201.102(g)(4) prohibits any restriction on growers' ability to share the documentation with translation service providers.

Furthermore, nothing in the rule prevents companies from providing a translation provided it is complete, accurate, and not misleading. Poultry dealers are strongly encouraged to do so. To preserve the minimum time period for grower review, AMS's requirement that live poultry dealers assist growers with accessing translation services must occur 14 calendar days before executing the poultry growing arrangement (provided that the grower may waive up to 7 calendar days of that time period).

AMS has aligned the translation timing with the general requirement that the Disclosure Document be provided 14 calendar days before executing the poultry arrangement to minimize complexity in the rule, provided that the grower may waive up to 7 calendar days of that time period. As discussed elsewhere in this final rule, the 14-day timing requirement only applies where no additional capital investment is being made. Where additional capital investments are being made the Disclosure Document must be delivered with the housing specification, which occurs before the capital investment. As noted elsewhere in this final rule, circumstances where no capital investments are being made tend to reflect continuity and an established relationship between the grower and the live poultry dealer, or circumstances where a grower is switching without capital investment. In either case, the dealer and grower can be expected to be in ongoing dialogue in the run up to the period before review, which should

allow for more flexible timing by both parties.

The suggestion that AMS provide educational outreach to non-English-speaking communities in their native languages is noted, and while a provision for outreach is not included in this rule, AMS will publish educational materials online in multiple commonly spoken languages to provide a basic level of outreach, in addition to exploring more opportunities to provide additional educational outreach.

Other Improvements to Proposed Disclosure Regime

Comment: In the proposed rule, AMS invited comments on what else USDA can do to improve the proposed disclosure regime, including whether AMS should provide more information about the scope of the definition of *deception* under the Act. Several non-profit organizations suggested AMS establish a definition of *deception* to give growers, regulated entities, and courts a clear understanding of the intent of the rule.

AMS response: AMS is making no change based on comments received. While the particular facts and circumstances in any individual case will determine the application of the prohibition on deceptive practices under the Act, well-established principles of deceptive practices under the Act squarely cover the information required to be disclosed in this rule. Taking the formulation set forth in the 1983 FTC Policy Statement on Deception, deception would require that the representation, omission, or practice be likely to mislead the grower, from the perspective of the grower acting reasonably in the circumstances, and be likely to affect their conduct or decision with regard to the poultry growing arrangement.⁷⁴ AMS has crafted this rule to meet that standard in the prevention of deception: to provide information that is important to reasonable poultry growers' decisions relating to contracting and the operation of their contracts and that addresses representations, omissions, and practices that are likely to mislead growers. Accordingly, AMS finds no need to further define deception in this rule.

AMS notes, also, that additional concepts, formulations, or applications of deception may be presented in a separate rulemaking. Other deceptive

⁷² As noted previously, Pew Research Center studies show that the English proficiency of the Hmong population in the U.S. in 2019 was only 68% and among foreign born Hmong, English proficiency is just 43%. Abby Budimen, "Hmong in the U.S. Fact Sheet," Pew Research Center, available at <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-hmong-in-the-u-s/> (last accessed April 2023).

⁷³ Jess Anna Spier, "Hmong Farmers: In the Market and on the Move," (January 1, 2007) Farmers Legal Action Group, available at <http://www.flaginc.org/wp-content/uploads/2013/03/CLE-JAS.pdf> last accessed 04/06/2023.

⁷⁴ FTC Policy Statement on Deception, Oct. 14, 1983 (Appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984)), available at <https://www.ftc.gov/system/files/documents/public-statements/410531/831014deceptionstmt.pdf>.

practices are outside the scope of this disclosure-based rulemaking.

D. Disclosure Document Advisories

In proposed § 201.100(b)(6), (7), and (8), AMS proposed the Disclosure Document contain specific verbatim advisories. The advisories would summarize provisions of the poultry grower's poultry growing arrangement, the grower's right to carefully read the Disclosure Document and all accompanying material, and the grower's right to share the document with certain others for counsel. The Disclosure Document advisories would describe the requirement that the live poultry dealer furnish a copy of the Disclosure Document and growing arrangement a minimum of 14 calendar days before the dealer executes the growing arrangement, provided that the grower may waive up to 7 calendar days of that time period. When the live poultry dealer seeks to offer or impose new or additional housing specifications that could lead the poultry grower to make a capital investment, the advisories would describe the requirement to provide the Disclosure Document simultaneously with a copy of the growing arrangement, any new or modified housing specifications that require original or additional capital investment, and a letter of intent. The advisories would also include a provision explaining that the information is not verified by USDA, and that false or misleading statements or material omissions by the live poultry dealer in the disclosure could constitute a violation of Federal law, State law, or both. Inaccurate information provided in disclosure to growers, as well as other bait-and-switch tactics, such as making a material policy change but not through a new or revised contract, would be covered under this section. This is designed to help growers understand that conduct which violates the rule is a violation of sec. 202(a) of the Act and may result in a notice of violation from USDA or prosecution by the Department of Justice and that, furthermore, growers may be able to tap additional remedies for misrepresentations in these disclosures under the Act and other laws as well.

Statement of Grower's Rights

Comment: Several non-profit organizations suggested AMS should add a requirement that dealers provide in the Disclosure Document USDA contact information that would allow current or prospective poultry growers to obtain further guidance regarding their rights and protections.

AMS response: AMS agrees with this comment, and has amended the proposed requirements for the Disclosure Document to include the Packers and Stockyard Division hotline number, along with the address for the AMS complaint portal, which was included in the proposed rule. AMS has additionally included a reference to the AMS website where live poultry dealers and growers may access further information about rights and responsibilities under the Act. Providing this contact information to growers will signal AMS's intent to enforce the rule and further facilitate growers' ability to contact USDA regarding potential violations.

Comment: AMS received several comments about the provision allowing poultry growers to discuss their arrangements with business associates. A non-profit organization suggested that the rule should ensure a grower's right to speak freely about their contracts. Several commenters said the rule should increase transparency by explicitly permitting poultry growers to discuss poultry growing arrangement offers and Disclosure Documents with anyone.

AMS response: AMS continues to agree growers must be able to consult with the entities listed in § 201.100(b) about entering into, renewing, and operating under such contracts because those parties are essential for assisting growers in appreciating the legal, financial, and operational risks that they may face. Moreover, the Disclosure Documents provide critical information that is core to their ability to provide that assistance. However, adding to the particular entities listed in § 201.100(b) is outside the scope of this rulemaking. AMS will monitor whether non-disclosure requirements are impeding the ability of growers to make the most efficient use of the Disclosure Documents, including whether such non-disclosure agreements impede the ability of growers to seek and obtain better offers from competing live poultry dealers. Accordingly, AMS will monitor and evaluate whether rulemaking to expand the entities listed in § 201.100(b) is needed, but made no changes to the rule as proposed based on these comments.

Comment: Several live poultry dealers said the verbatim advisories required by the proposed rule on the right to obtain counsel on a contract from certain trusted advisors and the right to seek redress from AMS for violations of the Act are unnecessary because they distract from the clear terms of the contract and do not require contractual provisions to be effective. These

commenters suggested AMS engage in targeted educational outreach, work with State agriculture extension services, and coordinate with other industry stakeholders as an alternative to these advisories.

AMS Response: Based on AMS's experience, some growers may not be aware of their rights under the Act or may be confused, intimidated, or misled about asserting those rights where contracts include confidentiality clauses. The mandated disclosures promote transparency and allow growers to better understand, evaluate, and compare contracts among dealers. This minimizes the risk of deception in the contracting process by ensuring growers know they have the right to understand and evaluate offered contracts by seeking business, legal, and financial counsel from the entities listed in § 201.100(b). It is true that certain information provided by State extension services, USDA resources, and other poultry growers under contract with the same live poultry dealer can help growers assess the feasibility and operation of new or revised poultry growing arrangements. Grower commenters at listening sessions, however—in response to rulemaking proposals—have reported to USDA they are not sure their contracts allow them to seek advice from others. Growers should be assured that seeking such guidance is not prohibited, regardless of confidentiality clauses in offered contracts. Further, AMS agrees that educational outreach is valuable to the industry and intends to continue and enhance efforts in those areas. Educational outreach, however, is not a replacement for legal protection. This rule provides this protection by requiring inclusion of the advisory disclosures in the Disclosure Document. Accordingly, AMS made no change to the proposed rule based on these comments.

Comment: A poultry industry trade association said AMS should omit requirements that are irrelevant to determining grower income, such as the requirement to provide information about general rights and obligations under the Act.

AMS Response: AMS does not agree that disclosures should focus only on grower income. Each of the disclosure elements required in this final rule will have a meaningful impact on growers' ability to understand and evaluate the production agreement. At earlier listening sessions and competition workshops, USDA heard from growers that certain information is critical to their decision making and ultimate success, and they have urged AMS to

require dealers to provide this information. For example, growers have told us that knowing the live poultry dealer's policies related to the sale or transfer of a poultry growing operation before they enter a contract and make associated capital investments would help them evaluate the long-range risks of doing so. In another example, growers knowing the dealer's policy regarding feed outages will be better prepared to avoid such situations or react appropriately in a timely manner to minimize the impact of an outage on the flock. While having such information forestalls confusion, misunderstanding, and unnecessary delays for growers, live poultry dealers also benefit from providing such information by avoiding potentially misleading or deceptive business communications and by maximizing business outcomes efficiently. Accordingly, AMS made no changes to the rule as proposed in response to this comment.

Comment: A poultry industry trade association said AMS should clarify what constitutes a "material omission" or "misleading statement" for the purposes of proposed § 201.100(b)(8) and asked whether an incorrect forecast or an unforeseen market change not contemplated by a disclosure would be considered "misleading."

AMS Response: The sufficiency and reliability of disclosures depend heavily on the facts and circumstances. Moreover, contract causes of action are, in general, a function of State law, and State courts may have different standards for interpreting "material omission" and "misleading statement." The law around "material omissions" or "misleading statements" is a well-established part of the law of deception under the Act, the FTC Act, and other relevant Federal and State disclosure laws. AMS made no changes to the rule as proposed based on this comment.

Comment: A meat industry trade association said AMS should modify the rule to consider proprietary and confidential information that would be provided to potential growers who would not necessarily end up with a business relationship with the live poultry dealer.

AMS response: AMS has already explained why the information in the Disclosure Document does not give rise to confidential or propriety business information.

Recommendations for Additional Advisories

Comment: Multiple commenters urged AMS to establish that it would be a violation of the Act for a live poultry dealer to threaten to retaliate against a

poultry grower who installs a feed scale to verify the accuracy of feed deliveries, and that live poultry dealers should have to disclose this right in the Disclosure Document. One commenter said this right is important because the tournament system values the growers' feed-to-weight conversion ratio, and if a live poultry dealer reports having provided a higher amount of feed than was actually provided, the grower is improperly penalized for having a lower ratio.

AMS response: This issue is outside the scope of this rule. This rule focuses on providing enhanced transparency to poultry growers and does not address retaliation and related matters. In addition, AMS has proposed a rule that would address retaliation against producers including poultry growers.⁷⁵ AMS is also considering additional steps to address unfair practices as set forth in the June 8, 2022, Advanced Notice of Proposed Rulemaking "Poultry Growing Tournament Systems: Fairness and Related Concerns." Therefore, AMS made no changes to the rule as proposed based on this comment.

Comment: Multiple commenters said the Disclosure Document should include a warning about the dangers of breathing dust and ammonia, as well as information about how poultry growers can protect themselves and their employees from these dangers. Several of these commenters said AMS should provide a fact sheet on respiratory health hazards. Similarly, a commenter said AMS should require disclosures to farmers and to the public of what goes into the feed for poultry, saying poultry growers could be irreparably harmed by handling dangerous chemicals and consumers could be harmed by ingesting these chemicals.

AMS response: This issue is outside the scope of this rule. The rule focuses on transparency regarding the financial risks and benefits of raising poultry under a poultry growing arrangement. AMS does not discount the commenters' concerns here and recognizes there are risks associated with growing poultry that are not directly financial. Nor does AMS discount the possibility that deception and unfair practices may extend to injuries beyond promises of financial gain. Because this comment is outside the scope of the rule, AMS made no changes to the rule based on these comments. AMS, however, encourages

all potential and current poultry growers to educate themselves on the various health and safety risks associated with growing poultry.

E. Financial Disclosures

AMS proposed to require live poultry dealers to provide various financial disclosures to poultry growers, including disclosure of bankruptcy filings, grower terminations, and grower payment history and projections.

Disclosure of Bankruptcy Filings

AMS proposed in § 201.100(c)(2) to require the Disclosure Document to contain a summary of bankruptcy filings in the prior 6 years for the live poultry dealer and any parent, subsidiary, and related entity.

Comment: Several poultry and meat industry trade associations argued that the requirement to disclose past bankruptcy filings is unnecessary. For example, a commenter said bankruptcy filings are rare among live poultry dealers and are already public if interested parties wish to obtain them. Another commenter noted that this information would be difficult to maintain for larger companies with multiple subsidiaries and said it is unclear why disclosing a live poultry dealer's bankruptcy history would be relevant to determining a poultry grower's earnings under a contract, or why this requirement is for a 6-year period rather than 5 years as with other disclosure requirements in the rule.

AMS response: The financial stability of a dealer is a relevant factor for prospective growers to consider. Dealers or complexes that are underperforming financially may be subject to closure or reduced production levels, resulting in negative effects on grower revenue and potential contract termination. For example, numerous grower contracts were terminated as a result of the Pilgrim's Pride bankruptcy in 2008. Had those growers understood the financial state of the company and the risk to their operations, they may have elected to work with a different dealer, not entered the business at all, or taken other measures to protect themselves from the risk of financial loss. In addition, because corporate relationships may not be known to growers, the public nature of filings may be inadequate to effectively communicate this type of risk. However, to improve the uniformity of recordkeeping for this disclosure regime in the final rule, and in response to comments, AMS has elected to adjust the bankruptcy information reporting period required by § 201.102(c)(2) to 5 years.

⁷⁵ Agricultural Marketing Service, "Inclusive Competition and Market Integrity," Proposed Rule, Oct. 3, 2022, 87 FR 60010, available at <https://www.federalregister.gov/documents/2022/10/03/2022-21114/inclusive-competition-and-market-integrity-under-the-packers-and-stockyards-act>.

Grower Termination and Bankruptcy Disclosures

In the proposed rule, AMS asked if it should require dealers to disclose the contractual grounds for termination or suspension of the poultry growing arrangement.

Comment: Several commenters suggested AMS should require live poultry dealers to disclose the contractual grounds for termination or suspension of the poultry growing arrangement. These commenters said it is important for poultry growers to know the circumstances under which the company can terminate the contract and leave the grower without income because growers make a substantial investment under the contract arrangement.

AMS response: Current regulatory requirements adequately cover this issue. Under existing regulations at § 201.100(c)(1), live poultry dealers are required to provide growers a copy of their contract that includes, among other things, “the duration of the contract and conditions for the termination of the contract by each of the parties.” Existing regulations at § 201.100(h) also require live poultry dealers to provide terminated growers with written notice, including the reason for termination and appeal rights. This information is shared between dealers and individual contracted growers only, and is not part of the Disclosure Document required of broiler dealers under § 201.102. AMS made no changes to the current regulations based on these comments.

Comment: In other responses to AMS’s request for input about contract terminations, multiple non-profit organizations asked AMS to require live poultry dealers to disclose the annual percentage of contracts they terminated over a certain period. The commenters said these disclosures would give growers a sense of the nature of the contract relationship, as well as the range of contract cancellation risks. One commenter noted this information is necessary for growers to determine the likelihood of failure. One commenter also suggested AMS require dealers to provide information about the most common reasons for termination. This commenter further suggested that live poultry dealers should include a summary of the average rate of bankruptcies among growers who have worked with that dealer over the past 5 years, as well as information on the most common reasons why growers may have filed for bankruptcy.

AMS response: In the proposed rule, AMS had not required live poultry

dealers to provide information about grower turnover rates. However, AMS agrees with commenters’ suggestions that disclosures related to the rates of contract termination and non-renewal with a live poultry dealer could help current and prospective poultry growers better assess the stability of the dealer’s contract relationships. In requesting disclosure of bankruptcy and litigation, AMS was seeking to capture the risk that might arise from termination or unstable relationships. Grower turnover rates are, in AMS’s views, a useful metric to assess those risks, as well as to assess grower satisfaction with the dealer. In AMS’s experience regulating the industry, grower turnover rates commonly reflect changes to poultry sales in the wholesale and retail marketplace, as well as general live poultry dealer grower management practices. Local turnover rates might stem from regional management practices, local agent practices, or changes in local agricultural or even labor markets. Local turnover rates may also reflect company-wide policy and management of poultry production, suggesting that growers need to understand and compare both local complex and company-wide grower turnover history in order to evaluate offered poultry growing arrangements.⁷⁶ As such, grower turnover rates provide information that is similar to, but also more holistic, than bankruptcy or litigation, and assist the grower in evaluating the risk of termination or an unstable or unsatisfactory relationship.

Accordingly, AMS has added a requirement to incorporate broiler grower turnover rates at the local complex and company level into the Disclosure Document. This information will allow growers to compare the turnover rates of multiple live poultry dealers as a risk factor when making contracting decisions. Section 201.102(c)(5) is added to the final rule and requires live poultry dealers engaged in the production of broilers to disclose average annual broiler grower turnover rates for the previous calendar year and the average of the 5 previous

calendar years at both the company level and the local complex level.

AMS is requiring grower turnover rates for the previous year and the average of the 5 previous years at *both* the complex and company level, whereas it is requiring dealers to provide previous-year average grower payment information only at the complex level and not at the *company* level (as in proposed § 201.100(d)(1)). AMS is adopting this distinction because company-wide grower turnover metrics provide the grower with an important picture of termination or other risks that may arise from company decision-making relating to sales market fluctuations—for example, if a dealer terminates growers quickly in response to sales changes. Complex level turnover rates are also important to growers because they are likely to provide insight into how the company, and in particular its local agents, interact with growers. AMS developed detailed instructions for how to calculate average annual broiler grower turnover rates, which are included in Form PSD 6100, to facilitate ease of compliance by live poultry dealers.

As explained in the previous comment response, live poultry dealers are required to provide individual terminated growers with written notice, including the reason for termination and the grower’s appeal rights. However, AMS has determined that this final rule should not require dealers to explain the reasons for terminations of other grower contracts on a complex- or company-wide basis in the Disclosure Document. AMS knows through experience working with the industry that poultry dealers and growers can have widely different perspectives on the causes and circumstances for contract terminations. Similar to a grower’s evaluation of a dealer’s bankruptcy or litigation history, growers can consider grower turnover rates when evaluating offered contracts, but live poultry dealers cannot reasonably be expected to convey the varying reasons that may be the basis for terminating contracts as that would at a minimum be burdensome and may in some circumstances reveal proprietary business information or create litigation risks to the company.

AMS also does not agree that dealers should be required to furnish information about the rates and causes for grower bankruptcies. AMS does not expect live poultry dealers to know all the rates or reasons for individual growers’ personal or business decisions to file for bankruptcy, which may or may not have anything to do with the poultry growing arrangement. Accordingly, no changes to the rule as

⁷⁶ In a case involving Arkansas growers, Judge Higginson wrote “[c]iting a downturn in the poultry industry, PPC terminated its contracts with the Growers and filed for bankruptcy.” *Growers v. Pilgrim’s Pride Corp. (In re Pilgrim’s Pride Corp.)*, 706 F.3d 636, 638 (5th Cir. 2013). In a case involving terminated Florida growers, a Pilgrim’s Pride executive was reported to have testified that “terminating the contracts (was) necessary and the best option . . . slowing or stopping operations at Pilgrim’s Pride plants is expected to save the company \$250 million this year,” from “Pilgrim’s Pride cut growers based on production factors,” *Meat + Poultry* (March 11, 2009).

proposed were made on the basis of these comments.

Facilitating Harmful Coordination by Integrators

In the proposed rule, AMS asked whether certain types of financial disclosures could facilitate harmful coordination by integrators and, if so, how this risk could be mitigated.

Comment: A non-profit organization said the large market share held by a few large companies, along with the existence of specialized data companies that service large integrators, has already led to harmful coordination to reduce both contract grower payments and wages for poultry industry workers. This commenter said the solution to avoid harmful coordination by integrators would be for USDA to work with DOJ to crack down on anticompetitive practices, rather than to limit disclosure of information to prospective and current contract growers.

AMS response: AMS is committed to working with DOJ to curb illegal trade practices, including antitrust violations, but antitrust violations are not the only behavior regulated by the Act. This rule is focused on providing enhanced transparency to current and prospective poultry growers because of the persistent challenges they have faced for many years with respect to their poultry growing arrangements. Enhancing transparency and reducing information asymmetry through this rule will allow growers to better understand evaluate, and compare contracts to reduce deceptive practices. AMS made no changes to the rule as proposed based on this comment.

Effect of Financial Disclosures on Lending System

In the proposed rule, AMS requested comment on the effect the proposed financial disclosures would have on the lending system and on the provision of credit to growers.

Comment: A non-profit organization said poultry growers finance the barns they use through loans, which are often guaranteed through USDA's Farm Services Agency (FSA) or the Small Business Administration (SBA). According to this commenter, when growers are unable to pay their loans because of inadequate pay from the tournament system, taxpayers end up paying for them. This commenter said FSA should use the information disclosed under the proposed rule to refuse to guarantee loans unless the contract terms are at least as long as the life of the loan.

AMS response: AMS noted in the proposed rule that FSA has recognized repayment reliability concerns related to informational asymmetries and their effect on poultry grower payments and total revenues. Under the loan repayment program, FSA assesses the "dependability" of poultry production contracts and requires contracts to provide assurance of the grower's opportunity to generate enough income to ensure repayment of the loan by incorporating requirements such as a minimum number of flocks per year or similar quantifiable requirements.⁷⁷

The commenter's request that FSA require contract length match repayment term is outside the scope of this rulemaking. However, AMS is committed to working with FSA and SBA on poultry industry lending practices. AMS made no changes to the rule as proposed based on this comment.

Disclosure of Grower Payment History and Projections

In § 201.100(d) (1), (2), and (3) of the proposed rule, AMS proposed to require the Disclosure Document to contain two tables. One table would show the average annual gross payments, in U.S. dollars per farm facility square foot, to poultry growers for the previous calendar year for all complexes owned or operated by the live poultry dealer. The second table would show the average annual payments, in U.S. dollars per farm facility square foot, to poultry growers at the local complex. The proposed rule also specified how the tables should be organized and how values should be calculated.

Under the proposed rule, if a live poultry dealer modified the building specifications such that the grower would be required to make additional capital investment, or the tables of payment history would not accurately represent projected grower annual payments, the live poultry dealer would be required to provide additional information. The dealer would be required to provide tables presenting projections of average annual gross payments to growers under contract with the complex, and having the same housing specifications, for the term of the poultry growing arrangement, at five quintile levels expressed as dollars per farm facility square foot. Dealers would further be required to explain why the payment history information would not

accurately represent projected future payments.

AMS asked whether the proposed grower payment history and projection disclosures were adequate to enable growers to make sound business decisions.

Comment: Several grower groups and State attorneys general indicated support for the proposed grower payment history information and projection disclosures. Commenters said the information should increase transparency for growers and that having information about real growers' outcomes in the region would help potential growers make decisions about entering into poultry growing arrangements. Commenters said that reporting average grower pay in quintiles helps prospective growers understand and compare income variations and evaluate their own income variation risk accordingly. On commenter explained that having realistic payment information would allow farmers to plan financing more accurately and avoid such predicaments as revenue shortfall in the face of equipment replacement and repair costs.

AMS Response: AMS notes widespread support among commenters for the utility of the proposed disclosures for growers. In this industry as well as many others, past performance is a commonly relied-upon predictor of future performance. As explained in this section and elsewhere in this document, dealer discretion with respect to production inputs, and grower discretion with respect to flock management decisions and applied skills, are also determinative factors in grower outcomes. Thus, historical payment data and future projections become the baseline upon which growers can evaluate likelihood of their success or failure under poultry growing arrangements.

Comment: A number of industry groups said providing the disclosures would impose significant costs on dealers but would be of little value to poultry growers.

AMS response: As detailed in the Regulatory Impact Analysis below, AMS has determined that except for the first year that the rule is effective, the benefits of this rule to growers exceed costs to dealers. Benefits include reduced uncertainty in the broiler grower's revenue stream, reduced risk of retaliation and potential for fraud and deception, and more optimal allocation of capital and labor resources, leading to improved efficiencies across the entire industry. First-year costs to live poultry dealers—following the effective date of

⁷⁷ USDA Farm Service Agency, *Guaranteed Loan Making and Servicing 2-FLP (Revision 1)* pp.8–86 (October 2008). https://www.fsa.usda.gov/internet/FSA_File/2-flp.pdf; accessed 1/3/2022.

the rule—include expenses for setting up new reporting and recordkeeping processes, which will decrease in succeeding years. Additionally, in economic terms, AMS expects total costs to the industry from the rule—as with total benefits—will be very small in relation to the total value of industry production. Significant benefits in the form of decision-making tools will nevertheless accrue to individual growers given the opportunity to understand, evaluate, and compare contract data provided by live poultry dealers in Disclosure Documents pertaining to their poultry growing arrangements.

Comment: One commenter said that the disclosures would be of little value to growers because past economic performance is not a reliable predictor of future economic conditions. The commenter asserted that the grower's income is determined as specified in the contract and driven primarily by the grower's skill and care.

AMS Response: AMS acknowledges that items specified in the contract, and the grower's skill and care, play important roles in grower performance. However, the live poultry dealer determines many items not specified in the contract that significantly impact the grower's income, such as how many flocks a grower receives annually and the number of birds in those flocks. In addition, in tournament systems, the grower's skill and care are supposed to be rewarded in reference to the skill and care provided by other growers settling with them under relative performance payment contracts. The disclosed information provides a history of past grower performances representing the range of skill and care of the pool of growers with whom they will be settled, and who operate under the same contract at the same complex. This information will provide the potential grower a firmer basis for forming performance expectations than a copy of the contract and a self-estimation of their skill and commitment in isolation. It is true that past economic performance may not always be a reliable predictor of future economic conditions. For example, past economic performance could not have predicted U.S. economic conditions following unanticipated events like a worldwide pandemic, foreign conflicts, social upheaval, or an avian flu epidemic. Nevertheless, past economic performance is commonly used in many industries to help predict and plan for future economic performance.

Actual payment information from the recent past illustrates how a live poultry dealer wields its discretion in the

contract. It offers one of, if not the, best pieces of available information to provide growers with a reasonable range of what their incomes may be, reflecting the range of grower skills and other factors present in the marketplace.⁷⁸ Further, providing only the average, or no information regarding variability, is deceptive in the face of payment variability—a significant complaint that AMS has received over the years from growers. Based on AMS's experience monitoring these markets, payments to growers frequently encompass a wide range above and below the mean payment level, as well as significant variation between specific contracts and grower pools.

In data drawn from a 2011 nationally representative sample of broiler growers, the mean payment received by contract growers was 5.77 cents per pound, but 10 percent of growers earned at least 7.02 cents per pound, while 10 percent earned less than 4.32 cents per pound.⁷⁹ While the data reported above range across all growers and all contracts, payments also range widely for specific contracts and grower pools.⁸⁰ Presenting payment history information broken out by quintiles (or, for very small complexes, by mean and standard deviation) gives insight into the variability of cash flow within recent years. As commenters pointed out, not even the best economic models can predict the future with a high degree of certainty, so presenting recent payment information broken out by quintiles (or, for very small complexes, mean and standard deviation) to share the range of performance is designed to enable growers to evaluate whether their potential earnings would be sufficient to meet personal and business financial obligations, as well as to better handle risk and improve farm management. The rule also recognizes that economic conditions may vary, and so provides the opportunity for live poultry dealers to explain why any future projections may differ from past outcomes.

Comment: Several commenters representing poultry industry interests

⁷⁸ Forecasts of a variable are often based on past values of that variable. J.C. Brocklebank, D.A. Dickey, and B.S. Choi, *SAS for Forecasting Time Series* (2018): 23.

⁷⁹ James M. MacDonald, "Technology, Organization, and Financial Performance in U.S. Broiler Production." U.S. Department of Agriculture Economic Research Service, Economic Information Bulletin No. 126 (June 2014).

⁸⁰ Charles R. Knoeber and Walter N. Thurman. "Testing the Theory of Tournaments: An Empirical Analysis of Broiler Production." *Journal of Labor Economics* 12 (April 1994). Armando Levy and Tomislav Vukina. "The League Composition Effect in Tournaments with Heterogeneous Players: An Empirical Analysis of Broiler Contracts." *Journal of Labor Economics* 22 (2004).

expressed concerns that any data on potential future payments is misleading to growers, given the number of factors that affect payments and the role of a grower's own skill.

AMS response: Grower skill does play a role in flock performance and therefore per-flock payments. The projection quintiles required in this rule are specifically designed to capture a wide range of grower performance. Therefore, the bulk of variability in future projections—and presumably the reason for offering projections in lieu of historical information in the first place—would be due to anticipated changes in dealer-controlled factors such as flock placement frequency and flock density, changes in production needs, and changes to the length of grower contracts. The supposition that payment disclosures would be misleading would only be true to the extent that dealers supply misleading data related to factors they control. To do so would be deceptive and a violation of the Act. Accordingly, AMS made no changes to the rule as proposed based on these comments.

Comment: Several poultry and meat industry trade associations requested that AMS require only grower payment history information for the grower's complex rather than for all complexes owned by the live poultry dealer. These commenters noted that complexes in other geographic areas face different economic conditions, such as cost of living, labor costs, and State and local taxes, arguing that payment information for these complexes would not be useful to poultry growers and would potentially confuse them.

AMS response: Payment history for complexes in other geographic areas may be useful to growers in some circumstances, in particular, in areas with only one or two live poultry dealers where there may not be the ready availability for growers to compare what they might earn from providing poultry growout services.⁸¹ However, some factors may vary regionally, such as labor costs, which could reduce the usability of the information. This rule does not require payment information for complexes in other geographic areas. Therefore, in the

⁸¹ In the last available survey of local markets (2011), MacDonald and Key found that about one quarter of contract growers reported that there was just one live poultry dealer in their area; another quarter reported two; another quarter reported three; and the rest reported four or more. James M. MacDonald, *Technology, Organization, and Financial Performance in U.S. Broiler Production*, EIB-126, U.S. Department of Agriculture, Economic Research Service, June 2014: 30, https://www.ers.usda.gov/webdocs/publications/43869/48159_eib126.pdf?v=0.

final rule, AMS removed the proposed requirement in § 201.100(d)(1) that live poultry dealers provide grower payment history information for all complexes they own, instead requiring in § 201.102(d)(1) that live poultry dealers engaged in the production of broilers provide only tables showing average annual gross payments to broiler growers at the local complex.

Comment: A poultry industry trade association urged AMS not to require future projections, saying it would be difficult for dealers to accurately make such projections, given that they depend in part on the economic climate and on other factors that cannot reasonably be foreseen. This commenter said if AMS requires projections, they should be qualified and exempt from certifications. A trade association suggested disclosure should include a disclaimer that past income does not guarantee future results and that income will be governed by the terms of the contract, the party's performance, and additional factors neither party has control over.

AMS response: AMS intends for live poultry dealers to make and disclose assumptions relating to projections, allowing poultry growers to better assess the context behind them. This final rule does not require disclosure of projections to include a disclaimer that past performance is not likely to reflect future results but does not prohibit it either. AMS will carefully monitor the use of disclaimers to prevent confusion and deception. To the extent that a disclaimer is provided in a manner that helps the growers understand that past income is not a contractual guarantee to the grower of such income, it may be acceptable. But such a disclaimer is not required, as the Disclosure Document should already clearly differentiate between past income and future projections that are made *because* past performance is not likely to reflect future results. AMS underscores that a live poultry dealer may not disclaim or absolve itself of any obligation to disclose information required to be disclosed in this rule, waive any liability under this rule, or confuse or discourage growers from reviewing the disclosures set forth under this rule.

Additionally, in the final rule, AMS has clarified that certifications by principal executives are made with respect to the sufficiency of the governance framework for delivering accurate and reliable disclosures, rather than to the specific accuracy of disclosures to particular growers because, as discussed elsewhere, such a certification is more appropriate with respect to the role of the principal

executive in providing the necessary governance and controls to reasonably provide for accuracy in disclosures.

Comment: Commenters from both the grower and live poultry dealer sectors requested more specificity on how to calculate average annual gross payments. Although the proposed rule provided detail on calculations, commenters stated the instructions lacked sufficient specificity to assure that live poultry dealers could comply and that poultry growers would receive adequate data on which to base business decisions.

AMS response: In response to commenters' request for specificity on how to calculate average annual gross payments, AMS developed detailed instructions for how to calculate average annual broiler grower turnover rates, which are included in Form PSD 6100. AMS also added a definition in § 201.2 for *gross payments*, which means the total compensation a poultry grower receives from the live poultry dealer, including, but not limited to, base payments, new housing allowances, energy allowances, square footage payments, extended lay-out time payments, equipment allowances, bonus payments, additional capital investment payments, poultry litter payments, etc., before deductions or assignments are made.

Comment: Multiple commenters asked AMS to require the Disclosure Document to include a maximum percentage variance from the base pay rate under the contract. These commenters said this information would give growers a better idea of the true range of potential incomes.

AMS response: The disclosure of payment quintiles or mean and standard deviation provides substantially more data points useful to assess payment variance and range of potential outcomes compared to maximum percentage variance, as quintiles show pay broken down into five bands. Live poultry dealers will report only a mean and standard deviation if there are nine or fewer growers, which provides a measure of expected outcome and expected volatility around that outcome. The base price and the maximum variance would not give an expected outcome or volatility measure, nor would it provide context useful to establish probabilities of where a grower would fall in the range. While AMS understands that growers have expressed concerns regarding the maximum variability of pay from the base pay, the financial disclosures in § 201.102(d) provide objectively more data points and create a more appropriate context for assessment

compared to a maximum variance. While outside the scope of this rule, AMS is considering other changes to the poultry grower payment systems. See June 2022 Advance Notice of Proposed Rulemaking on "Poultry Growing Tournament Systems: Fairness and Related Concerns."⁸² Therefore, AMS has not required in this final rule disclosure of maximum percentage variance from the base pay under the contract in the financial disclosures.

Grower Variable Costs

Proposed § 201.100(d)(4) would have required the live poultry dealer to provide a summary of the information it collects or maintains relating to grower variable costs inherent to poultry production, or costs that may be borne by the grower. AMS asked whether the proposed rule listed the appropriate items regarding grower variable costs that dealers should list and disclose to growers. AMS asked whether it should require dealers to disclose, for example, information about costs related to compliance with environmental regulations, energy, water, and waste disposal and whether the timing of housing upgrades is reasonably predictable enough for those costs to be included in grower variable costs during the poultry growing arrangement.

Comment: Several farm bureau commenters suggested AMS consider variable costs in different regions, as these costs vary from region to region rather than being a "one size fits all" disclosure. These commenters also said the rule should require disclosure of all information a dealer intends to collect, and that all information should be housed in an encrypted system and not subject to Freedom of Information Act requests to protect the privacy of the grower. A live poultry dealer said different farms would have different views on which variable costs are inherent in poultry production, offering as examples labor and insurance costs. A poultry industry trade association said it is inappropriate for a live poultry dealer to be required to collect, produce, or certify the accuracy of information about grower variable costs, arguing that growers are responsible for understanding and controlling their costs of production. A poultry grower said AMS should require live poultry dealers to disclose variable costs including livestock, housing upgrades,

⁸² Agricultural Marketing Service, USDA, "Poultry Growing Tournament Systems: Fairness and Related Concerns," 87 FR 34814, June 8, 2022, available at <https://www.federalregister.gov/documents/2022/06/08/2022-11998/poultry-growing-tournament-systems-fairness-and-related-concerns>.

financing costs, and any cost related to environmental compliance.

AMS response: Growers benefit from the disclosure of this information on a local or regional level because it will better enable them to analyze the potential profitability of their poultry growing arrangement or changes thereto. Such information may be available to growers through market research services or in some cases USDA resources, but to the extent that live poultry dealers have this information, it would facilitate growers' ability to access it and, consequently, also reduce information asymmetry, which creates risks in the contracting process. Based on AMS's experience auditing and investigating live poultry dealers, and the observation that dealers provide grower allowances from time to time, such as for energy, AMS knows that many live poultry dealers already are cognizant of factors affecting local and regional cost structures. This rule does not require live poultry dealers to collect the information, but rather requires that information be disclosed to growers if live poultry dealers do in fact collect it. AMS encourages dealers to disclose the information at the most granular level that is reasonable and will work with live poultry dealers to address questions during implementation. No changes to the rule as proposed were made in response to these comments.

Comment: Multiple commenters requested that AMS take action to prevent growers from having to bear the costs of environmental compliance and waste disposal, saying that these costs are related to the system of production the live poultry dealers dictate and should not be treated as grower variable costs.

AMS response: The contractual distribution of liabilities related to environmental compliance and waste disposal are outside the scope of this rule. To the extent that the costs of environmental compliance and waste disposal are grower variable costs under particular poultry growing arrangements, they should be disclosed by the live poultry dealer under the requirement to disclose information relating to grower variable costs. Therefore, AMS made no changes to the rule as proposed based on these comments.

Comment: Several non-profit organizations said AMS should impose a recordkeeping requirement to ensure that live poultry dealers cannot skirt the rules on grower variable costs by failing to maintain information relating to these costs. A meat industry trade association said the proposed requirement to

produce a summary of information the live poultry dealer collects or maintains relating to grower variable costs inherent in poultry production is arbitrary and capricious because it lacks a cost-benefit justification. The commenter said further that dealers may have concerns about sharing such data because they use it for confidential or proprietary business purposes, and that dealers are not the best source of information on grower variable costs since they do not experience such costs themselves. A poultry industry trade association commented that live poultry dealers do not systematically maintain all this information. Several non-profit organizations contended that poultry companies share detailed market and grower information with each other through private data collection firms.

AMS response: The final rule adopts the proposal that requires live poultry dealers to include in Disclosure Documents a summary of information that is collected by live poultry dealers pertaining to grower variable costs. The grower variable cost information is general, not specific to an individual grower; thus, if a live poultry dealer collects this information, they will need to disclose a summary of it.

Variable costs play a role in grower profitability, and understanding the information helps the grower manage cash flow. Improved grower cash flow management allows growers to continue in a productive capacity, benefiting live poultry dealers as well as themselves. These costs are directly attributable to grower production. AMS does not understand how summarized information related to these costs could be construed as confidential business information. The benefits of disclosing these costs to growers outweigh the potential business confidentiality issues.

Often this type of information takes the form of sample cash flow budgets or similar documents, which live poultry dealers can use to show differences in variable costs between housing specifications, allowing growers to assess differences in fixed costs against changes in variable costs. In balancing the live poultry dealer burden against the grower benefits, AMS sought to ensure growers have access to this type of information to the extent that dealers collect it. For growers contracted with dealers who do not collect this information, there are other resources via the extension service and producer organizations that may be able to provide similar types of information. Section 401 of the Act provides for recordkeeping requirements of this type;

no new requirements are necessary for this provision.

This type of information has value to many dealers, and AMS does not want to discourage its collection with inflexible requirements. AMS will investigate failures to provide these summaries where data is collected. Accordingly, no changes to the rule as proposed were made in response to these comments.

Comment: One commenter asked whether grower variable cost information has been used collusively, suggesting that AMS and DOJ investigate this information and that poultry growers receive access to it.

AMS Response: Whether live poultry dealers have used grower variable cost information collusively is outside the scope of this final rule, and AMS has made no changes to the rule as proposed based on this comment.

Informational Service Contact Information

Comment: Poultry grower groups expressed support for the proposed rule's requirement that the Disclosure Document include current contact information for the State university extension service office or county farm advisor's office that can provide information about poultry grower costs and poultry farm financial management in the grower's geographic area. Other commenters from the poultry industry said this information is already provided and should not be mandated by regulation.

AMS response: The Act affords growers the right to understand, evaluate, and compare contracts among dealers to inhibit deceptive practices. Access to any information about poultry grower costs and farm financial management can help growers make informed business decisions and avoid their being misled regarding the advisability of offered contracts. Based on its experience with record reviews, AMS is aware and appreciates that some dealers already include the required contact information in their contracts, and wants all growers to have access to the same information. Further, the additional burden to dealers associated with providing this information is small, as described in the *costs* section of the Regulatory Impact Analysis below. Accordingly, AMS made no changes to the rule as proposed based on these comments.

Other Financial Disclosures Not Currently Included

Comment: A State farm bureau commenter said that companies should disclose any requirements for a poultry

grower to make additional capital investments and whether the grower is being paid enough to cover these costs. According to the commenter, requiring these disclosures are important because equipment and housing upgrades typically benefit the live poultry dealer at the expense of the poultry grower.

AMS response: The Act requires all poultry growing contracts to contain the following language: “additional large capital investments may be required of the poultry grower or swine production contract grower during the term of the poultry growing arrangement or swine production contract.” 7 U.S.C. 197a (b)(1). Additionally, § 201.102(d)(2) of this rule requires live poultry dealers to provide a new Disclosure Document, which includes revenue projections, when “housing specifications are modified such that an additional capital investment may be required.” The required revenue projections are intended to help growers and their business advisers evaluate the proposed capital improvements to determine feasibility of the contract. With adequate information, growers should be capable of determining whether the projected revenues are likely adequate to cover the costs of capital improvements. Dealers, for whom there is a potential conflict of interest, should not be expected to advise growers about whether projected revenues will cover capital improvement costs. AMS agrees with the concerns raised by growers and has addressed them.

F. Other Disclosures

Sale-of-Farm Disclosures

In proposed § 201.100(c)(3), AMS proposed to require the live poultry dealer to include in the Disclosure Document a statement that describes the dealer’s procedures regarding the potential sale or reassignment of the poultry grower’s facility. AMS requested comment on whether the proposed sale-of-farm policies are adequate to ensure transparency and effective grower decision making.

Comment: Poultry grower groups expressed support for requiring live poultry dealers to include a statement regarding the potential sale or reassignment of the poultry grower’s facility. These commenters stated significant financial harm comes from dealers revoking the contract for a grower’s farm, making it unsellable. Poultry industry groups opposed the sale-of-farm disclosures, contending the requirement does not have any bearing on how much a grower can expect to earn, is not feasible because a dealer must consider numerous factors when

deciding to offer a poultry growing arrangement to a successive buyer of a farm, and would require disclosure of confidential information about dealer business practices.

AMS response: The ability to exit an industry or a particular farm location for whatever reason is an important factor in understanding and evaluating a contractual relationship. Although a dealer’s sale-of-farm policies may not affect the grower’s immediate earnings from poultry production, those policies could very well affect the value of the grower’s capital investment upon retirement, for example if the grower anticipating retirement is unable to sell the farm to a prospective poultry grower at a fair price. A grower considering a poultry growing arrangement must not be deceived into believing they would be free to transfer their operations to prospective buyers or heirs if the live poultry dealer would not be willing to consider offering a poultry growing arrangement to the grower’s successor. Thus, growers need to understand dealers’ policies regarding sale or transfer of the farm and poultry growing operation before entering contracts with dealers and before encountering future scenarios where they choose or are forced to exit poultry farming. Growers informed of dealers’ policies and procedures will have the opportunity to develop a coherent exit strategy.

Markets become more competitive with lower hurdles for participants to enter and exit an industry. If extra profits are to be made, new entrants will be attracted. If profits are too low, some participants will exit the industry. Greater transparency into the relevant factors that live poultry dealers use to evaluate entry and exit from the industry will aid both growers and live poultry dealers by providing additional certainty to growers about the conditions under which they can enter and exit. This will enable growers to better align their sale-of-farm choices to the needs of live poultry dealers. More information about the conditions to exit the industry allows growers to understand, evaluate, and compare contracts, preventing deceptive practices.

AMS does not require that dealers establish a policy and procedure where no consistent policy or procedure truly exists in practice. However, when there is in fact no policy or procedure—an assertion which AMS may scrutinize to ensure compliance with the rule—the lack of such a policy and procedure should be disclosed. Similarly, where the dealer looks to certain facts and circumstances in practice to evaluate sale-of-farm circumstances, those facts

and circumstances should be disclosed as the dealer’s policies and procedures. AMS recognizes that dealers must consider a number of factors when deciding whether to offer a poultry growing arrangement to a grower’s successor, and that not every factor may be known at the time the original grower is offered a contract. The rule simply requires dealers to accurately disclose their policies or procedures as a safeguard against grower deception. Thus, in the final rule AMS is maintaining the sale-of-farm disclosure requirement.

Finally, AMS is not requiring the disclosure of dealers’ potentially sensitive confidential business information, such as expansion or reduction strategies. However, to the extent that a grower’s ability to exit, including through retirement, depends upon such factors at any given time, the implications of those factors should be disclosed. Accordingly, AMS made no changes to the rule based on these comments.

Policies and Procedures Disclosures

AMS requested comment on whether it should require live poultry dealers to disclose policies and procedures for determining whether a disaster or sick flock was caused by the dealer or grower, and how a grower is compensated under each of these scenarios. It further sought comment on whether it should require disclosure of sick-flock risk when a dealer maintains policies that do not remove sick flocks from the tournament.

Comment: Multiple commenters suggested AMS include requirements for disclosing live poultry dealer policies on dealing with sick or diseased flocks, natural disasters, and other depopulation events, as well as policies on grower appeal rights and processes. These commenters cited the inherent risk of disease spread among confined poultry, the potential for growers to face financial impact from depopulation events outside of their control, and the effects of low-quality inputs on tournament performance. Several commenters also expressed the need for clarity regarding processes to address issues such as feed quality or delivery timing discrepancies.

AMS response: AMS notes the significant impact on grower performance and resulting incomes due to sick or diseased flocks, natural disasters, and other depopulation events, e.g., the COVID-19 pandemic, avian influenza, weather events, or other possibly impactful events outside the grower’s control. Although the event itself is not under the dealer’s control,

the dealer may have and apply formal company policies to management of those events. For example, a dealer may follow a company policy of increased layout time or special treatment for sick, diseased, or high early-mortality flocks. However, growers may be unaware of these policies, in which case they have agreed to grow poultry for the dealer without fully receiving key information. Dealers are in the best position to inform growers about both the disastrous events that may occur in connection with poultry growing and how the dealers' policy decisions in those situations will impact growers' income. Without up-front clarity about this information, the dealers' practices may be deceptive. AMS has in the past received a range of complaints regarding differential treatment between growers under the same live poultry dealer in these circumstances. If dealers disclose their formal disaster response policies—or the lack of such policies—to growers, growers can be better prepared for the possibility that they may be impacted differentially in certain situations. Such transparency is intended to mitigate potential deception.

The types of disclosures requested by the commenters will provide critical information up front to growers and safeguard against such deception. Therefore, this final rule adds a provision at § 201.102(c)(4) requiring live poultry dealers engaged in the production of broilers to disclose their policies and procedures to address key events to growers. These events include: increased layout time; sick, diseased, or high early-mortality flocks; natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events that could result in significant flock depopulation, affecting grower payments; feed outages, including outage times; and grower complaints relating to feed quality, formulation, or suitability; as well as any appeal rights arising out of these events. The policies and procedures that live poultry dealers disclose and implement may vary. For example, a live poultry dealer may establish an adjusted calculated payment to growers due to sick, diseased, or high early mortality flocks, or the dealer may have a policy that clarifies an appeals process. AMS does not require that dealers establish or follow any one policy and procedure, but does require dealer's accurate disclosure and implementation of any such policy or procedure as a safeguard against grower deception. Live poultry dealers that modify or replace a

disclosed policy would be required to provide new disclosures to remain compliant with the rule.

Comment: A commenter recommended that AMS require live poultry dealers to disclose both their own animal welfare policies and those of the relevant industry trade groups to give poultry growers a more holistic view of their obligations when entering into the contract and to reduce potential animal welfare concerns.

AMS response: To the extent live poultry dealers seek to incorporate animal welfare and other special growout requirements, such as for sustainability or other premium products, those obligations would need to be reflected in the contract if they are to be enforced, and under current regulations must be provided to the grower before entering into the poultry growing arrangement. The Disclosure Document does not seek to reproduce the entire contract. Instead, it will highlight aspects of the contract or poultry growing arrangement that are generally not disclosed or are presented in ways that may be misleading or otherwise create risks of deception. The information in the Disclosure Document will allow growers to analyze the profitability and financial risks of the poultry growing arrangement. If animal welfare and other special growout requirements give rise to profitability and financial risks, they would be considered variable costs for growers and are required to be disclosed in accordance with the variable cost disclosure requirements of this rule. In addition, the disclosures of average annual gross payments to broiler growers would also aid growers in identification of profitability and financial risk holistically, which would incorporate impacts from animal welfare policies and procedures. Accordingly, AMS made no changes to the rule in response to this comment.

Legal Disclosures

In proposed § 201.100(c)(1), AMS proposed to require the live poultry dealer to disclose in the Disclosure Document a summary of litigation over the prior 6 years between the live poultry dealer and any poultry grower. This summary would include the nature of the litigation, the party that initiated the litigation, a brief description of the controversy, and any resolution to the litigation. AMS also requested comment on whether legal violations or other matters that could call into question the financial integrity of the live poultry dealer should be disclosed.

Comment: Poultry grower groups and State attorneys general expressed

support for the proposed requirement for live poultry dealers to disclose a summary of litigation with any poultry grower in the previous 6 years. Commenters indicated that access to live poultry dealers' ongoing and previous litigation would increase transparency in the poultry industry and lead to more economic stability for growers. Several commenters also suggested requiring disclosure of additional litigation, such as litigation accusing the dealer or any of its growers of poultry mistreatment; litigation by employees; litigation the dealer has been subject to from DOJ, USDA, or other Federal agencies; and litigation brought against corporate successors and assignees of the dealer.

Multiple poultry industry commenters raised concerns about the litigation disclosure requirement, including that it is overly broad and does not consider the merits of the litigation or the reality that cases with little or no merit often settle. Several industry commenters also noted the proposed 6-year period for litigation disclosures is inconsistent with other disclosure periods in the rule, suggesting AMS should limit this period to 5 years.

AMS response: AMS agrees that disclosure of litigation between the live poultry dealer and other poultry growers is an important piece of information for growers. AMS does not agree that this disclosure is overly burdensome because it is known by the company and may be disclosed in other contexts. The litigation disclosure is important for appreciating the financial and performance risks that growers may face, as litigation reflects the company's approach to compliance and performance as they relate to treatment of growers. AMS is unconvinced litigation related to animal welfare issues and employees is correlated with grower risks and treatment. For grower disclosure purposes AMS sees advantages in limiting this disclosure to grower and live poultry dealer actions. Similar to the reasoning above, adding governmental actions would likely capture controversies unrelated to grower risks and treatment, and where overlap exists, very often a private case will run parallel to a government case. No changes were made to the rule based on these comments.

However, to improve the uniformity of recordkeeping for this disclosure regime, this final rule changes the period for which a dealer's litigation must be summarized to 5 years, instead of 6 years as originally proposed. Because contracts and grower relationships evolve over time, litigation

history covering the prior 5 years would provide information related to the most current contracts and contract terms. Requiring additional disclosures regarding litigation beyond a 5-year period would be overly burdensome and costly to dealers.

Comment: A poultry grower group and an individual said AMS should require disclosure of any past government investigations, charges, arrests, or convictions of a dealer or its growers or agents for violations of animal-welfare-related law, such as State laws against animal cruelty, neglect, or abandonment.

AMS response: While a live poultry dealer's compliance with animal welfare-related laws could be relevant to the financial risks of the poultry growing, AMS does not agree that these additional suggested disclosures are necessary. AMS is not presently aware of such a pattern or practice of intentional or reckless noncompliance with animal welfare standards and makes no changes to the proposed rule based on these comments.

Grower Appeals

Comment: Multiple commenters representing poultry growers recommended that AMS require live poultry dealers to maintain an appeals process for growers to report any issues that affect how their flocks perform or how their pay is calculated. They also recommended the Disclosure Document disclose the details of the dealer's appeals process, including the method for submitting an informal appeal of a live poultry dealer's contract performance and how these appeals will be resolved. The commenters said such requirements would increase fairness and transparency for poultry growers.

AMS response: As described in the preceding comment summaries, this final rule requires disclosure of live poultry dealers' policies and procedures regarding certain matters or circumstances, including any grower rights to challenge or appeal dealer determinations arising from those matters or circumstances. This final rule also requires dealers to disclose policies regarding growers' appeals procedures if they exist. AMS supports the creation of appeals policies; however, mandating their creation is outside the scope of this rulemaking. However, if a dealer has no such policies or procedures, this should be disclosed. Understanding whether and how growers may report issues affecting flock performance, or to challenge or appeal dealer determinations will aid growers in decision making and reduce confusion that may arise in times of disease or

other disaster, or from uncertainty or the exercise of discretion by live poultry dealers and their agents in the field.

Accordingly, in response to comments, AMS added a provision in § 201.102(c)(4) of this final rule that requires live poultry dealers engaged in the production of broilers to disclose their policies and procedures on a number of specific matters or circumstances and to disclose any policies regarding grower appeal rights and processes arising out of these matters or circumstances.

Other Comments About Disclosures

Comment: Several organizations representing poultry growers suggested AMS require other types of disclosures that would provide more transparency for current and prospective poultry growers. These commenters said AMS should require live poultry dealers to prominently disclose the risk of entering a poultry contract in that area if there are fewer than three options. Some commenters suggested AMS should alert poultry growers to the business risks proposed by regional monopsony and provide integrator options within a 50-mile radius of the prospective or current poultry grower's facility.

AMS response: AMS does not agree that further warnings are needed at this time, as the required disclosures aim to give poultry growers the information needed to understand the risks of entering into a poultry growing arrangement in any market, including where there are only a small number of dealers. No changes to the rule were made in response to these comments.

Comment: Some commenters said a live poultry dealer should be required to disclose known health risks associated with birds that the live poultry dealer has supplied, the expected pre-slaughter mortality rate of the birds based on the live poultry dealer's experience with similar growers, the most common causes of pre-slaughter death, and other aggregated health data known to the dealer.

AMS response: AMS is maintaining without change in the final rule the proposed requirement that live poultry dealers disclose known flock health impairments. AMS does not agree with comments that disclosure of an expected mortality rate or information about the causes of pre-slaughter death or other aggregated health data should be included. The expected mortality rate is not data a dealer can readily determine, and the benefit to growers is not clear. This final rule requires live poultry dealers to include in the Disclosure Document contact information for local extension service

offices that may be able to provide the type of information commenters seek. No changes to the rule as proposed were made based upon this comment.

Comment: A commenter urged AMS to require disclosure of any poultry-welfare advocacy campaign launched against the live poultry dealer in the previous 6 years, along with a summary of the types of animal health and welfare-related complaints lodged against either the dealer or its growers. This commenter also recommended that AMS require dealers to disclose their animal health and welfare policies in pre-contract disclosures, saying that such policies affect potential grower earnings. The commenter stated further that health and welfare policy and litigation disclosure would let prospective growers make informed decisions about legal and reputational risk and potential animal suffering they might face.

AMS response: It would be difficult for AMS—and possibly even for live poultry dealers—to determine what constitutes an animal welfare campaign or whether such a campaign has any validity. Presumably, such campaigns launched against live poultry dealers, including any associated litigation, are highlighted in the public media and available to interested growers. Whether or how such campaigns should be disclosed to growers is not contemplated in this final rule, which focuses on the information AMS knows to be essential for informed grower decision making.

Most live poultry dealers require growers to follow prescribed animal welfare guidelines or policies, and dealers must include those policies in the poultry growing contracts if growers are to be held accountable for them. To minimize additional burden on live poultry dealers, the final rule requires the Disclosure Document to highlight only that contract information AMS finds to be most essential to grower decision making related to poultry grower contracting to ensure those provisions are transparent for growers. Under § 201.102 of the final rule, growers are provided with the Disclosure Document simultaneously with the offered poultry growing arrangement, and growers are given adequate time to review both prior to entering into or renewing contracts.

Accordingly, AMS made no changes to the proposed disclosure requirements based on this comment.

G. Governance and Certification

The proposed rule included provisions on governance and certification in §§ 201.100(f) and (g).

AMS proposed to create a new § 201.100(f) to require live poultry dealers to establish, maintain, and enforce a governance framework that is reasonably designed to ensure the accuracy and completeness of the Disclosure Document, and to ensure that live poultry dealers comply with all their obligations under the Act and its regulations. This proposed framework included audits and testing, as well as reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers. AMS also proposed to require officers of the live poultry dealer's company to certify that the company complies with the governance framework requirement and that the Disclosure Document is accurate and complete. In addition, AMS proposed to require live poultry dealers to include a signature page in the Disclosure Document containing a statement informing current and prospective growers of the potential for violations. The live poultry dealer would be required to obtain a grower's dated signature on the signature page and to retain a copy of the dated signature page for 3 years following expiration, termination, or non-renewal of the poultry growing arrangement.

In the proposed rule, AMS invited comments on whether the proposed governance structure is appropriate and sufficient for ensuring the accuracy of information provided in the Disclosure Document, whether it is appropriate for dealers, and whether there were other ways it could sufficiently ensure the completeness and accuracy of the Disclosure Document. AMS also invited comments on whether it should collect disclosure data and, if so, how it might use such data to enhance compliance and accuracy and monitor for possibly deceptive practices. AMS also proposed to require the principal executive officer or officers of the live poultry dealer's company to certify accuracy and compliance and to require dealers to obtain a poultry grower's dated signature to show receipt.

Governance Structure Adequacy for Accurate Information

Comment: Several commenters suggested USDA conduct audits, with some commenters also suggesting the audits be random or unannounced. These commenters indicated conducting audits would help ensure that live poultry dealers make accurate disclosures.

AMS response: AMS agrees that regular compliance reviews are important tools to ensure compliance with the Act and regulations thereunder. Regular AMS audits and

compliance reviews encourage live poultry dealers to put in place the oversight and internal procedures necessary to ensure compliance. Audits and compliance reviews may also enhance compliance by catching problems at an early stage, before they become violations that result in larger scale impacts. They also enhance AMS's familiarity with industry practices, which enables more effective regulatory guidance and enforcement. AMS already conducts regular reviews of live poultry dealers' compliance with regulations under the Act—as reported in AMS's Packers and Stockyards Division Annual Report—and AMS intends to incorporate compliance with this final rule into those existing regular audits.⁸³ Currently, a portion of those compliance reviews are unannounced. Therefore, AMS made no changes to the proposed rule based on these comments.

Governance Structure Burden on Dealers

Comment: Poultry industry commenters expressed concern about the necessity and costs of the proposed governance structure and its potential for creating liability issues. For instance, commenters noted that live poultry dealers already are required to meet fair dealing requirements under the Act and have incentive to provide accurate information to current or potential growers, making the proposed provisions redundant. Commenters asserted the proposed scheme would take away dealer flexibility to implement compliance programs that meet their needs. Commenters also state that the “principal executive officer or officers” of many companies are remote from day-to-day responsibilities related to the information proposed for inclusion in the Disclosure Document and are thus not in a position to certify it. Commenters suggested that AMS underestimated the costs of the proposed governance framework because it did not take into account its requirement that firms evaluate their obligations under all regulatory requirements contained in the Act rather than just those contained in the proposal. An industry association asserted the agency cannot point to an authority within the Act that allows it to impose a “burdensome and unnecessary governance and audit framework” on live poultry dealers. This commenter also argued the

proposed governance requirements are arbitrary and capricious as they reflect a fundamental lack of understanding of the management structure and governance of live poultry dealers.

AMS response: Section 401 of the Act requires every poultry dealer to “keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business.” Under the Act, the Secretary may “prescribe the manner and form in which such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business.” The proposed rule requires that poultry dealers disclose important information to growers to prevent deception. Information furnished by dealers under the rule must be accurate and complete. In order to ensure that dealers can provide such required information accurately and continuously, AMS prescribes that dealers must at minimum establish a reasonably designed underlying governance framework and processes. Without such an established framework and processes, dealers would be providing this information to growers in an inconsistent manner that would increase the likelihood of inaccuracy and incompleteness and hence increase deception.

In building on longstanding, existing requirements under the Act to maintain books and records, AMS recognizes that additional steps are necessary owing to the more complex disclosure process contemplated by this final rule and the reliance that growers will place on it in avoiding deception. To help strike the right balance between stringency in the controls necessary to achieve accuracy and the flexibility necessary to accommodate diverse business operations, AMS takes note of the experience of—and mandates governing—other Federal regulatory agencies engaged in setting requirements for companies to provide disclosures to market participants that depend upon them. It also considers similar compliance mandates, such as the certification mandates set forth under the Sarbanes-Oxley Act of 2002 (section 302) and the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 named after former Federal Reserve chairman Paul Volcker, commonly known as the Volcker Rule (section 619). In the case of those financial and market regulatory reforms, Congress and regulators saw it necessary to enhance the accountability of senior officers to achieve the goal of effective and reliable disclosure and compliance by larger companies for the benefit of smaller, more diffuse market

⁸³ U.S. Department of Agriculture, Agricultural Marketing Service—Packers and Stockyards Division. (2020). P&SP 2020 Annual Report. Retrieved from <https://www.ams.usda.gov/sites/default/files/media/PackersandStockyardsAnnualReport2020.pdf>.

participants. Large-scale financial scandals highlighted the insufficiency of relying on generic fair dealing or liability requirements or other market-driven incentives to provide accurate information. Criminal and civil price fixing in the poultry sector, including a guilty plea in 2021 by one of the largest poultry processors and civil consent decrees relating to a conspiracy to suppress wages under Section 1 of the Sherman Act, 15 U.S.C. 1, and deception under the Packers and Stockyards Act,⁸⁴ underscores the presence of similar risks in the poultry sector. The sizable imbalance of power between poultry processors and growers—including as reflected in the longstanding series of concerns around retaliation—further underscores the need for heightened accountability requirements set forth preemptively through a governance framework as provided for in this rule.⁸⁵

The role of the governance framework required by this final rule is to ensure that the company has in place specific steps that it will take to comply with this rule. The governance framework is intended to be strict enough to achieve its intended compliance goal of

ensuring accurate and reliable disclosures that are necessary for growers to understand, evaluate, and compare contracts and operational risk. Yet AMS also intended for the requirement to be flexible enough to provide a framework that works for differently situated businesses. To ensure they are flexible yet effective measures to promote accuracy in the provision of disclosures to growers, AMS included language in the rule providing that the governance framework should be “reasonably designed” to audit the required disclosures and ensure compliance with obligations under the Act. Consistent with other regulatory frameworks that ask for forward-looking statements in disclosures, such as the FTC’s Franchise Rule and the Federal securities laws, AMS also intended for forward-looking projections to be subject to less stringent standards of precision and verification than past or present factual matters. For example, the assumptions or beliefs that form reasoned bases of the projections need to be accurately disclosed, reasonable, and then reasonably used to make the projections.⁸⁶ Also consistent with the approach of other regulatory regimes with respect to internal controls, one goal of the governance provisions is to ensure that live poultry dealers adopt and follow processes that are appropriately tailored to the scope and nature of their operation.

However, AMS determined that the requirement in proposed § 201.100(f)(2) for the principal executive officer or officers to certify the governance framework and the accuracy of the Disclosure Document adequately covers the intended requirement for officers of this level to be focused on the effectiveness of the governance framework. AMS concluded that the level of detail in proposed § 201.100(f)(1)(i) about the Disclosure Document audit process was not necessary, particularly as AMS seeks to balance the need to ensure reliability of these statements with the burden on the principal executive officers with respect to particular details of the governance process. Therefore, AMS removed from the final rule the requirements proposed in § 201.100(f)(1)(i) for principal executive officers to audit, test, and review an appropriate sampling of Disclosure Documents. AMS underscores that the accuracy of the information disclosed (including the reasonableness of the projections based on the honest and accurately disclosed assumptions) and the design and

compliance with the governance framework (including the reasonableness of its design and compliance with it) remain fully enforceable under the final rule. AMS will also monitor implementation and expects to examine governance frameworks to assess their effectiveness in delivering accuracy and reliability of information to growers. In the event that information is found to be inaccurate or incomplete, AMS will investigate. Violations may result in issuance of a Notice of Violation or referral to the Attorney General of the United States for prosecution pursuant to Section 404 of the P&S Act, 7 U.S.C. 224. Growers may also bring private cases in response to inaccurate or misleading disclosures under the Act or under other laws.

Other AMS Actions To Ensure Completeness and Accuracy

Comment: State attorneys general contended the proposed audit process does not go far enough, stating that the stipulation in proposed § 201.100(f) that poultry processors establish a governance framework might present a problem by giving processors too much control over the governance structure. The State attorneys general recommended mandating either government or external auditor involvement in a company’s audit and testing program, saying this step would increase the likelihood that the program is rigorous and that the financial disclosures provide useful and accurate information to poultry growers. The commenters also suggested strengthening the language in proposed § 201.100(f) to provide clearer requirements for governance systems and increase live poultry dealer accountability to USDA and to State attorneys general for the initial years after their implementation. Poultry grower organizations urged AMS to be more specific about the procedures it will use to ensure the completeness and accuracy of the disclosure data, suggesting that the final rule should include more details on the auditing process to ensure accurate information and prevent circumvention by live poultry dealers. Commenters recommended measures such as specifying the minimum number of live poultry dealer audits USDA will conduct per year and requiring dealers to submit Disclosure Documents annually to PSD. Several commenters also mentioned other resources that might be a model for governance actions. A poultry industry trade association said AMS should simplify and clarify the requirements for a governance framework, including

⁸⁴ Plea Agreement: *U.S. v. Pilgrim’s Pride Corp.*, Feb. 23, 2021, 20-cr-00330-RM, available at <https://www.justice.gov/atr/case-document/file/1373956/download>. Consent Decree: *U.S. v. Cargill Meat Solutions, Corp., et al.* (Sanderson Farms, Inc., Wayne Farms, LLC), July 25, 2022, 1:22-cv-01821-ELH, available at <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy>.

⁸⁵ On the other hand, as they facilitate packers and live poultry dealers’ control across the supply chain, contracts can shift certain risks onto or between producers. See, e.g., Michael Kades, “Protecting Livestock Producers and Chicken Growers,” *Washington Center for Equitable Growth* (May 5, 2022), available at <https://equitablegrowth.org/research-paper/protecting-livestock-producers-and-chicken-growers/>; Steven Y. Wu and James MacDonald, “Economics of Agricultural Contract Grower Protection Legislation,” *Choices*, Third Quarter, 2015: 1–6, available at <http://choicesmagazine.org/choices-magazine/theme-articles/current-issues-in-agricultural-contracts/economics-of-agricultural-contract-grower-protection-legislation>; Department of Justice, “Competition and Agriculture: Voices from the Workshops on Agriculture and Antitrust Enforcement in our 21st Century Economy and Thoughts on the Way Forward,” May 2012. Available at <https://www.justice.gov/atr/page/file/1534736/download>; Mary K. Hendrickson, et al., “The Food System: Concentration and Its Impacts,” A Special Report for Farm Family Action Alliance, May 2021, available at <https://farmaction.us/concentrationreport/>; C. Robert Taylor, “Harvested Cattle, Slaughtered Markets,” April 27, 2022, available at <https://www.antitrustinstitute.org/work-product/aai-advisor-robert-taylor-issues-new-analysis-on-the-market-power-problem-in-beef-lays-out-new-policy-framework-for-ensuring-competition-and-fairness-in-cattle-and-beef-markets/>; Peter Carstensen, “Buyer Power and the Horizontal Merger Guidelines: Minor Progress on an Important Issue,” 14 U. Pa. J. Bus. L. 775 (2012), available at <https://repository.law.wisc.edu/suwlaw/item/29746>.

⁸⁶ See generally 15 U.S.C. 78u–5(c); 17 CFR 229.303.

providing details on what “reasonably designed” means and on how AMS will inspect the disclosure and auditing framework.

AMS response: In establishing a governance framework, AMS sought to balance rigor in internal controls and audit systems so that growers receive reliable information with flexibility in design to accommodate compliance by live poultry dealers with different scales and types of operations. As discussed above, AMS took note of the approach of other regulatory frameworks⁸⁷ that mandate disclosures and sought to tailor approaches to compliance to the particular circumstances of the poultry markets and risks relating to these markets. A “reasonably designed” framework depends on the particular facts and circumstances of the poultry company and its growers, with larger, more complex processors adopting more comprehensive systems appropriate to the scope of their operations. AMS will evaluate the effectiveness of the governance framework in part through examining how accurate and comprehensive the disclosures are, and may also examine a dealer’s internal controls and other factors relevant to the facts and circumstances of the dealer, such as its recent track record of compliance with relevant laws and regulations.

AMS views the governance framework as an essential element of enforceability, as it will provide a framework including an external audit that will strengthen the accuracy of internal processes. The governance framework does not in any way absolve the live poultry dealer of its obligations to provide accurate disclosures to comply with the rule’s requirements, which are designed to correct deception against growers. Rather, the governance framework is intended to strengthen those obligations upfront before a disclosure failure occurs.

Governance frameworks, as a general matter, are not novel. Publicly listed companies—which several of the largest live poultry dealers are—must already maintain a range of internal controls related to their audit and disclosure functions.⁸⁸ The reasons why public-

facing companies must maintain internal control regimes to ensure the quality of their disclosures are similar to why live poultry dealers that are subject to this rule must maintain a governance framework—to ensure that the disclosures to growers are reliable.

AMS also intends to improve compliance over time through compliance reviews, industry training, and other mechanisms, including enforcement where necessary. Repeated compliance violations may necessitate proportionate agency enforcement and deterrence actions. In most circumstances, and as would be expected to be the case in the enforcement of good faith compliance with this final rule, AMS initially delivers a Notice of Violation that provides the live poultry dealer with the opportunity to engage with AMS around the nature of the violation and take compliance steps necessary to cure the violation before formal remedial actions are commenced. AMS also has provided, in this final rule and the associated form, additional detail regarding the methods for calculating certain disclosure data, which we believe will enhance completeness and accuracy of data.

AMS Collection of Disclosure Data

Comment: In response to AMS’s request for comments on whether it should collect disclosure data and how it might use such data to enhance compliance and monitor for potential deceptive practices, poultry grower groups and farmers unions expressed support for data collection. The commenters said this data would help inform producers, lenders, and regulatory authorities, given the industry’s consolidation and geographic monopolistic environments. Commenters recommended AMS require dealers to annually disclose the data they are calculating and disclosing within the Disclosure Document, especially regarding grower incomes and grower cost. The commenters also suggested that USDA dedicate staff to analyzing this data in the context of industry consolidation and fair competition to identify patterns early on that may require corrective or enforcement action.

AMS response: AMS agrees that data-driven approaches can be expected to provide valuable information for monitoring compliance with this rule and with other rules under the Act. AMS notes that it has the authority to request Disclosure Document data under existing requirements in the Act. AMS

will further consider the extent to which some Disclosure Document data may be incorporated into annual report requirements to AMS. Thus, there is no need for this rule to contain a particular requirement for submitting the data to AMS. Therefore, AMS made no changes to the rule as proposed based on these comments.

Requirement of Dealers To Certify Documents

Comment: Several poultry and meat industry trade associations urged AMS to omit the requirement for certification by an executive officer. One commenter argued that expecting this officer to be in a position to certify the required information is unreasonable because the principal officer or officers of many companies have responsibilities for many areas in addition to live poultry and contract with thousands of growers, and because much of the information produced in conjunction with a Disclosure Document would be maintained at the local poultry complex level with multiple layers of management between that level and the “principal executive.” Another commenter said a poultry grower could have recourse if an agreement made deceptive statements regardless of whether someone certifies the information and that including this requirement appears to be motivated by an effort to establish individual liability for what should be a commercial contracting issue.

AMS response: AMS refers to the response provided earlier on the governance framework and the rationale for chief executive officer (CEO) certification. In multiple circumstances, Congress and regulators saw it necessary to enhance the accountability of senior officers to achieve the goal of effective and reliable disclosure and compliance by larger companies for the benefit of smaller, more diffuse market participants. CEOs set the “tone at the top,” which is critical for fostering a culture of compliance at companies.⁸⁹ Additionally, AMS already requires signatures on required annual reports (see 9 CFR 201.97), typically by the CEO or another high-ranking official, creating a precedent for the certification as proposed. In addition, CEOs may rely on sub-certifications by relevant officers

⁸⁷ As noted above, AMS has looked to the certification mandates set forth under the Sarbanes-Oxley Act of 2002 (section 302) and the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 named after former Federal Reserve chairman Paul Volcker, commonly known as the Volcker Rule (section 619).

⁸⁸ “Management’s Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports,” SEC Release No. 33–8238 (June 5, 2003) (“SEC Final Rule 2003,” which required disclosure of material

weakness and other assessments in annual reports for publicly traded securities).

⁸⁹ See, e.g., William C. Dudley, “Enhancing Financial Stability by Improving Culture in the Financial Services Industry,” Federal Reserve Bank of New York, October 20, 2014, available at <https://www.newyorkfed.org/newsevents/speeches/2014/dud141020a>; Group of Thirty, “Banking Conduct and Culture: A Call for Sustained and Comprehensive Reform,” 2015, available at <https://group30.org/publications/detail/166>.

or senior officials, thus reducing the burden CEOs may face while still creating the appropriate level of executive engagement to underscore the importance of compliance and address any issues early and effectively. AMS agrees that recourse exists against live poultry dealers for deceptive practices under the Act and for violations of the final rule regardless of the certification. Violations may result in issuance of a Notice of Violation or referral to the Attorney General of the United States for prosecution pursuant to Section 404 of the Act, 7 U.S.C. 224. Growers may also bring private cases in response to inaccurate or misleading disclosures or bait-and-switch tactics under the Act or under other laws. The purpose of the governance framework and certification requirement is to minimize the need to rely on legal recourse in order to obtain accurate, reliable disclosure, and thus to enhance the reliability of the information provided to growers at the outset. Therefore, AMS made no changes to the rule as proposed based on these comments.

Requirement of Growers To Sign Documents

Comment: Live poultry dealers noted that there may be instances in which obtaining a grower signature is not possible, such as grower unavailability or refusal to sign. These commenters indicated it is appropriate to have other means available for the live poultry dealer to verify delivery of the Disclosure Document to the grower in these instances.

AMS response: AMS recognizes that some growers may not sign the form verifying that they received the Disclosure Document, for reasons unrelated to whether the live poultry dealer made reasonable efforts to obtain such signature. AMS intends to place the requirement for disclosure and delivery on the live poultry dealer, and not on the grower. If the grower refuses to sign the Disclosure Document, such decision should not affect whether the live poultry dealer has fulfilled its obligations. Accordingly, in the final rule, AMS revised the delivery verification provision in § 201.102(g)(2) to allow live poultry dealers engaged in the production of broilers to obtain alternative documentation to evidence delivery and that best efforts were used to obtain grower receipt. The rule does not limit the mode of delivery, whether by regular mail, certified mail, registered mail, overnight mail, email, facsimile, or personal service, provided that the dealer obtains and maintains evidence that the grower or prospective grower received the Disclosure

Document in the required timeframe and that best efforts were made to obtain grower receipt. AMS expects that best efforts will include personal communications with the grower. The revised provision requires live poultry dealers engaged in the production of broilers to document and certify in their records that delivery occurred, as well as by what method the delivery took place.

H. Contract Provisions on Variables Controlled by Live Poultry Dealer

Current § 201.100(c) specifies the contents of live poultry dealer contracts with poultry growers. This subsection requires dealers to specify the duration of the contract and conditions for its termination by each of the parties, all terms relating to the poultry grower's payment, and information about a performance improvement plan for the grower, if one exists. In the proposed rule, AMS proposed to redesignate § 201.100(c) as § 201.100(i) and amend it to require dealers to specify the minimum number of placements to be delivered to the grower's farm annually in each year of the contract, as well as the minimum stocking density of each placement. In the final rule, the existing requirements at § 201.100(c) are retained for all live poultry dealers, while the minimum placement and stocking density requirements are at § 201.102(h) and apply only to live poultry dealers engaged in the production of broilers.

Utility of Proposed Requirements in Addressing Need for Transparency

Comment: Several live poultry dealers and industry groups expressed opposition to the proposed requirements to specify a minimum number of flocks annually and a minimum stocking density for each flock. These commenters contended that requiring these minimum values would make it harder to adjust supply chains for factors largely outside of the parties' control, take away dealer flexibility to adjust production plans as market conditions change, and lead to substantial costs associated with changing existing contracts to incorporate this requirement. A commenter suggested that the Disclosure Document provide tentative projections regarding flock placements rather than guaranteed minimums. Conversely, growers and grower groups expressed support for these guaranteed minimums, saying they would allow for more accurate and predictable income projections.

AMS response: AMS intends for disclosure of these guaranteed minimums to improve the competitive

environment for poultry growers by allowing growers to make decisions based on minimum flock offerings disclosed by different dealers. AMS recognizes that dealers may wish to adjust flock placements or density based on external factors, and this rule does not prevent such adjustments. The rule also does not prohibit setting guaranteed minimums that are lower than projected placements to allow for such adjustments. Indeed, should dealers wish to indicate that the guaranteed value is zero, this rule would not prohibit such a disclosure, provided that such disclosure is accurate and not misleading. The purpose of this rule is to provide the information that growers need regarding flock placements and density to enable them to make decisions regarding their farm operations and manage risks, and AMS underscores the views of growers, farm bureaus, and others that minimum flock placements and stocking density are valuable to growers. Minimum flock placements are different from tentative placements, in that they provide growers with information well in advance of the actual placements, which aligns better with longer-term obligations that farmers must make with respect to borrowing and capital investment, equipment investment, labor contracts, and other longer-term arrangements on the farm. Therefore, AMS made no changes to the rule as proposed based on these comments.

Alternative Approaches

Comment: Several non-profit organizations said that AMS should require disclosure of the maximum amount of money that could be added to or deducted from the contract's stated base price within the live poultry dealer's tournament ranking formula in addition to the guaranteed minimum placement number and stocking density of flocks, saying this information would be useful in allowing poultry growers to better predict their income based on the minimum flock placement and stocking density guarantees.

AMS response: The poultry growing arrangement will dictate maximum pay variance to the extent it exists. Because additions and deductions from base pay are generally associated with deviations from average performance, the range of payments for individual settlements can fluctuate. That is, to the extent that a minimum and maximum exists, its occurrence is rarely observed. For the purposes of projection, the disclosure of payment quintiles or mean and standard deviation provided in § 201.102(d) provides substantially more data points useful to assess payment variance

compared to maximum and minimum pay terms, as quintiles show pay broken down into five bands. Live poultry dealers will only report a mean and standard deviation if there are nine or fewer growers. This reporting will provide a measure of an expected outcome and an expected volatility around that outcome. The minimum and maximum pay terms would not give an expected outcome or volatility measure. AMS acknowledges some growers have expressed concerns about excessive pay variability. As noted above, AMS is considering rulemaking for the purpose of more direct changes to the poultry grower payment systems. That is outside of the scope of this rule. Therefore, AMS made no changes to the rule as proposed based on these comments.

Comment: A farm bureau suggested AMS conduct additional rulemaking in relation to stocking density to account for changes in target weights after birds have been placed, citing examples of poultry growers who were stocked at an appropriate density but lost significant income after adjustments in bird pick-up timing. This commenter and other farm bureaus supported grower compensation for loss of income when target weights are modified after placement.

AMS response: The issue raised by the commenters is a concern in that the growers relied on the contract terms when entering the agreement and subsequent revisions to target weights result in financial losses that presumably would not have occurred under the original terms. The remedy proposed by the commenters, however, is not within the scope of this rule, which is focused on increasing transparency in live poultry dealer communications with poultry growers. If a live poultry dealer deceives a grower through a “bait and switch” agreement as described, remedies may exist through enforcement by the USDA and DOJ, or in private actions by the grower in Federal court. AMS encourages growers to report specific instances of potential occurrences directly to AMS. Growers may also file a complaint at [farmerfairness.gov](https://www.farmerfairness.gov) or by calling 1-833-DIAL-PSD (1-833-342-3773) if they suspect a violation of the Act or any other Federal law governing fair and competitive marketing, including contract growing, of livestock and poultry. Therefore, AMS made no changes to the rule as proposed based on these comments.

Other Comments About Contract Provisions

Comment: A poultry grower group suggested AMS require live poultry dealers to provide enough flocks to allow poultry growers to pay their debts and be profitable. The commenter also suggested AMS require contracts with growers to extend to the term of the loan. Several farmers unions recommended that AMS modify the contract provisions to clearly state what recourse poultry growers have under the Act if live poultry dealers fail to meet the contract terms. A farm bureau noted that under the current contracting system, companies promise profits to entice growers into contracts that offer little or no guarantee for success or profit, and growers have limited clout to negotiate for better contract terms or treatment. This commenter explained that grower contracts are typically flock to flock with no commitments regarding future flocks, number of birds per flock, quality of birds placed, and feed delivered, and that they allow companies to cancel contracts at will. Instead, the commenter contended that contracts should last as long as the commitment the grower has with their financial institution. A poultry grower also recommended that the proposed rule require dealers to present contracts that endure for the entirety of a grower’s loan to give growers more security when deciding to invest start-up capital and to remedy issues that arise when a dealer refuses to extend a contract unless a grower makes certain modifications.

AMS response: AMS acknowledges these concerns raised by growers. As noted above, AMS is considering rulemaking for the purpose of more direct changes to the poultry grower payment systems. AMS also welcomes growers and others to contact us directly regarding these matters. Growers may file a complaint at [farmerfairness.gov](https://www.farmerfairness.gov) if they suspect a violation of the Act or any other Federal law governing fair and competitive marketing, including contract growing, of livestock and poultry. However, these items are outside the scope of this disclosure-based regime, which focuses on increasing transparency in live poultry dealer communications with poultry growers, not on requiring contracts to include specific guarantees or establishing requirements related to their duration. Therefore, AMS made no changes to the rule as proposed based on these comments.

I. Transparency Requirements for Poultry Grower Ranking Systems

AMS proposed to create a new § 201.214—Transparency in poultry grower ranking pay systems (§ 201.104—Disclosures for broiler grower ranking system payments—in this final rule) specifying the recordkeeping and disclosure requirements for live poultry dealers using a poultry grower ranking system to calculate grower payments.

Recordkeeping and Maintenance

AMS proposed in § 201.214(a) to require live poultry dealers who calculate payments under poultry grower ranking systems to produce and maintain records showing how certain inputs were distributed among participants. In proposing these recordkeeping and maintenance requirements, AMS intended to ensure that USDA or any other party with the proper legal authority can collect records for review during an investigation or legal action. In the proposed rule, AMS proposed to require dealers to retain records relating to the distribution of inputs to tournament participants for 5 years. AMS invited comments about whether this record maintenance period is appropriate. AMS also requested comments on the burdens these recordkeeping requirements create for dealers.

Comment: Groups representing poultry growers expressed support for a 5-year retention period for records, suggesting such record retention would allow for a higher degree of accountability and compliance enforcement in disputes over unfair distribution of inputs by live poultry dealers. These commenters contended burdens on dealers would be minimal, as records would be maintained electronically, and the industry already provides much of the required information to shared data collection services. A live poultry dealer argued that some information AMS proposed for dealers to provide is sensitive and proprietary, saying that, for example, grower payments may provide information about costs and live-side operations; breeder information might deal with strategic changes in breed or efforts to deal with chick health; and details about feed outages or other internal operations might reveal proprietary information that would adversely and unfairly impact the live poultry dealer’s competitive position.

AMS response: AMS agrees with the poultry grower commenters and retains 5 years as the appropriate length of time for record retention purposes for this

rule. Although most regulations under the Act provide for 2-year record retention, 9 CFR 203.4(c) allows for an extension of the record retention period when investigations or proceedings are underway. AMS is adopting a 5-year retention requirement here principally to enable PSD to enforce the disclosure requirements that provide growers with transparency into the past 5 years of revenues, which enables growers to see trends over time. To determine whether the required disclosures are accurate or not, PSD will need to be able to review at least 5 years' worth of records.

Regarding concerns about sensitive proprietary information raised by a live poultry dealer, proprietary information such as poultry genetics, poultry feed blends, trade secrets, or other proprietary information not contained in the grower contracts are not required to be disclosed and may thus remain restricted. Growers' need for relevant information with which to make informed decisions weighs heavily in favor of the disclosures specified in this final rule because they relate to the manner in which the poultry company treats growers under its poultry growing arrangements and enable broiler growers to monitor some aspects of the live poultry dealer's performance under the contracts. Moreover, the topics contemplated for disclosures to growers—such as grower compensation and policies and procedures on matters of interest to growers (sick chicks, feed complaints, sale of farm policies, etc.)—have limited proprietary value.

Accordingly, AMS made no changes to the rule as proposed based on these comments.

Placement Disclosure

AMS proposed in § 201.214(b) to require live poultry dealers to provide certain information about the flock placed with the grower within 24 hours of its placement on the grower's farm. This information would include the flock's stocking density, expressed as the number of poultry per facility square foot; the names and ratios of breeds of the flocks delivered; the ratios of male and female birds in the flock if the sex of the poultry had been determined; the breeder facility identifier; the breeder flock age; information regarding any known health impairments of the breeder flock and of the poultry delivered to the poultry grower; and what, if any, adjustments live poultry dealers will make to grower pay to reflect any of these inputs. AMS requested comments on how well the proposed requirement to supply input information at the time of placement responds to grower requests for such

information; whether the required information is useful to a grower's operation; what burdens or challenges dealers might encounter in collecting information for placement disclosures; and whether the placement disclosure requirement would affect live poultry dealers' business practices.

Comment: Farm bureaus and groups representing poultry growers supported the requirement to supply input information after placement, saying the information is critical to poultry grower performance. Several groups suggested additional systems for complaints and appeals are needed, saying poultry growers often do not have a fair way to report and resolve issues and that transparency alone does not guard against circumstances in which growers consistently receive poor-quality inputs or face repeated unfair treatment.⁹⁰

AMS response: Mandating particular systems for complaints and appeals would not be within the scope of this transparency rulemaking. However, AMS agrees that poultry growers should be aware of avenues for complaints and appeals where they exist. Consistent with AMS's experience regulating the poultry industry, commenter responses have identified circumstances where live poultry dealers commonly exercise higher levels of discretion with respect to the interaction between the dealers and the growers. In such circumstances, absent disclosures of policies and procedures that may exist, broiler growers are unable to understand and evaluate how live poultry dealers may handle those circumstances, which can and do affect growers' financial outcomes under the poultry growing arrangement. These circumstances—sick chicks and disasters, feed issues, and appeal procedures—were the subject of questions on which AMS requested comment in the proposed rule. Therefore, AMS added a new provision at § 201.102(c)(4) of the final rule

requiring live poultry dealers to disclose policies and procedures on increased layout time; sick, diseased, or high early-mortality flocks; natural disasters; weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability, as well as any appeal rights arising out of these events.

In AMS's experience fielding and investigating grower complaints, some live poultry dealers will remove sick, diseased, and high early-mortality flocks from the tournament settlement group and provide payment calculated separately. Similarly separate treatment will sometimes be made for instances of sick chicks, depopulation events, natural disaster, weather events, or other events affecting the physical infrastructure of the local complex or grower facility, as many live poultry dealers provided for during the COVID-19 pandemic or during the ongoing series of avian bird flu outbreaks.^{91 92} However, these practices are not uniform and are not necessarily provided for in written contracts.⁹³

How live poultry dealers respond to feed outages, including outage times, as well as to grower complaints relating to feed quality, formulation, or suitability, also vary widely, and commonly depend to a high degree on the approach that field agents for live poultry dealers take in their particular complex. AMS has received a range of complaints over the years relating to differential treatment between growers within complexes relating to these concerns. Live poultry dealers have indicated in the past to AMS that they provide growers the opportunity to appeal the determinations or actions of

⁹⁰ See, e.g., Campaign for Contract Agriculture, Rural Advancement Foundation International—USA, “Comment on AMS-FTPP-21-0044: Transparency in Poultry Grower Contracting and Tournaments” (received Aug. 23, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0479>; Institute for Agriculture & Trade Policy, “Comment on AMS-FTPP-21-0044: Transparency in Poultry Grower Contracting and Tournaments” (received Aug. 1, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0110>; Stone Barns Center for Food & Agriculture, “Comment on AMS-FTPP-21-0044: Transparency in Poultry Grower Contracting and Tournaments” (received Aug. 4, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0139>; Animal Welfare Institute, “Comment on AMS-FTPP-21-0044: Transparency in Poultry Grower Contracting and Tournaments” (received Aug. 1, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0109>.

⁹¹ A typical practice in such circumstances is to pay growers based on their previous five flock average to ameliorate losses. One such circumstance is detailed in “What lessons can poultry producers learn from extreme weather events?” *ThePoultrySite.com*, March 02, 2022, available at <https://www.thepoultrysite.com/articles/what-lessons-can-poultry-producers-learn-from-extreme-weather-events> (last accessed April 2023).

⁹² AMS's rule under § 201.102 (c)(3) would require dealers to disclose to growers its policies and procedures, as well as any appeal rights arising from four types of important events, including “Natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility.”

⁹³ A 2007 survey by USDA found that 17.9% of broiler contracts included specific provisions for catastrophic payments, see James MacDonald, “The Economic Organization of U.S. Broiler Production,” USDA Economic Information Bulletin 38 (June 2008).

local agents, but such availability has not been consistent and is subject to a high degree of opacity.

This rule provides up-front clarity for growers on how the live poultry dealer will deal with such circumstances. If live poultry dealers choose not to maintain such policies and procedures, growers would benefit knowing this up front during the contracting process.

However, this rule is focused on providing transparency regarding the policies and procedures that live poultry dealers may have, whether formal or in practice. Requiring additional systems for complaints and appeals was not proposed and would not be a logical outgrowth of the proposed rule. In future rulemaking, AMS may consider additional steps to address the maintenance of certain policies or procedures.

Comment: Several organizations suggested AMS require live poultry dealers to disclose input quality variables and feed discrepancies by house on each poultry grower's farm, preventing live poultry dealers from using averaging to hide variables and discrepancies on settlement sheets. The commenters said, with this addition, the placement and settlement disclosure requirements would give poultry growers more transparency in accessing information about their flocks, other inputs, and their performance in the context of their complex.

AMS response: Per-house disclosure would represent a substantial increase in recordkeeping burden. In addition, this disclosure would likely provide only a minor benefit, as metrics relating to payment are required to be provided to poultry growers on a farm-wide basis, and facility-based input disclosures are thus likely to create confusion among growers. Accordingly, AMS is not requiring disclosure at the house level.

Comment: Farmers unions and groups representing poultry growers expressed concern about variance in feed delivered to grower farms. These commenters urged AMS to require live poultry dealers to disclose information about the quantity and type of feed delivered throughout the flock's growout. Commenters said live poultry dealer errors in the type or amount of feed delivered, even with no feed disruption, can have significant ramifications for flock performance.

AMS response: As discussed above, AMS recognizes the need to provide transparency to address risks of deception in circumstances where dealer discretion, opacity, and other information asymmetries are present in the poultry growing arrangement. As highlighted by the comments, growers

have repeatedly expressed concerns regarding feed quality and type, as well as delivery and disruption thereof.

Section 201.102(c)(4)(v) and (vi) of the final rule requires disclosure of dealer policies and procedures relating to feed outages, including outage times, and grower complaints about feed quality, formulation, or suitability. Required disclosures also include policies and procedures around any appeals processes on such matters.

AMS considered an option to require live poultry dealers to disclose the feed mix, or recipe, to growers, but determined this option is not appropriate because the feed mix varies at different stages of the growout and it is a closely protected formula, treated as proprietary information by live poultry dealers. Also, AMS determined that providing additional disclosures about feed delivered throughout a flock's growout would involve overwhelming complexity, particularly due to the dynamic nature of feed contents and quantities within a given growout period. Moreover, these disclosures would have limited usefulness.

AMS acknowledges these commenters' concerns about transparency and responsiveness regarding feed quality and delivery issues and that particular instances of concern may arise but concludes that the potential benefits of the requested disclosures would not justify the costs.

Ongoing disclosure of the actual feed mix and delivery, as noted above however, may be too burdensome given the proprietary and fluid set of practices that live poultry dealers use in providing feed. It may also be overbroad, as a focus on policies and procedures will provide information that growers need to better manage the specific risks they encounter, while providing greater flexibility for live poultry dealers to develop the systems that work best for their company and their growers. AMS will continue to monitor these areas and expects to use the additional transparency provided by the disclosures to develop more tailored educational, outreach, or regulatory responses.

Comment: Several poultry industry representatives requested that AMS clarify what constitutes a health impairment requiring disclosure. A commenter said it is unclear whether AMS intended the provision requiring disclosure of health impairments to encompass impairments other than recognized and diagnosed poultry diseases, while another said the current proposal is vague enough to leave significant room for legal disputes over whether a condition affected a grower's

compensation. Several animal welfare groups said AMS should strengthen the disclosure requirements related to health issues. A commenter said integrators should have to disclose known health impairments at least 24 hours before the flock is placed with the grower, rather than within 24 hours of placement, because earlier notice would give the grower more time to prepare and would ensure a fairer marketplace. This commenter also suggested requiring integrators to track disease and to inform other poultry growers with birds from the same facility of problems with birds from a particular breeding facility or hatchery, so the entire affected community of poultry growers will be better prepared for disease outbreaks. Other commenters suggested that AMS require additional health-related disclosures, including any known health issues present in the flock being delivered, such as infections, and any past veterinary care rendered to the chicks, saying these extra disclosures would better allow them to provide suitable veterinary care and may lead to better growth outcomes and fewer deaths.

AMS response: AMS concluded that disclosure of known health impairments is the appropriate standard, and "health impairments" as generally understood provides an appropriate context for classification. AMS does not believe it is appropriate to limit the standard, as flock health impairments affect certain flocks, breeds, and growouts differently. Health impairments may affect growout management, performance, pay, or other relevant factors. Often, specific input deliveries may not be decided 24 hours in advance, as logistics, weather, transportation, and other factors may influence distribution. Therefore, AMS made no changes to the rule as proposed based on these comments.

Comment: Multiple farmers unions and groups representing poultry growers said live poultry dealers should disclose a breeder flock identifier in addition to a breeder facility identifier. A commenter said growers could use this data to support an appeal if they are punished for poor growth after receiving a diseased or lower-quality flock and to obtain the breeder's flock-breeding methods.

AMS response: AMS acknowledges the commenters' interest in the disclosure of breeder flock identifiers. However, it concluded that this additional information is not needed because individual breeder facilities are generally populated and depopulated all in and all out. Breeder facility identifiers would thus reflect the same information in breeder flock identifiers.

Therefore, AMS made no changes to the rule as proposed based on these comments.

Comment: Numerous non-profit organizations requested that AMS require live poultry dealers to provide historical breed performance and best management practice recommendations disaggregated according to important factors, such as breeder flock age and flock pickup date, and to keep this data archived for 10 years.

AMS response: Virtually all live poultry dealers provide manuals to growers outlining best management practices. In addition, historical performance is currently publicly available on breeder internet sites. Given the widespread availability of this information, AMS made no changes to the rule as proposed based on these comments. AMS may reevaluate in the event that industry practices shift away from voluntarily providing this information.

Comment: Several non-profit organizations said AMS should require live poultry dealers to disclose data about the optimal pickup age for a flock's breed on flock placement sheets. Some of these commenters also suggested AMS should require integrators to disclose the average feed conversion efficiency of flocks hatched from breeder flocks of that age in addition to requiring disclosure of breeder flock age on delivery. The commenters said this requirement would allow poultry growers to compare their own performance to a more accurate flock efficiency performance expectation.

AMS response: Weight, not number of days, is the target for bird harvest and is generally included in most settlements. As target weight is readily known to poultry growers, along with the average number of days to achieve the target, it is unnecessary to require this readily known information in the Disclosure Document. Accordingly, AMS is not requiring live poultry dealers to provide information related to the optimal pickup age for a flock's breed. While AMS is considering action targeting live poultry dealers who allow birds to stay in houses beyond their target weight, that falls outside the scope of this disclosure-based regime. AMS further notes the commenters' views regarding the value of benchmarking performance but is not prepared at this time to adopt such a requirement in this rule. AMS also notes that USDA makes available a range of resources, in particular Extension expertise, to assist growers in better analyzing their performance utilizing different inputs, and notes the inclusion

of contact information for USDA resources in the final rule.⁹⁴ AMS will monitor implementation and may examine additional tools for assisting growers in improving their performance.

Comment: Commenters representing the poultry industry said the information to be required on flock placement would burden live poultry dealers and is unnecessary because of a lack of evidence showing it would help poultry growers in managing their farms. Commenters also said providing stocking density information is not necessary because live poultry dealers will place flocks at the optimal density for the best return.

AMS response: Broiler growers, farm bureaus, and many other commenters widely supported flock placement disclosures because these disclosures assist growers in planning and operating their farms, managing their financial risks, and negotiating with live poultry dealers over better contractual execution, among other reasons. AMS has concluded that, for live poultry dealers engaging in the production of broilers, the burden of providing the flock placement disclosures, including disclosures on stocking density, would be minimal and the benefit to broiler growers substantially outweighs the impact to dealers. Further, dealer decisions on stocking density may also be influenced by other factors beyond optimal returns to growers, such as responses to market changes, which mitigates in favor of providing additional transparency by live poultry dealers, the entities responsible for making those decisions.

Comment: Several poultry and meat trade associations said live poultry dealers sourcing birds from a third party may not have access to some data the proposed rule would require them to disclose with placement, such as breeder flock age. Commenters also mentioned that third-party breeder operations might consider sourcing information to be proprietary or subject to a nondisclosure agreement, suggesting AMS address how live poultry dealers should make placement disclosures when they do not have required information or when law or contract prohibits them from providing it.

⁹⁴ See, e.g., Jennifer Rhodes, Extension Educator, et al., University of Maryland, "Broiler Product Management for Potential and Existing Grower," Table 1 and 2, available at Poultry Budgets, Enterprise Budgets, Agricultural and Resource Economics, North Carolina State University Extension, <https://cals.ncsu.edu/are-extension/business-planning-and-operations/enterprise-budgets/poultry-budgets/> (last accessed April 2023).

AMS response: Based on AMS experience, under most poultry growing arrangement contracts, live poultry dealers are responsible for providing the birds to the growers. Live poultry dealers may also be expected to already have State contract law obligations relating to their performance under the contract. Based on AMS's experience, dealers sourcing chicks from third parties already monitor the inputs provided by those parties. Growers need to know the information being required in this rule, such as the breeder flock age and known health impairments of the breeder flock, and the live poultry dealer, not the grower, is best positioned—indeed, is the only party positioned—to require, via contract, that the third-party provide the information necessary to comply with the rule. Nor are the obligations especially burdensome. For example, regarding health impairments, AMS is requiring only disclosure of "known health impairments" of the breeder flock or of the poultry delivered, and the live poultry dealer has a range of ways to ask the third-party input supplier to provide that information, including contractual guarantees, indemnifications, attestations, or other means all of which are already commonly used in livestock transactions to ensure animal health and food safety.

Whether the live poultry dealer is sourcing the inputs internally or via a contractual arrangement with a third party, it is ultimately the live poultry dealer that is providing the inputs to the grower under the poultry growing arrangement and is responsible for not engaging in a deceptive practice. AMS has discussed in other parts of this final rule why the information being requested about the inputs is not confidential or proprietary. Therefore, AMS made no changes to the rule as proposed based on these comments.

Comment: Several industry groups opposed the requirement proposed in § 201.214(b)(7) to disclose any adjustments the live poultry dealer intends to make due to the other factors covered in placement disclosures. One commenter said live poultry dealers would not be able to disclose adjustments at the beginning of a flock because it is impossible to predict the financial impact of factors that may affect live birds in advance. This commenter said it is more appropriate for live poultry dealers to make pay adjustments after a flock settles based on comparisons with historical data.

AMS response: Some live poultry dealers may be unable to predict the exact financial impact of those factors in any specific flock delivery to a grower,

but these are contracted-for payments that should be legitimately based upon factors known to both parties. Otherwise, the live poultry dealer may deceptively manipulate the contract payments based on withheld information because the live poultry dealer controls all the tools used to calculate payments. Of course, live poultry dealers may be able to predict some of the financial consequences of a contract, or the live poultry dealer may want to create additional grower incentives specific to one flock that may take the form of a pay adjustment. In AMS's experience reviewing contracts, payment formulas can be complicated. However, AMS included the requirement to disclose any adjustments that may be made based on the factor in the settlement disclosure to help growers to recognize and manage risks, and to prevent adjustments that were opaque or pose risks of deception to the grower.

The rule does not require any adjustments, and only requires live poultry dealers to *disclose* adjustments that can be known prior to placement and that the live poultry dealer could apply, for example a particular adjustment formula, process, or approach. The specific final amount of adjustment need not be predicted, but if the live poultry dealer knows that the inputs will likely result in payment being adjusted upward or downward in an unknown amount, and particularly if it knows how or under what conditions that will occur, it should disclose that information to a grower to allow the grower to better manage their growout strategies; plan for the payment they are expecting to receive upon settlement; and avoid being confused, misled, or otherwise deceived about how their performance under the contract will be compensated. Live poultry dealers remain free to make the actual contractually agreed upon adjustments after settlement based on flock performance. Therefore, AMS made no changes to the rule as proposed based on these comments.

Comment: Groups representing poultry growers supported the proposed placement disclosure requirements. These commenters said the requirements would ensure more transparency by integrators and help growers in areas such as flock management and financial planning. A live poultry dealer said much of the proposed placement disclosure information pertains to factors that do not vary significantly from grower to grower, saying any natural variation in inputs is expected to even out over time and providing the information would

place undue emphasis on single inputs rather than factors such as the grower's skill, dedication, and hard work.

AMS response: Input variation has not been the subject of external study because of the proprietary nature of the data available, but it has been the source of repeated concerns raised by growers for many years.⁹⁵ The persistence of these grower complaints suggests that making this information available to growers to measure, monitor, and adjust as they may see fit is worth the modest cost to live poultry dealers because it will reduce the opacity and risks of deception with respect to their payments. With that additional transparency, growers will be able to determine the relative emphasis to be placed on single inputs versus other factors, such as skill, dedication, or hard work, which may help them adjust their growout practices to match. To the extent variations do even out over time, growers will be in a better position to recognize those trends and make their own determinations on the importance of inputs versus other factors, thanks to this rule's enhancement of transparency tools. If input factors do not in fact vary significantly from grower to grower, the burden of disclosure by the live poultry dealer remains relatively light.

Comment: Industry groups contended the placement disclosure requirements would impose a significant administrative burden, such as requiring capital investments to overhaul their software to provide the required data. One commenter said the discussion of input distributions in the preamble to the proposed rule relied on anecdotal reports rather than actual data or evidence, making the proposed provisions arbitrary and capricious.

AMS response: AMS has conducted an extensive cost-benefit analysis for this rule, available under the regulatory analyses section below, and believes that the burden of compliance is relatively modest. AMS investigations and reviews of information sharing services and consultations with experts from the Agricultural Research Service, in addition to AMS's own subject matter experts, supervisors, and auditors with many years of experience in working with growers and auditing live poultry dealers all indicated that most live poultry dealers maintain this information already, and indeed report much of it to information sharing services.

⁹⁵ See, e.g., Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop, May 21, 2010, Normal, Alabama; Leonard, Christopher, *The Meat Racket* (2014).

AMS acknowledges that external analyses of poultry inputs generally lack a ranking system context, but the proprietary nature of the relevant data makes quantitative academic and other external analysis nearly impossible. Even with the lack of context, peer reviewed research supports the supposition that input differentiation can affect biological outcomes.⁹⁶ AMS is relying on the longstanding concerns of growers and its own experience as the industry's regulator to warrant placement disclosure requirements. Accordingly, AMS made no changes to the proposed rule based on these comments.

Settlement Document Information on Tournament Group

In the proposed rule, AMS proposed to retain existing regulatory requirements in § 201.100(f) to provide settlement sheets but to move the provision to § 201.214(c). It also proposed to require live poultry dealers employing poultry grower ranking systems to provide every grower within the system with settlement documents that show certain information about each grower's ranking within the system, housing specifications, and the inputs each poultry grower received. AMS invited comments on how well the requirement to provide input distribution information, along with settlement payment information, for all members of the tournament group responds to grower requests to improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system.

⁹⁶ E. David Peebles, et al., "Effects of Breeder Age and Dietary Fat on Subsequent Broiler Performance. 1. Growth, Mortality, and Feed Conversion." *Poultry Science* 78.4 (1999): 505–51; J.B. O'Neill, "Relationship of Chick Size to Egg Size and its Effect Upon Growth and Mortality." *Poultry Science* 29 (1950):774; C.L. Wyatt, W.D. Weaver Jr, and W. L. Beane, "Influence of Egg Size, Eggshell Quality, and Posthatch Holding Time on Broiler Performance." *Poultry Science* 64.11 (1985): 2049–2055; R.A. Guill and K.W. Washburn, "Genetic Changes in Efficiency of Feed Utilization of Chicks Maintaining Body Weight Constant." *Poultry Science* 53.3 (1974): 1146–1154; R.G. Wells, and C. G. Belyawin, "Egg Quality-Current Problems and Recent Advances." *Poultry Science Symposium Series*. No. 636.513 W4. 1987(citing D. Spackman, "The Effects of Disease on Egg Quality"); W.A. Dozier III, et al., "Effects of Early Skip-A-Day Feed Removal on Broiler Live Performance and Carcass Yield." *Journal of Applied Poultry Research* 11.3 (2002): 297–303. AMS notes additionally that research in this and related areas has limitations. It is older and results are mixed. AMS is concerned that publically available research has stagnated, despite the introduction of new breed strains in the intervening years. Because integrators now own the genetics companies, AMS has additional concerns that research has, in effect, been privatized, creating information asymmetries.

Comment: Groups representing poultry growers, in general, expressed support for the proposed settlement disclosure requirements. Commenters noted these disclosures would help growers determine if they are being treated fairly compared to other growers in their complex and enable them to establish cases based on unfair treatment or retaliation claims. Several commenters advocated for further rulemaking to reform the tournament system, saying the proposed settlement sheet disclosures do not sufficiently mitigate several anticompetitive factors and unfair practices. Commenters said the current rule does not account for factors such as tournament group composition effects and recommended that the disclosure requirements for settlements apply to any poultry contract in which the integrator-controlled factors may impact the baseline or bonus income of the contract grower. These commenters suggested AMS require live poultry dealers to disclose input quality variables and feed discrepancies by house on each grower's farm to reflect circumstances in which flock drop-off or pick-up for a grower is split over a weekend, introducing variables in bird performance. AMS received few comments that specifically opposed making available to growers information about tournament grouping and composition. AMS has summarized above and below any comments that oppose proposed required disclosures, e.g., that the disclosures would unnecessarily increase the dealer's costs.

AMS response: AMS acknowledges the commenters' interest in input quality variables and feed discrepancies, as well as the timing of flock drop-off or pick-up. In response to comments, and based on AMS's experience regulating the poultry industry, AMS has identified circumstances where live poultry dealers commonly exercise higher levels of discretion. In these circumstances, broiler growers are unable to evaluate how live poultry dealers may handle those circumstances and, as such, are exposed to risks of deception with respect to the operation of their contract and payment. Commenters asked for specific disclosures regarding sick, diseased, or high early mortality flocks; natural disasters; depopulation events; feed outages; and feed quality, formulation, and suitability.⁹⁷

In this final rule, AMS requires additional disclosure regarding policies and procedures relating to layout time; sick, diseased, and high early-mortality flocks; natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or grower facility; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages, including outage times; and grower complaints relating to feed quality, formulation, or suitability. AMS believes that focusing on disclosure of the live poultry dealer's policies and procedures—if any—in these areas will provide the appropriate flexibility for live poultry dealers to develop systems that work best for their company and their growers, while also providing growers with the additional information they may need to better manage risks relating to those matters.

AMS determined that specific disclosures would not be suitable to addressing these risks because the burden on live poultry dealers would be great, and the benefit of these disclosures would be insufficient. In part, many of these situations occur from time to time and depend upon discretion by the live poultry dealer and its field agents. Because ongoing disclosure would likely be insufficient to provide growers the advance notice of how live poultry dealers intend to handle such circumstances, AMS has determined that disclosure of policies and procedures is the most suitable and effective way to provide growers with transparency regarding these situations and risks arising from them. Such an approach is consistent with the approach to disclosure that AMS is taking, and proposed to take, in other areas that may depend on a degree of circumstance-specific discretion—for example, sale-of-farm policies.

AMS will continue to monitor these areas and expects to use the additional transparency provided by the disclosures to develop more tailored educational, outreach, or regulatory responses. AMS also notes the commenters' interest in additional

rulemaking with respect to fairness concerns relating to tournament systems and highlights that it has put forth an Advance Notice of Proposed Rulemaking focused on those issues.⁹⁸

Comment: AMS requested comment on whether the proposed requirement in § 201.214(c) (§ 201.104(c)(1) in the final rule) to include the housing specification for each poultry grower ranking system participant on grouping or ranking sheets responds to grower requests to improve transparency, address information asymmetry, and reduce the chance of deception in the tournament payment system. Groups representing poultry growers expressed support for this proposed requirement, saying it would improve growers' ability to assess the relative performance and income gains that more modern infrastructure may provide.

AMS response: In addition to helping growers assess the value of making housing upgrades, dealers may benefit from making such disclosures when they can demonstrate for growers a correlation between more advanced housing tiers and improved flock performance, inducing more grower advancement. Accordingly, we have retained the requirement in § 201.104(c) to provide these disclosures.

Comment: Several commenters said the proposed settlement disclosures would help poultry growers evaluate or improve their performance, make informed business decisions, or mitigate risks. For example, these commenters said the information would help growers to better understand their placement in the tournament and could change industry bargaining dynamics. However, many commenters said the disclosures do not go far enough in giving poultry growers meaningful tools to address fundamental power imbalances, hampering poultry growers' ability to meaningfully negotiate contracts with live poultry dealers and minimize dealer opportunities to manipulate rankings within a group.

AMS response: AMS has designed this final rule to enhance transparency for broiler chicken growers because of the deception that arises from well-documented information asymmetries and attendant risks in the design and operation of poultry grower ranking systems. Transparency, as provided by this rule, will prevent deception, encourage live poultry dealers to offer

⁹⁷ See, e.g., Animal Welfare Institute, "Comment on AMS–FTPP–21–0044: Transparency in Poultry Grower Contracting and Tournaments" (received Aug. 1, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0109>; Campaign for Contract Agriculture, Rural

Advancement Foundation International—USA, "Comment on AMS–FTPP–21–0044: Transparency in Poultry Grower Contracting and Tournaments" (received Aug. 23, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0479>; Institute for Agriculture & Trade Policy, "Comment on AMS–FTPP–21–0044: Transparency in Poultry Grower Contracting and Tournaments" (received Aug. 1, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0110>; Stone Barns Center for Food & Agriculture, "Comment on AMS–FTPP–21–0044: Transparency in Poultry Grower Contracting and Tournaments" (received Aug. 4, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0139>.

⁹⁸ Agricultural Marketing Service, "Poultry Growing Tournament Systems: Fairness and Related Concerns," Request for Comments (87 FR 34814, June 8, 2022), available at <https://www.federalregister.gov/documents/2022/06/08/2022-11998/poultry-growing-tournament-systems-fairness-and-related-concerns>.

better contracts, and enhance growers' ability to understand contracts and the grower-dealer relationship.

Transparency will also prevent live poultry dealers from engaging in certain forms of deception in the operation of those contracts. AMS also expects increased transparency to function as a deterrent by exposing abusive conduct by market participants. Transparency also creates reputational disincentives to such actions as well. Disclosure regimes in other areas, such as the FTC's Franchise Rule, as well as the long-established operation of the Federal securities laws, show that disclosure is a cost-effective tool to prevent deception, improve trust among market participants, and mitigate market failure and the potential for market failure. Disclosure laws are common in financial, housing, and other markets where the products are complex, the financial risks are significant, and one party has significantly more information than the other.⁹⁹ Additionally, AMS's experience in the poultry sector and agriculture in general shows that producers value transparency as a tool for enhancing their ability to contract and manage risks.

AMS recognizes, however, that transparency may not be sufficient to address all the risks that growers may face, in part because transparency does not inherently prohibit harmful practices that growers may be unable to avoid owing to lack of competition (*i.e.*, lack of other options for poultry dealers with whom to do business), deception, or other reasons.¹⁰⁰ Accordingly, AMS has proposed other rules seeking to prevent retaliation for joining an association or forming a cooperative, among other protections against discrimination, retaliation, and deception. AMS has also published an Advance Notice of Proposed Rulemaking regarding additional rules to address fairness concerns relating to tournament systems.¹⁰¹ AMS is committed to continuing to improve the integrity, fairness, and competitiveness of the poultry growing marketplace

through additional rules and through the enforcement of existing laws and regulations, as well as through a range of other strategies, such as \$1 billion in direct investments in expanded meat and poultry processing capacity that USDA is implementing to promote competition across agriculture.¹⁰²

Comment: AMS requested comment on whether there is other information or another way of presenting the proposed settlement information that would be better. Several groups representing poultry growers said the proposed disclosure requirements are helpful but incomplete and recommended requiring live poultry dealers to disclose other factors that impact grower settlement performance. Commenters suggested AMS require dealers to document and disclose the quality of the feed provided to the growers in the settlement group because feed quality can significantly affect the ranking if a live poultry dealer provides lower quality feed to one poultry grower within a settlement group. Commenters urged AMS to require integrators to disclose the average feed conversion efficiency of flocks hatched from breeder flocks of that age to enable growers to compare their own performance to a more accurate flock efficiency performance expectation. Commenters also suggested that AMS require live poultry dealers to disclose the flock age at pickup because when integrators pick up flocks before or after the ideal pick-up time range, growers are penalized due to the flock's less optimal weight or feed conversion efficiency metrics. Commenters also recommended disclosure of all appeals, summaries of their resolution, and any extended delay during poultry delivery or collection that results in the remaining flock members losing body weight, being placed back on feed, or being delivered or collected with a different payment settlement group at a later date.¹⁰³

Industry groups expressed concerns regarding proposed requirements to

report feed disruptions, suggesting AMS clarify what constitutes a disruption. These commenters noted the proposed rule does not address situations, such as outages caused by natural disasters or other events out of either party's control that may affect all participants in the settlement pool. An industry group also said omitting the requirement to disclose breeder flock information would reduce costs and administrative burden on live poultry dealers and reduce confusion among poultry growers. This commenter also noted live poultry dealers already provide the information used to calculate a grower's payment under the contract; therefore, the additional information is unnecessary and would be confusing to growers. The commenter also asked AMS to clarify how to address situations in which the live poultry dealer has determined the sex of the birds for some, but not all, growers in the settlement pool.

AMS response: Paragraphs 201.102(c)(4)(v) and (vi) of the final rule require disclosure of integrator policies and procedures relating to feed outages, including outage times, and grower complaints about feed quality, formulation, or suitability. AMS intends these provisions to be broadly construed to include situations caused by natural disasters as well as other miscellaneous situations. While AMS acknowledges the requests to omit breeder flock information, it recognizes that many growers have expressed concern about and need for this information. Growers will benefit from its inclusion in the required settlement disclosures because academic research indicates that different breeder flocks may perform differently.¹⁰⁴ This is particularly important information to growers settled under a tournament payment system, where small differences in outcomes can have an outsized effect on grower payments because growers are compared on a relative rather than objective basis. Integrators are in possession of this information because they acquire and deliver the chicks to growers, and engage in extensive research and development to improve performance of the breeds. Absent the provision of this information, growers are subject to deception because their ability to perform under the tournament may be adversely affected by differences in these inputs between growers and by the inability to know and adjust to those differences at the earliest possible

⁹⁹ D.W. Carlton and J.M. Perloff, *Modern Industrial Organization* (1994): 624. Paula J. Dalley, "The Use and Misuse of Disclosure as a Regulatory System," 34 *Fla. St. U.L. Rev.* 1121–22 (2007). <https://ir.law.fsu.edu/lr/vol34/iss4/2>.

¹⁰⁰ Federal Trade Commission Chair Lina M. Khan, "Poultry Growing Tournament Systems: Fairness and Related Concerns" (received Sept. 1, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-22-0046-0143>.

¹⁰¹ Agricultural Marketing Service, "Poultry Growing Tournament Systems: Fairness and Related Concerns," Request for Comments (87 FR 34814, June 8, 2022), available at <https://www.federalregister.gov/documents/2022/06/08/2022-11998/poultry-growing-tournament-systems-fairness-and-related-concerns>.

¹⁰² U.S. Department of Agriculture, Agricultural Marketing Service. (May 2022). *Agricultural Competition: A Plan in Support of Fair and Competitive Markets: USDA'S REPORT TO THE WHITE HOUSE COMPETITION COUNCIL*. Retrieved from Agricultural Competition: A Plan in Support of Fair and Competitive Markets (usda.gov).

¹⁰³ Campaign for Contract Agriculture, Rural Advancement Foundation International—USA, "Comment on AMS-FTPP-21-0044: Transparency in Poultry Grower Contracting and Tournaments" (received Aug. 4, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0479>, and Virginia Farm Bureau Federation, "VFBF Comments—AMS Poultry Disclosure Proposed Rule" (received Aug. 5, 2022), available at <https://www.regulations.gov/comment/AMS-FTPP-21-0044-0160>.

¹⁰⁴ E. David Peebles, *et al.* "Effects of Breeder Age and Dietary Fat on Subsequent Broiler Performance. 1. Growth, Mortality, and Feed Conversion." *Poultry Science* 78.4 (1999): 505–511.

moment, to the extent such adjustment is possible. Therefore, AMS is retaining this requirement in the final rule.

Paragraph 201.104(b)(3) requires that “[i]f the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered” must be disclosed. AMS does not require that the live poultry dealer disclose the sex of all birds delivered because AMS understands that industry practice varies on sexing, and not all birds are sexed before delivery. However, AMS maintains the requirement that where a live poultry dealer does engage in some collection of information regarding the sex of the birds, that the integrator must disclose that information to growers as it is helpful to growers.

AMS would accept the live poultry dealer using ratios and percentages to describe bird sex in relation to a flock. AMS did not provide further clarification beyond this explication because of the potential variation in practice, and because AMS believes that the language “all ratios” provides an appropriately inclusive coverage of the information that the live poultry dealer may collect, and which should be disclosed to growers in those circumstances. AMS will be making available guidance documents during the implementation phase to answer live poultry dealer and grower questions, and intends to implement the rule in a careful, iterative manner.

AMS acknowledges commenters’ concerns that flock pick-up timing (and hence age) may affect grower outcomes. Flock age is often disclosed under existing § 201.100(f) to the extent that daily averages are used in formulas to calculate payments. To appropriately balance the burdens on live poultry dealers, AMS is not adopting specific disclosures, beyond those that exist in § 201.100(f) on that topic at this time.

Comment: AMS requested information about obstacles to sharing or discussing settlement information with others and on whether the right to discuss the terms of poultry growing arrangement offers should apply to these disclosures. Groups representing poultry growers said they appreciate the proposed rule’s extension of the existing right to discuss the terms of growing arrangement offers with other growers from the same dealer to include the right to discuss the Disclosure Document. However, they believe growers should also have the right to discuss the settlement sheet disclosures proposed under § 201.214, and that AMS should clarify that the current right to discuss the poultry growing arrangement encompasses this right.

AMS response: The settlement sheet disclosures in § 201.104 will be provided to the entire pool of growers settled during the same time period. Only the growers’ personal identifying information may be excluded from the settlement sheet documents, as the rule specifically provides that the disclosures need not show the names of other growers. AMS is not aware of existing restrictions on settlement information. New restrictions related to settlement information will be reviewed by AMS for compliance under the Act, but AMS has not changed the rule based on this comment.

Comment: AMS invited comments on whether a grower being completely out of feed for 12 hours is an appropriate length of disruption to trigger reporting of a feed disruption or whether it should instead require a shorter time, such as 6 hours. Multiple farm bureau and poultry group commenters indicated that 6 hours rather than 12 hours would be an appropriate length of time to trigger reporting. The commenters stated that being out of feed for 6 hours drops birds’ feed conversion efficiency and would affect the grower on the settlement sheet. The commenters stated this length would allow growers to establish a pattern, as growers would have records that let them take action to correct the problem if they are out of feed multiple times for multiple hours during consecutive growout periods.

A poultry industry association commented that the turkey industry has almost no feed disruptions lasting more than 12 hours, except in cases of natural disaster. The commenter noted in the rare instances when a disruption might extend to that length of time, addressing it depends on timely and accurate reporting from the turkey grower and that turkey integrators have no control over the circumstances when growers do not report feed disruptions in a timely manner.

AMS response: AMS notes that research¹⁰⁵ has shown that commercial broilers deprived of feed for more than 12 hours develop hemorrhages in their intestines that curtail usual growth patterns and lessen the efficiency of conversion of feed into meat. AMS also noted feed withdrawal for 6 hours was not found to be statistically significant.¹⁰⁶ Accordingly, in the final rule, AMS retains the 12-hour threshold for reporting feed disruptions. However, AMS will monitor implementation and

encourages growers to report specific instances or patterns of concern to AMS.

Disclosure of Grower and Breeder Identity Information

Section 201.214(b)(4) of the proposed rule would require dealers to include the breeder facility identifier for the flock in the information they provide to growers within 24 hours of flock delivery. Under proposed § 201.214(c)(1), dealers, when providing grouping or ranking sheets to growers at time of settlement, would not have to show the names of other growers, but would be required to show their housing specification and the actual figures upon which the grouping or ranking is based for each grower grouped or ranked during the specified period. AMS proposed in § 201.214(c)(2)(iv) to require the grouping or ranking sheets provided to growers to disclose the breeder facility identifiers for each poultry grower ranking participant. However, AMS did not propose to require dealers to disclose the names of breeder farms. AMS invited comments on whether it should reevaluate this position. In addition, live poultry dealers currently are not required to disclose the names of all competing growers on ranking sheets. AMS did not propose to change this requirement but asked whether it should require dealers to disclose the names of all competing growers in settlement documents.

Comment: Several groups representing poultry growers urged AMS to require integrators to provide the names of breeding facilities, saying extreme vertical integration means that many breeding facilities are owned by the integrator delivering chicks to a grower and if growers knew the actual names of breeders, it would be easier for them to independently assess relevant variables or issues rather than relying on the integrator’s representations. However, other groups representing poultry growers did not support a requirement for live poultry dealers to disclose farm names.

AMS response: The purpose of the rule is to provide the grower with reliable information needed to make decisions in the management of their farm. Consistent designation of breeder facility identifiers is sufficient for the purposes of enabling growers to consistently understand and track the input. AMS makes no changes based on the comment.

Comment: Farm bureaus and poultry grower groups said it is not necessary for AMS to require live poultry dealers to disclose the names of all competing growers in settlement documents. These

¹⁰⁵ K.L. Thompson, “Optimizing Feed Withdrawal Programs,” Purdue Extension (2008).

¹⁰⁶ S.F. Bilgili and J.B. Hess, “Tensile strength of broiler intestines as influenced by age and feed withdrawal.” *J. Appl. Poultry Res.* 6 (1997): 279–283.

commenters opposed disclosure of individual grower names and said such disclosure would be a breach of privacy.

AMS response: AMS agrees grower privacy is important and should be appropriately protected. The names of competing growers does not provide useful information to growers to assess the role that differences in inputs played in their settlement or, from that, in the expected future profitability of their operations because the purpose of the disclosure is to prevent deception against the grower and to enable the grower to perform better. The appropriate focus then is on the substantive differences in the inputs, or the housing specifications, which requires disclosure of those items among different settlement participants but can be done using consistent identifiers other than actual grower names. To affirm that position, AMS retained the language of the proposed rule, which provided that the names of the growers need not be provided in the settlement document, consistent with current practice under existing disclosure requirements for settlement. AMS is not adopting a prohibition on live poultry dealers using the names of growers as that was not proposed. Further, because the goal of the rule is disclosure, rather than prohibitions against disclosure, such a prohibition is outside of the scope of this rule.

J. Effective Date

Comment: Live poultry dealers and industry groups noted AMS has publicly indicated that it is considering changes to multiple regulations under the Act and said that AMS should share all proposed rules specific to the tournament system at one time to allow stakeholders to comment on the proposed changes in their entirety. Commenters further urged AMS not to take an incremental approach to updating the regulations and asserted that such an approach would create challenges for poultry growers and dealers, such as increasing compliance costs, confusion, uncertainty, and frustration. In addition, these commenters recommended that AMS provide one effective date for all regulatory changes under the Act. One commenter recommended that the effective date for this rule be delayed for five years to give live poultry dealers time to build five-year records for disclosure and to develop the necessary systems for producing required disclosures. Another commenter suggested that AMS conduct outreach to explain to producers and food companies the regulatory changes and

how they will be implemented and enforced.

AMS response: Our approach has been to address the regulatory needs of the poultry industry systematically and as swiftly as possible. All broiler growers can benefit immediately from the greater transparency offered by this final rule. AMS does not want to postpone implementing this regulation, which makes available vital information growers need when deciding whether to incur capital expenses and engage in broiler production. Nor do we want to delay provision of useful input information to broiler growers in tournaments, who can use that information immediately to make production management decisions.

Based on AMS's experience with the industry, we believe live poultry dealers have ready access to the historical information they are required to provide in the Disclosure Documents. AMS agrees with commenters that the final rule should provide sufficient time to implement any changes it requires. Therefore, the effective date for this rule is 75—rather than 60—days following publication in the **Federal Register**. Live poultry dealers will need to amend contracts in some instances, create records processes, format the incorporation of new information in existing documents, and create Disclosure Documents using USDA instructions. Seventy-five days provides the length of at least one flock to prepare for implementation of the rule. USDA will have resources available to answer questions as appropriate. Additionally, based in part on the experience of recent settlements between DOJ and a large poultry company, AMS believes this period will provide sufficient time for live poultry dealers to update their compliance systems and policies and procedures and commence complying with the rule.

AMS agrees that it should conduct outreach to producers and food companies regarding regulatory changes, implementation, and enforcement. Over the course of this rulemaking, AMS has published informational materials, including a fact sheet and a video webinar to help the public understand the proposed rule. AMS intends to conduct further education and outreach following the finalization of the rule.

AMS rejects comments calling for a delay of rules until other rules are proposed and critiquing its incremental approach. To the contrary, AMS is deploying a nuanced approach to these rulemaking proposals such that stakeholders and the public can review each individual proposal on its own

merits. This approach offers producers and other market participants greater ability to effectively evaluate the impacts of each proposal on the market and their particular interests, and enables commenters to more effectively tailor and target comments.

K. Regulatory Notices & Analysis and Executive Order Determinations

Comment: Live poultry dealers said the full cost of the proposed rule will likely be many times more than predicted by AMS. For example, these commenters asserted AMS greatly underestimated the costs of creating the recordkeeping systems needed to comply with the proposed rule, the proposal would add costs generated by frivolous litigation, and the proposal would undermine the tournament system and replace it with a new model that would likely drive up the costs of chicken production. Live poultry dealers and industry groups said AMS's own estimate indicates the 10-year aggregate costs will be higher for poultry growers than for live poultry dealers.

AMS response: In drafting and estimating the cost of the proposed rule, AMS consulted auditors and supervisors who are familiar with live poultry dealers' records from many years of experience in auditing live poultry dealers for compliance with the Act. In contrast, commenters provided no estimated costs for AMS to review. AMS expects the recordkeeping systems most live poultry dealers already have in place will enable them to gather much of the information in the disclosures from records available to them, which limits the necessity of developing new recordkeeping systems.

The higher costs estimated for broiler growers compared to live poultry dealers is due to the large number of broiler growers that receive the disclosures compared to a small number of live poultry dealers. The primary costs to the live poultry dealers are the one-time costs to develop the disclosures, while the ongoing costs to update, distribute, and maintain the disclosures are relatively small. A small number of live poultry dealers will incur relatively small costs to distribute the disclosures to relatively large groups of growers, but AMS anticipates every grower will read the disclosures. The actual cost to any individual grower is estimated as the value of the time required to read the Disclosure Documents, but with more than 16,000 broiler growers with more than 19,000 broiler growing contracts and just over 40 live poultry dealers engaged in broiler production, aggregate cost estimates are higher for broiler growers

than for live poultry dealers, though the rule has a significantly lower cost estimate for a single grower than for a single dealer.

The new requirements in the rule are primarily disclosures of information by dealers to broiler growers. AMS does not expect that informing growers about their contracts and how they are ranked in the tournament system will cause frivolous lawsuits. Increased transparency through this final rule should improve confidence in the tournament system rather than undermine it.

Comment: Groups representing poultry growers said they agree with AMS that the benefits of the proposed rule outweigh the costs. They suggested that benefits for poultry growers include being able to predict their range of income for the coming year and having transparency about the quality of inputs provided by the live poultry dealer. These commenters also said that additional benefits to poultry-dependent communities could include fewer growers going into debt to build facilities and consequently fewer abandoned poultry houses degrading the value of farms and the community. Industry groups said they do not believe estimates of benefits are well-founded, and that the calculation of benefits merely attempts to quantify the revenue reduction poultry growers would be willing to accept in exchange for increased transparency under the proposal.

AMS response: USDA estimated that some of the benefits of the rule would come from reduced revenue uncertainty associated with greater transparency. The greater transparency would include a tighter range around predicted income due to such factors as a higher probability of receiving a new contract and lower variability in compensation under the contracts due to greater transparency about input quality as it relates to revenue. USDA also listed a number of benefits in qualitative terms, as it does not have the information to estimate empirical values associated with them.

AMS expects that if property values change due to final §§ 201.102 or 201.104, the change would be very small. Broiler growers who abandoned housing and exited the industry will not benefit from the rule and will have no incentive to remove the abandoned housing. For broiler growers that remain in the industry, expected gains would be modest relative to the costs removing buildings.

The concept of risk aversion is well founded. It is the reason that insurance and futures and options exchanges exist,

for example. The risk aversion benefits estimated for the rule represent the value to growers of a decrease in the uncertainty of revenue due to increased transparency. Since growers do not have to pay for the increased transparency, the estimated benefit to growers is the same as their net benefit (*i.e.*, the gross benefit minus the cost to growers of increased transparency). And at the industry level, even with the small decrease in grower revenue uncertainty assumed for the analysis, the benefits to growers are higher than the cost to dealers of complying with the rule.

L. Legal Issues Relating to the Proposed Rule

Comment: Industry groups argued AMS lacks authority to issue this rule. A commenter said that AMS asserts a broad mandate to rewrite private contracts and affect relationships between live poultry dealers and poultry growers, yet the Act's legislative history shows Congress intended for AMS's statutory authority to be much narrower in scope. A commenter cited a Supreme Court decision shortly after the Act's passage noting that Congress enacted the Act to ensure the free flow of livestock and prevent packers from using monopoly power to set unfair prices,¹⁰⁷ as well as the 1935 expansion of the Act to include live poultry dealers, in which Congress said it targeted unfair, deceptive, and fraudulent practices and devices because "they are an undue restraint and unjust burden upon interstate commerce."¹⁰⁸

Commenters continued by arguing, for instance, AMS does not have authority to promulgate parts of the proposed rule it justifies based on the goal of achieving "fair income" for poultry growers or that characterize growing arrangements as incomplete contracts so it can target information asymmetry between dealers and growers. A commenter rejected the concept that the Act gives AMS authority to prevent information asymmetry in contracts between dealers and growers, stating that it has not established that the Act's prohibition on unfair, unjustly discriminatory, or deceptive practices applies to "plainly written poultry growing arrangements." Commenters contended that many other lawful business arrangements do not encompass all conditions affecting compensation in the contract and that all real-world markets have some information asymmetry. A commenter

also contended AMS's citation of FTC regulation under sec. 5 of the FTC Act, which Congress drew on in enacting the Act to support its targeting of information asymmetry, undermines its authority in relation to the proposed rule. According to this commenter, this section was interpreted at the time of the Act's enactment to "prohibit anti-competitive and monopolistic conduct, but not to restrict legitimate corporate activity" such as the tournament system.

A meat and poultry industry association said AMS lacks statutory authority to justify disclosure of potentially confidential, proprietary, and competitively sensitive payment history information required in § 201.102(d) of the final rule, as well as the requirement in § 201.102(d)(4) of the final rule that live poultry dealers must disclose contact information for State university extension service offices or county farm advisor's offices. The commenter also said if, as implied under § 201.102(g)(1)—Grower Receipt of the final rule, AMS is taking the position that live poultry dealers can violate sections 202(a) and 202(b) of the Act even if they do not harm competition, it is acting without statutory authority, as Congress enacted the Act to curb monopolies and courts have consistently held that the statute only prohibits anticompetitive practices.

AMS response: AMS disagrees that competition was at the time of enactment, or is now, the controlling factor for all regulations issued under the Act. Moreover, even where relevant, competition for the purposes of Section 202 must be defined by the plain meaning of Section 202, which defines the scope of USDA's authority. Therefore, the meaning of competition or harm to competition must be broader than its meaning under the antitrust laws.¹⁰⁹

As USDA noted in a 2010 proposed rule, a 2016 interim final rule, and a 2017 final rule,¹¹⁰ it has consistently taken the position that "in some cases, a violation of section 202(a) or (b) can be proven without proof of predatory intent, competitive injury, or likelihood of competitive injury." Scope of Sections 202(a) and (b) of the Packers

¹⁰⁹ See *Spencer Livestock Com. Co. v. Department of Agriculture*, 841 F.2d 1451 at 1455 (9th Cir. 1988) (The Packers and Stockyards Act is more than "a mere mirror of the antitrust laws").

¹¹⁰ In the 2017 final rule, USDA withdrew the 2016 interim final rule out of concerns about confusion over the conflicting court decisions on this subject and the absence of a good cause justification for foregoing notice and comment. However, USDA reaffirmed its longstanding position that harm to competition is not required, which we again reaffirm here.

¹⁰⁷ *Stafford v. Wallace*, 258 U.S. 495, 514–15 (1922).

¹⁰⁸ Packers and Stockyards Act of 1921, Public Law 74–272, § 501, 49 Stat. 648, 648 (1935).

and Stockyards Act, 81 FR 92566, 92567 (Dec. 20, 2016); *see also* Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 82 FR 48594, 48595 (Oct. 18, 2017); Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act, 75 FR 35338, 35340 (June 22, 2010).

USDA has previously explained that this consistently-held position is based on the language, structure, purpose, and legislative history of the Act. *See, e.g.*, Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 FR at 92567–92568. USDA continues to adhere to this longstanding position, despite the disagreement of some courts as to the proper scope of the Act. *See* Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 82 FR 48596 (Oct. 18, 2017) (reaffirming that “USDA has adhered to this interpretation of the P&S Act for decades” and rejecting comments that this interpretation is not the USDA’s longstanding position).

Even where courts have disagreed with USDA’s longstanding position that competitive harm is not required under these sections, some have not held that such a requirement would apply to a claim of deception under § 202(a), as opposed to other claims such as unfairness claims. *See, e.g., Been v. O.K. Industries*, 495 F.3d 1217, 1227 (10th Cir. 2007) (“We are concerned here only with whether unfairness requires a showing of a likely injury to competition, not whether deceptive practices require such a showing.”) Such AMS authority to regulate deception is well-established. This includes forming the basis of a proposed consent decree between DOJ and two of the nation’s largest poultry companies relating to the failure to provide the transparency that would be mandated under this rule. As DOJ set forth in its complaint: “Poultry processors have also engaged in deceptive practices associated with the ‘tournament system.’ Under this system, growers are penalized if they underperform other growers, but poultry processors control the key inputs . . . that often determine a grower’s success. Poultry processors often fail to disclose the information that growers would need to evaluate and manage their financial risk or compare offers from competing processors.”¹¹¹

The regulatory mechanism of disclosure, as set forth in this rule, is also well-established as a cure for

deceptive practices that arise from information gaps in the marketplace, including AMS’s disclosures already in place under the Act for settlement in the poultry sector, FTC’s mandated disclosures by franchise companies to franchisees, and a range of other mandated disclosures by Federal and State regulators. Rather than undermining AMS’s authority, a reference to FTC’s sec. 5 authority on deceptive practices is entirely appropriate, as courts have long recognized the similar design and application of the two provisions. Violations under FTC’s sec. 5 deceptive practices authority do not require a showing of harm to competition.¹¹²

Regardless, even if a showing of harm to competition were required for a deception claim, the deceptive practices prohibited in this rule would meet such a requirement. AMS rejects the idea that a prohibition on certain widespread deceptive practices is inconsistent with addressing anticompetitive conduct, including information asymmetries and the holdup and other anticompetitive risks that may arise from them and distort competition in the market for grower services.

AMS affirms the longstanding view that fraud and deception have no value or place in a competitive market.¹¹³ Indeed, the academic literature has long understood that Section 202 covers two broad categories of conduct, (1) anticompetitive conduct and (2) conduct described as “market abuses.”¹¹⁴ AMS seeks to enable growers to better protect themselves from hidden risks in contracting and the operation of those contracts. Preventing deception enhances competition among dealers by enabling growers to compare offers and reasonably assess entry into the business. Preventing deception improves how markets function by forcing dealers to compete for growers service based on the merits of commercial offer the producer is making. Preventing deception enables growers to better assess their performance vis-à-vis other growers.

¹¹² Federal Trade Commission, Policy Statement on Deception, 1983. *See also, e.g., FTC v. Minuteman Press et al.*, E.D. N.Y. (1998), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/minuteman-press-et-al>. *Morrone’s Water Ice, Inc.; Franchise Consultants Corporation d/b/a Franchise Consultants Group; et al.*, E.D. Penn. (2003), available at <https://www.ftc.gov/legal-library/browse/cases-proceedings/x020068-morrone-water-ice-inc-franchise-consultants-corporation-dba-franchise-consultants-group-et-al>.

¹¹³ *Bruhn’s Freezer Meats, Inc. v. Department of Agriculture*, 438 F.2d 1332, at 1341 (mislabeling grading of meat violates section 202); *USDA v. Excel Corp.*, 397 F.3d 1285 (failure to disclose change in grading system violates section 202).

Ultimately, the conduct at issue is squarely within the purposes of the Act. Where conduct “prevents an honest give and take in the market,” it “deprives market participants of the benefits of competition” and “impedes . . . a well-functioning market.”¹¹⁵ In its report on the 1958 amendments to the Packers and Stockyards Act, the U.S. House of Representatives explained that the statute promotes both “fair competition and fair trade” and is designed to guard “against [producers] receiving less than the true market value of their livestock.”¹¹⁶ Deception subverts normal market forces, undermines market integrity, and deprives producers and growers of the true value of their products and services.

Comment: Poultry grower groups argued that AMS has both authority and obligation to implement the rule. These commenters said the Act authorizes the Secretary of Agriculture to make rules necessary to carry out its provisions, and one of its cornerstones is ensuring that business arrangements between live poultry dealers and growers are not unfair, unjustly discriminatory, deceptive, or facilitating undue preferences. They contended that, because the proposed rule aims to improve the information asymmetry between dealers and growers so that violations of the Act no longer persist unchecked, its requirements clearly fall within AMS’s rulemaking authority. The commenters also cited evidence that Congress intended the Act to go beyond previous antitrust laws to target an expansive range of anticompetitive conduct by meat companies.

AMS response: AMS affirms the view that the conduct that may be prohibited under the Act is more expansive than that which is covered under the Sherman Act, 15 U.S.C. 1 *et seq.*, the Clayton Act, 15 U.S.C. 12 *et seq.*, or the FTC Act, 15 U.S.C. 41 *et seq.*, and in particular, that deceptive practices sought to be prohibited by the rule fall within the authority of the Act.

Comment: Live poultry dealers and industry groups argued that the proposed rule is beyond the scope of congressional direction. They said that there was a lack of further congressional action since the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill; Pub. L. 110–234; June 18, 2008) and that AMS has completed its rulemaking under the 2008 Farm Bill. This, the commenters assert, indicates that Congress views the current framework as adequate.

¹¹¹ *U.S. v. Cargill Meat Solutions*, Complaint, D. MD, July 25, 2022, available at <https://www.justice.gov/atr/case-document/file/1528331/download>.

¹¹⁵ Kades, 55, also quoting the FTC.

¹¹⁶ Kades at 55.

These commenters also cited the major questions doctrine put forth by the recent Supreme Court decision in *West Virginia v. Environmental Protection Agency*¹¹⁷ as a limiting factor for AMS's authority to promulgate this rule. According to these commenters, the issue of whether the Federal Government should further regulate poultry growing contracting has political and economic significance, and AMS has not demonstrated clear congressional authorization to exercise its powers on this issue, meaning the agency lacks the authority for this rule. Poultry grower groups argue that the proposed rule does not trigger the major questions doctrine because, rather than making a radical change based on vague authority, it is based on clear congressional mandates and represents only incremental improvements to the preexisting regulatory regime. These commenters further contended that sec. 202 of the Act, which enumerates the practices Congress has deemed unlawful, provides a clear and forceful statement of AMS responsibility to regulate such practices.

AMS response: AMS exercises its statutory authority under the Act, which includes authority to address deceptive practices. The lack of congressional action since the 2008 Farm Bill does not impact the scope of AMS's authority under the Act.

With respect to the major questions doctrine, there is no indication that this regulation is of such economic and political significance that the Congress did not give the Secretary authority to write a regulation of this kind. In *West Virginia*, 142 S. Ct. at 2604, the Court noted that EPA's modeling "would entail billions of dollars of compliance costs[.]" In comparison, this rule will cost less than 10 million dollars over the course of the next decade. Sec. 407 of the Act gives AMS the authority to "make such rules, regulations, and orders as may be necessary to carry out the provisions of" the Act. 7 U.S.C. 228. Moreover, at least one court has concluded that Congress intended for the USDA to have broad regulatory power under the Packers and Stockyards Act. As the Court of Appeals for the Eighth Circuit observed in *Bruhn's Freezer Meats of Chicago, Inc. v. U.S. Dep't of Agric.*, 438 F.2d 1332, 1339 (8th Cir. 1971), "[t]he Act was framed in language designed to permit the fullest control of packers and stockyards which the Constitution permits, and its coverage was to encompass the complete chain of commerce and give the Secretary of

Agriculture complete regulatory power over packers and all activities connected therewith. H.R. Rep. No. 324, 67th Cong., 1st Sess. (1921); H.R. Rep. No. 77, 67th Cong., 1st Sess. (1921)."

As noted above, AMS has long maintained disclosure requirements under the Act with respect to poultry contracting and the operation thereof, including settlement payment disclosures. Further, regulation of the communication to producers under related regulations is not at all unusual: buyers in grade and yield transactions must provide accurate accounting and provide the basis of the grade. Similarly, FTC has long required disclosures under its Franchise Rule¹¹⁸ to address similar deception risks for business owners seeking to enter into a franchise relationship with a franchisor. In this rule, AMS updates its disclosure rules to reflect the realities of modern poultry growing, which are comparable to a franchisor-franchisee contractual relationship, including with respect to taking out debt, taking into account the range of other risks relating to doing business in this sector such as trust and compliance issues as exemplified by a recent DOJ poultry industry price fixing prosecution and Packers and Stockyards Act deceptive practices investigation resulting in a number of guilty pleas and consent decrees.¹¹⁹

Comment: Live poultry dealers and industry groups argued that AMS relied on anecdotes and did not cite actual violations of the Act that would justify the proposed rule. These commenters indicated that the administrative record thus does not support a rulemaking on poultry grower contracting at this time, especially one likely to have significant costs affecting supply chains. State attorneys general and groups representing poultry growers noted a proposed settlement agreement between DOJ and poultry processors¹²⁰ stemming from the recent wage suppressing conspiracy and Packers and Stockyards Act deceptive practices investigation that includes disclosure requirements similar to those in the proposed rule. Groups representing

poultry growers suggested this consent decree indicates that these companies are capable of running their businesses under fairer and more transparent conditions.

AMS response: AMS chose to take a regulatory approach, as opposed to case-by-case enforcement, to enable it to better tailor its approach to addressing the concerns under the Act that AMS has identified in the poultry sector, especially relating to broiler chickens. Such an approach permits AMS to transparently engage the public, industry, Congress, and others, and obtain the benefit of accepting public comments during the regulatory process. Yet, as indicated by the State attorney general commenters, AMS has also determined it appropriate to refer cases regarding deception in the failure to disclose important information regarding financial risks in poultry growing arrangements and the operation of those arrangements to DOJ for handling as circumstances warrant, as exemplified by the recent consent decree whereby the nation's third largest poultry processor agreed to provide the disclosures as set forth in the proposed rule and updated by this final rule. This case and settlement indicate both the seriousness of the ongoing deceptive practices violation, as well as the appropriateness and workability of the remedy defined by this rule.

Comment: Several farm bureaus suggested the rule should have been an interim final rule, rather than a final rule, to give AMS the regulatory flexibility to immediately address any effectiveness issues with the disclosures. Groups representing poultry growers said the proposal's required disclosure of material information to protect parties to asymmetrical business relationships is a longstanding policy tool for promoting healthier markets and does not violate any "cognizable right," including dealers' First Amendment rights. Groups representing poultry growers also urged AMS to affirm its interpretation of secs. 202(a) and (b) of the Act to not require a harm-to-competition standard, as it is highly difficult for farmers to meet this standard, and argued that USDA's December 2020 "undue preferences" rule¹²¹ creates a substantial loophole for

¹¹⁸ 16 CFR parts 436 and 437.

¹¹⁹ Plea Agreement: *U.S. v. Pilgrim's Pride Corp.*, Feb. 23, 2021, 20-cr-00330-RM, available at <https://www.justice.gov/atr/case-document/file/1373956/download>. Consent Decree: *U.S. v. Cargill Meat Solutions Corp., et al.* (Sanderson Farms, Inc., Wayne Farms, LLC), July 25, 2022, 1:22-cv-01821-ELH, available at <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy>.

¹²⁰ *U.S. v. Cargill Meat Solutions Corp., et al.* (Sanderson Farms, Inc., Wayne Farms, LLC), July 25, 2022, 1:22-cv-01821-ELH, available at <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy>.

¹²¹ Agricultural Marketing Service, "Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act, Final Rule, Dec. 11, 2020, 85 FR 79779, available at <https://www.federalregister.gov/documents/2020/12/11/2020-27117/undue-and-unreasonable-preferences>

Continued

¹¹⁷ 142 S. Ct. 2587 (2022).

dealers by allowing them to justify actions they claim are a “reasonable business decision.” An industry group said the heightened disclosure requirements between dealers and growers in the proposed rule may raise competitive concerns by creating an information exchange of specific and competitively sensitive information between a wide range of actual and potential competitors. The commenter also said marketing agreements may experience a chilling effect, as increased transparency may lead dealers to offer growers uniform contract terms that diminish competition as well as individual growers’ marketing power.

AMS response: AMS notes the commenters’ interest in an interim final rule. An interim final rule is generally reserved for situations where the agency, for good cause, finds that prior notice is “impracticable,” “unnecessary,” or “contrary to the public interest,” in which case the agency may issue a final rule without providing the usual notice and comment required by the Administrative Procedure Act (APA).¹²² However, because AMS has already solicited comments on the proposed rule, it is unnecessary to issue an interim rule and make a good cause finding to justify non-compliance with the APA’s notice and comment requirements.

AMS further affirms that no further showing is required to prove a violation of the Act beyond a violation of the provisions set forth in this rule.

AMS believes that the provision of additional information to growers will improve the competitive market conditions by allowing growers to better understand, evaluate, and compare contracts among dealers, enhancing their ability to bargain efficiently by reducing deceptive practices. Deception has no competitive value or place in the market and can create inefficiencies. AMS is skeptical that contract terms will necessarily become more uniform and further finds that the new transparency will allow live poultry dealers to compete for growers on the merits of their contracts and aid in marketplace innovation as live poultry dealers and growers remain free to develop new and innovative methods for conducting their business. Previous AMS rulemakings related to disclosures in poultry growing have not been shown to negatively affect innovation.

With respect to information exchanges, AMS notes that statistical sharing services today routinely collect

and make available a wide range of information only to live poultry dealer subscribers. AMS has tailored the disclosures to provide information useful to growers in their particular circumstances and has reduced requirements such as the disclosure of information across all complexes in part to reduce risks of inappropriate information sharing.

M. Other Comments About the Proposed Rule

Comment: A farm bureau recommended adding several requirements for grower contracts, such as: performance verification provisions to protect growers from arbitrary company sanctions on bird placements; clear statements of layout times (i.e., time between flock placements) and company compensation for extended periods of reduced or no bird placements; a requirement that contracts should not be subject to change by the company without prior agreement from the grower; starting pay rates that allow amortization of debt load in 10 years, cover normal expenses, and provide the grower a livable income; additional compensation for above-average feed conversion; and company responsibility for low performance based on company-provided inputs. In addition, the commenter recommended that contracts clearly disclose risks and provide grower protections against early termination, and that live poultry dealers provide growers with ample time to review contracts. This commenter said contracts that require arbitration for grower disputes should also require arbitration for dealer disputes, while another farm bureau said AMS should ban mandatory arbitration clauses in contracts.

AMS response: AMS shares many of the concerns expressed in the above comment summary. Improved transparency including contract requirements requiring minimum flock placements and minimum density will reduce asymmetric information problems and address many of the issues related to flock placements and out time. Additionally, this regime will deter dealers from constant contract modifications that would trigger a new Disclosure Document. Further, AMS views the financial disclosures required in this rule as appropriate to inform growers of revenues, potential profitability, and debt management. Growers maintain the statutorily protected right to opt out of arbitration. Therefore, no changes were made to the proposed rule.

Comment: A poultry grower group indicated the rule does not address the

lack of transparency associated with farm research and development. The commenter explained that poultry companies do not own their own farms; therefore, research and development for farm-level changes cannot take place within the company’s business infrastructure. According to the commenter, the result is that major dealers benefit from expensive research and development efforts, and the unknowing poultry growers routinely shoulder the burden of live poultry dealer “experiments” with neither consent from nor compensation for the grower.

To stay ahead of the field and make advancements, according to the commenter, companies use a few common strategies, such as merging with and acquiring smaller companies that are pioneers in new fields, leveraging financial and political influence over research at universities, and experimenting through mandatory trial-and-error efforts on contract farms, such as studying the effect of windows in chicken houses and introduction of slow-growth chickens as a research program with associated adjustments in flock schedules for growers.

The commenter provided an example of growers being required to change growing practices due to the increased value of chicken paws (feet) without seeing a benefit. Multiple farmers contracting with three different integrators have come to the commenter expressing concerns about having to change growing practices to promote the health of chicken paws. No farmer was compensated for these changes according to the commenter; however, the companies have experienced a financial windfall because of growing demand in China for chicken paws. According to the commenter, farmers spent their own time and energy to increase company profits and that effort was not reflected in their tournament ranking.

AMS response: AMS shares some of the concerns cited above, particularly with regard to practices resembling “trial and error” experimentation at the expense of contract growers. To the extent that programs of this type are a change in housing specification, new disclosures would be required for growers to evaluate the benefit. Where adjustments to management practices cause growers to incur additional costs and are not covered in the contract, a new contract may be required, again triggering a new Disclosure Document. Separately, AMS has proposed rules to better protect growers’ rights to organize associations and cooperatives, which may enable them to more effectively

and advantages under the packers and stockyards act.

¹²² 5 U.S.C. 553(b)(B).

work together and bargain under existing laws.¹²³ Therefore, no changes to the proposal are warranted.

Comment: A group representing poultry growers noted that, under the proposed rule, live poultry dealers will still control most of the production inputs, which fails to close the extreme disparity in bargaining power between growers and dealers. Based on the experience of growers in its network, the commenter described several problems it anticipated will remain even if the proposed rule is implemented.

The commenter stated debt accumulation is a problem that will remain even if the rule is implemented. The commenter stated that growers lack leverage to negotiate favorable contract terms, often incurring substantial debt loads as they invest significant amounts of money in poultry houses and in modifications and upgrades that dealers require as a condition of contract renewal. According to the commenter, growers are then stuck paying back the loans to the same companies that required them to make the investments in the first place, leading to “crippling accumulations of debt” resulting in numerous bankruptcies, and the amount of this debt is expected to increase.

Finally, the commenter said there are limited legal resources available to farmers to fight against poultry companies, with time and legal costs deterring farmers from seeking justice in court. According to the commenter, while the proposed rule provides some legal recourse for controversies related to the Disclosure Document and poultry growing arrangements, the exchange of information between growers and dealers is not sufficient and the costs of litigation are still often prohibitive.

AMS response: AMS is concerned about poultry grower debt accumulation. AMS is confident the disclosure regime outlined in this proposal will provide baseline information relating to revenue and profitability of their operations, improving grower debt management. As housing specifications evolve and new investments are mandated, under this rule, growers will receive additional required disclosures that will better enable growers to assess additional capital investments. AMS will continue to review capital improvement programs and evaluate those programs under existing § 201.216. AMS encourages

growers with specific concerns to submit complaints and tips through farmerfairness.gov or to contact AMS directly at 1-833-DIAL-PSD (1-833-342-3773).

Comment: Commenters recommended AMS require dealers proposing or requiring modifications to existing grower infrastructure housing specifications to disclose their own cost-benefit analysis to growers. Further those commenters said that any finding that any such cost/benefit disclosures are broadly fallacious, *i.e.*, that where the dealer's cost-benefit claims did not match the actual costs and benefits, should constitute a violation of the Act as a deceptive practice.

AMS response: While this rule does require some financial disclosures related to additional capital improvements and other deviations from the prior five-year grower payments, AMS is not requiring the production and disclosure of a dealer's cost-benefit analyses because AMS is not prepared, at this time, to assess all potential cost-benefit factors, as well as the necessary formatting and recordkeeping requirements that would be implicated. In the interim, AMS will also continue to review grower solicitation practices and inducement materials. Practices and materials that are deceptive have and will continue to be violations of the Act. AMS is not adopting such a requirement at this time but may consider the value of such a disclosure as part of future steps. In particular, AMS is reviewing this issue in light of comments received on the June 2022 “Advance Notice of Proposed Rulemaking on Poultry Tournaments: Fairness and Related Concerns” and may elect to address issues related to additional capital investments in future rulemakings.

Comment: Commenters also wanted AMS to require live poultry dealers to give poultry growers a minimum of 6 months to begin any upgrades they might demand.

AMS response: AMS is also not at this time adopting any requirements relating to the timing for when housing upgrades could be required. The request by commenters is not within the scope of this rule, and AMS needs additional time to consider the matter. AMS will consider the matter as part of comments received to the June 2022 “Advance Notice of Proposed Rulemaking on Poultry Tournaments: Fairness and Related Concerns.”

VIII. Regulatory Analyses

A. Executive Orders 12866, 13563, and 14094

AMS is providing a regulatory analysis in conformance with the requirements of Executive Orders 12866—Regulatory Planning and Review, 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means.

In the development of this rule, AMS considered several alternatives, which are described in the Regulatory Impact Analysis, below.

The final rule is not expected to provide, and AMS did not estimate, any environmental, public health, or safety benefits or impacts associated with the proposed rule.

This final rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). Details on the estimated costs of this final rule can be found in the rule's economic analysis.

AMS is amending 9 CFR part 201 by adding new definitions to § 201.2, adding new § 201.102 regarding contract and disclosure requirements for live poultry dealers engaged in broiler production, and adding new § 201.104 regarding live poultry dealer responsibilities when they use poultry grower ranking systems to settle payments for broiler growers. Based on its familiarity with the industry, AMS's Packers and Stockyards Division (PSD) prepared an economic analysis of the final rule as part of the regulatory process. The economic analysis includes a cost-benefit analysis of the rule. PSD then discusses the impact on small businesses.

B. Regulatory Impact Analysis

As a required part of the regulatory process, AMS prepared an economic

¹²³ Agricultural Marketing Service, “Inclusive Competition and Market Integrity,” Proposed Rule, Oct. 3, 2022, 87 FR 60010, available at <https://www.federalregister.gov/documents/2022/10/03/2022-21114/inclusive-competition-and-market-integrity-under-the-packers-and-stockyards-act>.

analysis of the costs and benefits of final §§ 201.102 and 201.104.

The poultry industry is highly vertically integrated. That is, a single entity owns or controls nearly all the steps of poultry production and distribution. Poultry production contracts reduce the costs for live poultry dealers of negotiation with individual growers over the purchase of individual flocks of poultry and relieve live poultry dealers from the burden and risks of owning and maintaining poultry houses. The growout portion of production is largely accomplished through contract growers, who bear these burdens and risks. Most poultry, and particularly broilers, are grown under production contracts.

The USDA National Agricultural Statistics Service's (NASS) Census of Agriculture (Agricultural Census) reported that 96.3 percent of broilers were raised and delivered under production contracts in 2017.¹²⁴ Live poultry dealers place chicks in poultry houses owned by contract growers. Typically, live poultry dealers provide young poultry, feed, medication, and harvest and transportation services to these poultry growers, who house, feed, and tend the growing birds.

In order to grow poultry on a commercial scale, a poultry grower must invest in poultry housing. The investment is often substantial. Most farms have multiple houses, and the total investment required can easily exceed \$1 million. Also, the housing is built and equipped specifically for the purpose of growing poultry. The costs of adapting the housing for any other purpose can be prohibitive.¹²⁵ Because the live poultry dealers control most aspects of a grower's production, growers are dependent upon the actions of the live poultry dealers to recoup the grower's substantial and specific investment. This puts growers in a particularly precarious position in which contract growers have only a small number of live poultry dealers with whom to do business in almost all geographic markets within the United States.

Broiler industry vertical integration leads to many risks being borne by contract poultry growers. Due to the large investment required of poultry growers, the financial risk of protecting that investment is substantial. Because live poultry dealers maintain such heavy influence over many key aspects

of growers' production, growers have significant exposure to liquidity risks, should flock placements and revenues fall.

Thus, contract poultry growers are subject to numerous risks associated with live poultry dealers' control over key aspects of their operations, such as the frequency and density of flock placements, and the related risks of not having control over the genetic quality or health of the chicks placed by the live poultry dealers. Live poultry dealers control the scheduling of feed deliveries, which also can impact feed conversion and thus grower pay. Also, production variables such as bird target weights and growout periods are determined by the live poultry dealer, further adding to the risks borne by contract poultry growers.

Live poultry dealers benefit from poultry growing contracts by having control over the quality and supply of inputs (birds) into the processing plant while remaining free from many of the risks related to capital investments in growing capacity, where those costs and associated risks are borne by the growers. On the other hand, contracts shift other risks from the grower to the live poultry dealer. With live poultry dealers responsible for chick genetics, feed quality, and other inputs (with the possible exception of fuel), changes in input prices do not directly affect growers. Growers also do not bear the risks (or enjoy the benefits) of price changes in the value of live poultry or poultry meat, as they do not own the poultry or poultry meat and thus do not sell it. Research on poultry growing contracts in the broiler market has shown live poultry dealers to shift that variation in input costs and output prices, which comprises up to 84 percent of the variation in returns to broiler production.^{126 127}

The most common form of poultry growing contract is a relative performance contract, also known as a "tournament" contract in the industry. Tournament systems are a type of poultry contract under which the live poultry dealer assigns each grower to a settlement pool, which consists of all the growers' given flocks that the live poultry dealer processed in a given week. The live poultry dealer provides the grower with the production inputs of an initial supply of chicks and feed

and veterinary support throughout the growing period; the grower provides the inputs of housing, water, electricity, labor, and management. At the time of processing, the live poultry dealer collects the finished broilers and calculates an average performance metric for the settlement pool, typically the feed-conversion ratio or similar metric. The grower's compensation under the tournament contract, is the sum of a base payment, which typically depends on the total liveweight of the finished birds and a payment or deduction based on the average performance metric for the settlement pool. For most tournaments, the payment or deduction formula is the difference between the grower's performance metric and the settlement's average, subject to a scaling multiplier. Production periods for poultry are sufficiently short that a grower will typically be in several tournaments in a year.

Agricultural production is an inherently risky endeavor, and returns have some level of risk no matter the marketing channel or structural arrangement. For example, common production risks are systematic risks common to all growers in a given geography (which may coincide with a given tournament) such as weather or widespread disease, feed quality, or genetic strains. Academic research finds that where risks are likely to affect all growers in a region, compensation is less likely to be adversely affected under a tournament contract than it would be on a simple price per unit of weight contract.¹²⁸ For example, if an unusual heat wave caused all growers in a tournament to experience poorer feed conversion, all tournament growers may require more feed and a longer grow period for their flocks to reach the target weight. They would receive the same pay for the weight produced, while not being penalized for the higher feed costs incurred to produce that weight. Some aspects of the tournament system are not necessary to account for these risks, however, and other contractual arrangements may account for the same risks without the concerns associated with the tournament system.

As noted, no contract type will protect growers from all market risks, and tournament contracts still leave growers exposed to some common risks. For example, when plants had to reduce processing capacity due to the COVID-19 pandemic, growers experienced

¹²⁴ USDA, NASS. 2017 Census of Agriculture: United States Summary and State Data, (April 2019): 7, 56.

¹²⁵ For a discussion of the difficulty in adapting of broiler grow houses for other purposes, see Vukina and Leegomonchai 2006, Op. Cit.

¹²⁶ C.R. Knoeber and W.N. Thurman, "Don't Count Your Chicken . . . : Risk and Risk Shifting in the Broiler Industry," *American Journal of Agricultural Economics* 77 (1995): 486–496.

¹²⁷ This research is regularly cited and reaffirmed in the current economics literature including Tsoulouhas and Vukina (2001) and McDonald (2014) that we cite elsewhere.

¹²⁸ See, e.g., Theofanis Tsoulouhas and Tomislav Vukina, "Regulating Broiler Contracts: Tournaments Versus Fixed Performance Standards," *American Journal of Agricultural Economics* 83 (2001): 1062–1073.

reduced compensation to the extent that they received fewer or less dense placements from the live poultry dealers.

Tournament systems do not insulate growers from the other risks of contracts discussed above such as financial risk, liquidity risk, the risk from incomplete contracts, and the lack of control over inputs and production variables. Tournaments also introduce new categories of risks to growers, such as group composition risk and added risks of settlement-related deception or fraud. The risks of deception or fraud as discussed above include the inability of growers to verify the accuracy of payments, and to detect discrimination or retaliation.

Group composition risk is the risk associated with the composition and performance of other growers in their settlement groups. A particular grower's pay is impacted by the performance of others in the tournament. Growers have no control over the other tournament members' effort and performance, nor over with which other growers they are grouped. An individual grower's effort and performance can be static, and yet that grower's payments could fluctuate based on the grower's relative position in the settlement group. Further, changes in payment may not be commensurate with the changes in grower's effort and performance. These characteristics of the tournament system can add to the variability of pay and affect the ability of growers to plan and measure their own effort and performance. On the other hand, the system is designed to incentivize participants to do their best in the hopes of gaining higher rewards.

The integrators also determine which growers are in each settlement group. While growers in a group must have similar flock finishing times, a live poultry dealer could move a grower into a different grouping by altering layout

times to change the week that a grower's broilers are processed. An individual grower may perform consistently in an average performing pool, but if the live poultry dealer places that grower in a pool with more outstanding growers, those outstanding growers raise the group average and reduce the fees paid to the individual. At its discretion or per the poultry growing arrangement, a live poultry dealer may remove certain growers it considers to be outliers from a settlement pool. This would likely affect the average performance standard for the settlement and affect the remaining growers' pay. Group composition risk can be more relevant to some growers when a tournament's settlement group contains growers with different quality or ages of grow houses.

In addition, the current documentation of tournament terms provides little to no information on the expected variation between individual payments over time. Providing the settlement formula alone does not give growers a means by which they can predict total income over a meaningful period. More generally, an individual grower cannot estimate the variance in pay across periods with the same accuracy as the live poultry dealer with which he or she contracts. Information provided pursuant to this rule addresses this issue. Also, growers do not currently receive information that allows them to understand the impact of many live poultry dealer decisions made during the growout period that may affect grower incomes. For example, live poultry dealers may switch the genetics of chicks supplied to growers or change a feed ration or supplier. Increased information required in settlement disclosure regarding inputs and other factors will make it easier for growers to assess the impacts of these decisions and improve their ability to protect themselves against any

systematic issues related to those decisions.

Live poultry dealers benefit from tournaments systems, because they provide live poultry dealers more control and certainty of the total pay to all the growers in a settlement group. They also benefit from the system if it disincentivizes shirking with respect to production efficiency. However, the incentive to avoid shirking can be imparted in a fixed performance standard contract as well.

There is asymmetry in the information available to live poultry dealers and the growers with whom they contract. Some of the information held by live poultry dealers would be valuable to growers because it influences grower compensation in tournament contracts and might help growers in negotiating contract terms and making decisions about capital investments and flock management.

The contracts themselves are often incomplete and exhibit asymmetry in the information available to live poultry dealers and contract growers. Because live poultry dealers supply most of the inputs, much of the production information is available to the grower only from the live poultry dealer. For example, the contract grower may not know precisely how much feed it used, or how much weight the flock gained under his or her care, unless the live poultry dealer provides the information.

Growers often lack negotiating leverage with live poultry dealers to demand transparency and completeness in contracts. Most growers have few live poultry dealers in their area with whom they can potentially contract. The table below shows the number of live poultry dealers that broiler growers have in their local areas by percent of total farms (number of growers), total birds produced (number of birds), and total production (pounds of birds produced).

TABLE 1—LIVE POULTRY DEALERS IN BROILER GROWERS' AREA ¹²⁹

Integrators in grower's area ¹³⁰	Farms	Broilers	Production	Have additional integrator in area
Number	Percent of total			Percent of farms
1	21.7	23.4	24.5	7
2	30.2	31.9	31.7	52
3	20.4	20.4	19.7	62
4	16.1	14.9	14.8	71
>4	7.8	6.7	6.6	77
No Response	3.8	2.7	2.7	Na

¹²⁹ MacDonald. (June 2014) Op. Cit.

¹³⁰ MacDonald. (June 2014) Op. Cit. (Percentages were determined from the USDA Agricultural Resource Management Survey (ARMS), 2011.

"Respondents were asked the number of integrators in their area, which was subjectively defined by each grower. They were also asked if they could change to another integrator if they stopped raising broilers for their current integrator." The 7 percent

of those facing a single integrator assert that they could change, presumably through longer distance transportation to an integrator outside the area. Ibid. p. 29 and 30.)

The data in the table show that 52 percent of broiler growers (farms), accounting for 55 percent of broilers produced and 56 percent of total production and, report having only one or two integrators in their local areas. This limited integrator competition may accentuate the contract risks. Even where multiple integrators are present, there can be significant costs to switching, including owing to the differences in technical specifications that integrators may require. To switch, the growers likely may need to invest in new equipment and learn to apply different operational techniques due to different breeds, target weights and growout cycles.

Live poultry dealers hold information on how individual poultry growers perform under a variety of contracts. The mean number of contracts for the live poultry dealers filing annual reports¹³¹ with AMS in 2021 was 472. The largest live poultry dealers contracted with several thousand growers. Because live poultry dealers provide most of the inputs to all the growers in each tournament, the live poultry dealers have information about the quality of the inputs, while each grower can know only what he or she can observe. A grower almost certainly will not know about the inputs received by other growers. Live poultry dealers also have historical information concerning growers' production and income under many different circumstances for all the growers with which they contract, while an individual grower, like most other producers, has information concerning only its own production and income.

New growers entering the industry may have little or no experience from which to draw information for forming expectations for future input and maintenance costs or for evaluating the value of initial capital expenditures. Experienced growers entering into new contracts are limited to their own past experience to draw upon. Live poultry dealers have information from all their contractors about performance, costs, and expenditures.

Compensation based on relative performance when growers are not in control of many of the inputs of production may create opportunities for live poultry dealer deception. It is also difficult, especially for new growers, to understand how compensation is likely to vary over time as a result of

tournaments and other terms that may not currently be present in all contracts such as placement frequency and flock density. This problem of incomplete contracts is of particular concern due to the cost and lifespan of the capital required to be a poultry grower.

With incomplete contracts, at least one party will have discretionary latitude to deviate from expectations.¹³² For example, poultry production contracts often do not guarantee the number of flocks a grower will receive even with long-term contracts, even though this is critical information for understanding the value of the contract to the grower.¹³³ The type and frequency of required upgrades to existing equipment and housing are often left to the discretion of the live poultry dealer.

Hold-up is a problem that occurs in poultry production contracts because the poultry grower's outlay of the significant capital requirements of growing chickens results in specialized equipment and facilities with little value outside of growing chickens. As a result, growers entering the market are tied to growing chickens to pay off the financing of the capital investment. Growers might fear that they will be forced to accept unfavorable contract terms because they must continue production to pay off lenders and have few, if any, alternative live poultry dealers with which they can contract. This can lead to underinvestment in the capital necessary to grow broilers.

Comments From the Proposed Rule and Changes to the Final Rule

After consideration of public comments, AMS determined to adopt the proposed rule as a final rule with several modifications. In order to make compliance with the final rule as easy as possible for regulated entities, AMS reorganized the final rule by moving the new disclosures required into revised § 201.102 and new § 201.104. In the final rule, AMS removed the proposed revisions to § 201.100 requiring all live poultry dealers to provide certain additional disclosures to prospective or current growers and placed the requirements in new § 201.102. AMS also moved the requirements from proposed new § 201.214 to new § 201.104. This reorganization of the rule does not impact the recordkeeping requirements or costs of the final rule.

A commenter representing the turkey industry noted the proposed rule was

largely based on research into the broiler industry. The commenter asserted it would be extremely difficult for turkey companies to implement the rule due to differences between turkey and chicken production. Based on comments received to the proposed rule and AMS further study, AMS has limited the applicability of final §§ 201.102 and 201.104 to live poultry dealers engaged in the production of broilers. The final rule does not apply to live poultry dealers engaged in the production of turkeys, ducks, geese, and other domestic fowl. The proposed rule considered the costs and benefits to all live poultry dealers. This change reduced the number of live poultry dealers to whom the final rule applies from 89 respondents made up of live poultry dealers engaged in the production of broilers, turkeys, ducks, geese, and other domestic fowl under the proposed rule to 42 live poultry dealers engaged in the production of broilers in the final rule. Accordingly, this change reduced the costs and benefits from the proposed rule to the final §§ 201.102 and 201.104. Existing provisions of § 201.100 continue to apply to live poultry dealers engaged in the production of broilers, turkeys, ducks, geese, and other domestic fowl. The new provisions of § 201.102 and the new § 201.104 apply only to live poultry dealers engaged in the production of broilers. AMS made several other changes to the proposed rule that are reflected in the final rule.

Live poultry dealers commented that the full cost of the proposed rule would likely be many times greater than predicted by AMS. The commenters asserted AMS greatly underestimated the costs of creating the recordkeeping systems needed to comply with the proposed rule.

Commenters suggested that AMS underestimated the amount of time required to create and maintain recordkeeping systems. They also suggested that AMS did not adequately consider the IT and legal costs or the cost of hiring compliance officers. Some live poultry dealers indicated that the rule would promote frivolous lawsuits, and suggested the requirement to list ongoing litigation would discourage settlement. Some commenters also indicated that disclosures would undermine the tournament payment system, forcing live poultry dealers to adopt less efficient methods of compensation, which would increase the price of chicken and ultimately increase inflation.

AMS consulted auditors and supervisors who are familiar with live poultry dealers' records from many

¹³¹ All live poultry dealers are required to annually file PSD form 3002 "Annual Report of Live Poultry Dealers," OMB control number 0581-0308. The annual report form is available to public on the internet at <https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf>.

¹³² Steven Y. Wu and James MacDonald, "Economics of Agricultural Contract Grower Protection Legislation," *Choices*, Third Quarter, 2015, pp 1-6.

¹³³ MacDonald (June 2014) Op. Cit.

years of experience with AMS in auditing live poultry dealers for compliance with the Act. AMS expects that recordkeeping systems that most live poultry dealers already have in place will enable them to gather much of the information in the disclosures from records they already have available to them and limit the necessity of developing new recordkeeping systems. AMS made no changes to the information collection requirements of the proposed rule based on this comment.

AMS proposed to require live poultry dealers to make various financial disclosures to broiler growers, including a table showing “average annual gross payments” made to growers at all complexes owned or operated by the live poultry dealer for the previous calendar year, as well as to growers at the local complex. Poultry and meat trade associations suggested AMS require dealers to disclose average annual gross payments only for the grower’s local complex. These commenters noted that complexes in different geographic areas face different economic conditions, arguing that information about payments at other complexes would not be useful and would potentially confuse growers. Therefore, AMS removed the proposed requirement disclose payment information for all complexes owned or operated by the dealer. AMS maintains the requirement for live poultry dealers engaged in the production of broilers to disclose payment information only relating to the broiler grower’s local complex. Accordingly, this change reduced the information collection burden on live poultry dealers from the proposed to the final rule.

Growers and live poultry dealers also requested in comments that AMS provide more specificity on how to calculate average annual gross payments. While the proposed rule provided detail on calculations, the commenters felt the instructions were not sufficiently specific to assure that live poultry dealers could comply and that broiler growers received adequate data on which to base business decisions. Therefore, AMS developed more detailed instructions on how to calculate them. The instructions are included in Form PSD 6100 (Live Poultry Dealer Disclosure Document). AMS added a modest amount of time to its cost estimates for live poultry dealers to review the instructions.

Several commenters recommended that AMS require the disclosure of grower turnover data. Grower turnover rates relate to the general risk of termination and non-renewal of

contracts with a live poultry dealer. This information would allow growers to compare the turnover rates of multiple live poultry dealers as a risk factor when making contracting decisions. Therefore, AMS added a provision of the final rule requiring live poultry dealers engaged in the production of broilers to disclose average annual broiler grower turnover rates for the previous calendar year and the average of the 5 previous calendar years at both the company level and the local complex level. AMS developed instructions for how to calculate average annual broiler grower turnover rates. The instructions are included in Form PSD 6100. AMS added a modest amount of time to its cost estimates for live poultry dealers to review the instructions and calculate grower turnover rates.

Numerous commenters from the grower and live poultry dealer sectors expressed that these provisions should be in plain and unambiguous language to avoid discrepancies in interpretation among the various parties, regulators, and courts. Some commenters also indicated a need to ensure growers who are not native speakers of English can understand the disclosures.

Considering the comments, AMS added a provision at § 201.102(g)(4) of the final rule to require live poultry dealers engaged in the production of broilers to make reasonable efforts ensure that growers are aware of their right to request translation assistance, and to assist the grower in translating the Disclosure Document at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement, but the grower has the option to waive up to 7 calendar days of that time period. Reasonable efforts include but are not limited to providing current contact information for professional translation service providers, trade associations with translator resources, relevant community groups, or any other person or organization that provides translation services in the broiler grower’s geographic area. The rule would also prevent a live poultry dealer from restricting a broiler grower or prospective broiler grower from discussing or sharing the Disclosure Document for purposes of translation with a person or organization that provides language translation services. AMS also added a provision to § 201.100 preventing live poultry dealers from restricting growers from sharing the Disclosure Documents with legal counsel, accountants, family, business associates, and financial advisors or lenders.

The proposed rule would have required live poultry dealers to provide growers with copies of the Disclosure Document and a true written copy of the contract 7 calendar days prior to executing the contract. The final rule changes the 7-day requirement to a 14-day requirement, but the broiler grower has the option to waive 7 calendar days of that time period. These changes did not affect the estimation of costs or benefits in the rule because growers retain the flexibility to determine the length of time they need to review the documentation.

The proposed rule also would have required live poultry dealers to obtain the broiler grower’s or prospective broiler grower’s dated signature as evidence of receipt of the Disclosure Document or obtain alternative documentation acceptable to the Administrator as evidence of receipt. The final rule will require live poultry dealers to obtain the broiler grower’s or prospective broiler grower’s dated signature as evidence of receipt or obtain alternative documentation to evidence delivery and that best efforts were used to obtain grower receipt. AMS expects in either case live poultry dealers to engage in personal communications with the grower and the delivery of the Disclosure Document, resulting in comparable levels of effort by the live poultry dealer. Accordingly, these changes did not affect the estimation of costs or benefits in the rule.

In the proposed rule, AMS did not specifically propose to require live poultry dealers to disclose their policies on grower payments with respect to increased lay-out time, diseased flocks, natural disasters and other depopulation events, feed issues or outages, or policies on grower appeal rights and processes. Multiple commenters suggested AMS include these disclosures. In the final rule, AMS added a provision at § 201.102(c)(4) requiring live poultry dealers engaged in the production of broilers to disclose policies and procedures on increased lay-out time; sick, diseased, or high early mortality flocks; natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability, as well as any appeal rights arising out of these events. AMS added a modest amount of time to its cost estimates for

live poultry dealers to comply with this new requirement.

AMS proposed in § 201.100(f)(1)(i) to require live poultry dealers to establish, maintain, and enforce a governance framework reasonably designed to audit the accuracy and completeness of the disclosures in the Disclosure Document, which must include audits and testing, as well as reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers.

AMS determined that the requirement in § 201.102(f)(2) for the principal executive officer or officers to certify the governance framework and the accuracy of the Disclosure Document adequately covers the intended requirement for officers of this level to be focused on the effectiveness of the governance framework. AMS concluded that this level of detail about the audit process for the Disclosure Document was not necessary, particularly as AMS seeks to balance the need to ensure reliability of these statements with the burden on the principal executive officers regarding details of the governance process. Therefore, AMS removed the proposed requirement for audit, testing, and reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers, which reduces the burden on regulated entities.

AMS expects §§ 201.102 and 201.104 to mitigate costs associated with asymmetric information by requiring live poultry dealers to disclose more and potentially valuable information to growers. Section 201.102 requires live poultry dealers engaged in the production of broilers to make disclosures before entering into new contracts, renewing existing contracts, or requiring growers to make additional capital investments. Section 201.104 requires live poultry dealers engaged in the production of broilers to disclose additional information at the placement and settlement of each flock.

AMS considered three alternatives to the final §§ 201.102 and 201.104. The first is “do nothing” or the *status quo*. All regulations under the Act would remain unchanged. It forms the baseline against which the second alternative, §§ 201.102 and 201.104 will be compared. The rule removes portions of the current § 201.100, which already requires disclosure from live poultry dealers, and replaces them with a more extensive set of disclosure requirements in § 201.102 that only apply to live poultry dealers engaged in broiler production. Since the cost and benefit analysis are compared to the cost and benefits *status quo*, costs and benefits

estimated here reflect only cost and benefits associated with the new requirements in §§ 201.102 and 201.104.

AMS considered a third alternative similar to §§ 201.102 and 201.104. The alternative would leave all of the requirements in §§ 201.102 and 201.104 the same, but entirely exempt live poultry dealers engaged in broiler production that process less than 2 million pounds per week. This third alternative would exempt smaller live poultry dealers, some of which might not have sophisticated records. However, since larger growers do most of the contracting (as quantified later in this analysis), most broiler growers would still receive the disclosures. AMS then estimated and compared the costs and benefits of the alternatives and selected §§ 201.102 and 201.104 as the preferred alternative to finalize.

Discussion of the Benefits of the Regulations

The primary purpose of the final rule is to make information available to broiler growers when that information would be most important in decision-making. Currently, most broiler production contracts are incomplete, and providing more information would likely lower the uncertainty the grower faces over their revenue and profit estimates. In addition, growers lack negotiating leverage with live poultry dealers to demand, among other things, transparency, and completeness in contracts. A benefit of this regulation is that by providing prospective growers and those contemplating additional capital investments better information on expected returns, growers should be able to make more informed business decisions and can more readily avoid entering into contracts that are not financially sustainable. The regulation still retains the rights of broiler growers to discuss the terms of the broiler growing arrangement and the Disclosure Document with other growers for the same live poultry dealer, advisors, and governmental agencies even if the broiler growing arrangement contains a confidentiality provision. This facilitates better information sharing, decision making, and risk management. By alleviating market failures, disclosures may help the market for grower services function better and help growers benefit from competition in the market for their services.

Better information on live poultry dealer commitments should reduce hold-up concerns that may stifle investment by growers. Better information and transparency on placements and settlements could reduce grower concerns over live

poultry dealer manipulation of inputs and reduces the potential for deception or fraud, and the high degree of control and influence that the live poultry dealer has over many, if not most, of the critical inputs that will determine the business success of the grower's operation.

Alternatively, the placement and settlement information could provide broiler growers with concrete information they can use to support, individually or collectively, any grievances they might have with a particular live poultry dealer. At the same time, this regulation provides growers a measure of protection against risks of retaliation or discrimination that may arise from disputes with live poultry dealers during the course of the broiler growing arrangement.

Section 201.102 lays out the information that a live poultry dealer is required to provide to broiler growers contemplating a relationship with that live poultry dealer. The disclosure of information is required whenever a live poultry dealer seeks to renew, revise, or replace an existing broiler growing arrangement. In addition, such disclosure is required for any new contract as well as whenever a live poultry dealer is requiring an original capital investment or a change to existing housing specifications that require an additional capital investment. These are the times when the information will be most useful in informing broiler growers of the potential implications of entering into a contract with the live poultry dealer or contemplating additional investment in capital stock. This information allows potential growers to make more informed and financially sustainable business decisions. Inaccurate information provided in disclosure to growers, and other bait-and-switch tactics, such as making a material policy change but not through a new or revised contract, would be a deceptive practice and would constitute a violation of this section and § 202(a).

When a live poultry dealer requires a broiler grower to make a capital investment, the dealer is required to provide the grower with the capital specifications they are required to meet and with a letter of intent sufficient to seek financing, as well as a full disclosure of the terms of the agreement. This information allows more informed investment decisions and help potential lenders accurately assess risk.

The Disclosure Document provides information on the length of the contract, number of guaranteed placements, stocking density, and notification of certain risks inherent in

the agreement. All this information helps to evaluate the longer-term viability of the investment and reduce hold-up fears.

Grower awareness of minimum flock placements and minimum stocking densities enables growers to more accurately estimate the risks and returns associated with their operations including debt management, cash flow, and other risks. It may enable growers, as well as financial institutions, to better estimate and manage risk, potentially including the acquisition of external insurance and risk management products.

In addition to information about the specific terms of the contract, information is provided to inform growers about the live poultry dealer's financial history and history of grievances with growers with whom they have contracted. This information also improves growers' ability to evaluate their decisions and the potential for hold-up related concerns.

The Disclosure Document includes information on the level and distribution of payments made to broiler growers under contract to the live poultry dealer. It describes past and expected future annual returns for similarly situated growers based on the complex and the live poultry dealer's other complexes with the same housing specifications. It presents returns at various levels of performance, as not all growers perform equally relative to the fixed cost of entry, making it easier for potential growers to estimate their revenues from the contract. The Disclosure Document also provides insights into the variability of cash flow within any given year to enable the grower to improve business decision-making and manage risk. The increased information in the Disclosure Document on the expected levels and distributions of payments has the added benefit of lowering the uncertainty of revenue streams for contract broiler growers.

The reliability of these disclosures would be reinforced by a governance framework and anti-fraud protections. In presenting this information to growers, the Disclosure Document reduces information asymmetry and the risk of fraud and deception. As a result, prospective growers and those contemplating additional capital investments have more confidence in the integrity of the information and consequently in their ability to make sound decisions.

A live poultry dealer is required to provide the Disclosure Document to growers prior to their entering into an agreement to allow time to discuss the terms of the agreement with advisors,

lawyers, business associates, bankers, USDA, or other extension organizations to obtain assistance in evaluating the agreement.

Section 201.104 requires additional ongoing disclosure of information related to broiler grower ranking pay systems ("tournaments"). This information is focused on the actual distribution of inputs to growers at the time of placements and the outcomes of the ranking system. Some of this information improves growers' ability to manage the flocks under their care, while other information helps growers to evaluate the factors affecting the outcome of the ranking system.

Lack of transparency in the tournament calculations has led to risks by growers relating to the potential for fraud and deception. These include grower inability to verify the accuracy of payments, to measure and manage risks, and to detect possible discrimination or retaliation for disputes arising under the broiler growing arrangement. The provision of additional transparency around tournament systems in this regulation is designed to address those risks. Provision of information regarding consistency of inputs (both at the time of placement and at the time of settlement), and any adjustments to methods or formulas, will foster more transparent, accurate, reliable, and widely accepted tournaments, and greater ability to monitor and hold live poultry dealers accountable for divergences from high standards of market integrity.

Broiler growers who participate in numerous tournaments over time will benefit from the added information they receive at the time of placement and settlement, as they will gain experience and knowledge useful in maximizing their growout performance. Because live poultry dealer-provided inputs may vary from flock-to-flock, growers may enhance their knowledge and improve management practices and skills with access to input distribution information, particularly at the stage when the input is provided. The increased information in the settlement and placement disclosures will allow growers to assess the impacts of input variability on revenues over time, which will also serve to lower the uncertainty of revenue streams. Growers armed with this information may be better able to efficiently allocate resources, reduce uncertainty of revenue streams, and maximize their individual profitability.

Confidentiality restrictions have historically prevented broiler growers from releasing details of contract pay and performance, thus limiting the availability of comprehensive data with

which to consider the effects of alternative regulatory and institutional structures on market performance.¹³⁴ Subsequently, the literature on these topics is insufficient to allow AMS to fully estimate the magnitude of the inefficiencies corrected by the rule, nor the degree to which the disclosure requirements and additional grower protections will address them. Though AMS is unable to completely quantify the benefits of the regulations, this analysis explains numerous benefits derived from increased information, reduced information asymmetries, and reduction in risk of deception by live poultry dealers. Each of the disclosures required under §§ 201.102 and 201.104 of the rule provides information that will be useful to growers in making more informed decisions and reducing concerns resulting from lack of access to information.

AMS estimated the industry benefits in two parts, one quantifiable and the other non-quantifiable. For the quantifiable part, AMS will provide a minimum value of the benefit to broiler growers from the additional information in the disclosures required under §§ 201.102 and 201.104 and will refer to this minimum benefit as G_{min} .

The quantifiable minimum benefit of the financial, placement, and settlement disclosures, G_{min} , arises from the additional information available to growers that serves to lower the uncertainty in revenue streams of contract growers. Lower uncertainty in revenue streams results in a reduction in revenue risks to growers. According to economic principles, a risk averse grower will benefit economically from a reduction in revenue risk.¹³⁵ AMS quantifies the benefit to growers from the reduction in revenue risk by estimating the Risk Premium (RP) to contract broiler growers from reducing variability of their net revenues from the disclosures. AMS will then use RP as G_{min} , the quantifiable minimum benefit of the disclosures.

However, §§ 201.102 and 201.104 have additional, other non-quantified benefits to growers and live poultry dealers, referred to as B_o .¹³⁶ These other benefits arise from a reduction in risk of retaliation by allowing growers to share

¹³⁴ For instance, the analysis of MacDonald (2014), MacDonald and Key (2014), and Vukina and Leegomanchai (2006) (Op. Cit.) relies on data from grower surveys. Knoeber and Thurman (1995) relies on contract settlement data from a single integrator.

¹³⁵ A risk averse grower prefers revenue streams with low uncertainty to revenue streams with high uncertainty when both have the same mean return.

¹³⁶ In the context of this analysis, "non-quantified" is defined to include measures which are quantitative in principle but whose value cannot be estimated at present.

information even if the growing arrangement contains a confidentiality provision and reducing the potential for fraud and deception by live poultry dealers by providing better, more accurate, and verifiable information to growers. These other benefits may lead to an improved allocation of capital and labor resources (such as increased capital investment through the reduction in perceived hold-up risk, and more informed decisions on whether and with whom to enter into a growing arrangement), leading to improved efficiencies and an improved allocation of resources for broiler growers and live poultry dealers.

AMS refers to the total benefits to the industry as B_T , which is the sum of the quantified G_{min} , and the non-quantified B_O , benefits or, $B_T = G_{min} + B_O$. AMS is not able to fully quantify the total benefits, B_T , from improved grower information, more informed decision-making, reduced revenue uncertainty, grower risk reductions, and an improved allocation of resources. The benefits AMS was able to quantify exceed the costs AMS was able to quantify.

AMS expects that the effects on the industry from the final rules will be very small in relation to the total value of industry production. In other words, AMS expects the impacts on total industry supply to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

Estimation of Costs and Benefits of the Regulations

AMS estimated costs and benefits for two alternatives. The first is the §§ 201.102 and 201.104, which is the preferred alternative. The second alternative is the same as § 201.102 and 201.104 with a complete exemption for live poultry dealers engaged in broiler production that process fewer than 2 million pounds per week. Both are compared against a baseline of *status quo*, which has no costs or benefits.

The quantified costs of §§ 201.102 and 201.104 primarily consist of the time required to gather the information and distribute it among the broiler growers. These costs of the rule will fall on live poultry dealers as they collect and disseminate the required information, and on broiler growers based on the value of the time they put into reviewing the disclosures. Though broiler growers are expected to incur costs in reviewing the information, they would be the primary beneficiaries of the information, which would be reflected in their ability to make more

informed decisions. The broiler growers must review the information in order to realize the benefits. This may result in a more efficient allocation of capital to the broiler growing industry.

There were 42 live poultry dealers to which the rule would apply that filed annual reports¹³⁷ with AMS, and their reports indicate that they had 19,808 contracts with 16,524 broiler growers during their fiscal year 2021.

AMS expects the total costs and benefits would be very small relative to the size of the market. Chicken sales in the U.S. for 2019 were approximately \$58.6 billion. The total quantified costs of §§ 201.102 and 201.104 are estimated to be greatest in the first year at \$3.4 million, or 0.006 percent (six thousandths of one percent) of revenues. Although an increase in cost of six-thousandths of a percent of sales could reduce supply, the reduction would be extremely small and would not measurably alter broiler supply. Provisions of final § 201.202 and 201.204 require only disclosures to growers. Neither requires any changes in the way live poultry dealers or broiler growers produce or process broilers. Given the nature of the rule, AMS expects that neither live poultry dealers nor broiler growers would measurably change any production practices that would impact the overall supply of broilers.

Expected quantified costs are estimated as the value of the time required to produce and distribute the disclosures required by §§ 201.102 and 201.104 as well as the time required to create and maintain any necessary additional records. AMS's experience in reviewing live poultry dealers' records indicates that most live poultry dealers already keep nearly all of the required records.

Final § 201.102 requires live poultry dealers disclose information to broiler growers concerning the growout contract, capital investments, grower earnings, recent litigation, recent bankruptcies, and live poultry dealers' policies concerning events such as disasters or feed outages that might occur during the growout period. The disclosures will require live poultry dealers to retain records, but AMS experience in reviewing live poultry dealers' records indicates that most live poultry dealers already keep nearly all of the necessary records.

¹³⁷ All live poultry dealers are required to annually file PSD form 3002 "Annual Report of Live Poultry Dealers," OMB control number 0581-0308. The annual report form is available to public on the internet at <https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf>.

Paragraph (a) of final § 201.102 requires live poultry dealers to provide a true copy of a new contract as well as a Disclosure Document that is defined in the remaining paragraphs. When the new contract is associated with new housing or changes in the housing live poultry dealers are also required to provide a letter of intent that growers can present to lenders. Paragraph (b) of the final § 201.102 requires live poultry dealers to disclose certain terms of the contract including the live poultry dealer's contact information, length of the term of the agreement offered, annual minimum number of placements, and minimum stocking density. AMS is aware that live poultry dealers already keep copies of contracts because AMS commonly reviews growout contracts on letters of intent during live poultry dealer compliance reviews.

Paragraph (c) of final § 201.102 requires live poultry dealers to disclose a summary of litigation and bankruptcies in the last 5 years. Although AMS does not commonly review records of past bankruptcies or litigation in live poultry dealer compliance reviews, courts keep records of litigation and bankruptcies that would enable live poultry dealers to disclose the required summaries. Paragraph (c) also requires live poultry dealers to disclose their policies concerning a number of events that could occur during the term of the contract, including increased layout times; high mortality birds, natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; depopulation of birds; feed outages; grower complaints concerning feed. In the event that the live poultry has no policy, paragraph (c) requires the live poultry dealer to disclose that it has no policy. AMS commonly reviews the types of policies in paragraph (c) of final § 201.102, and AMS expects that live poultry dealers that have the relevant policies will have records of them.

Paragraph (d) of final § 201.102 requires records of annual turnover rates for the last 5 years and annual gross payments per square foot by complex and housing type. Current regulations under the Act generally require live poultry dealers to retain payment records for at least 2 years,¹³⁸ and as noted below the final rule requires payment records under final § 201.104(a) be retained for 5 years. Some disclosures required under final

¹³⁸ Section 401 of the Act and 9 CFR 201.94, 201.95, and 203.4.

§ 201.102 will inherently necessitate that the companies keep records sufficient to produce and substantiate the disclosure. For example, the dealer would need to keep the last 5 years of litigation records to support a disclosure about its litigation history. As a result, some live poultry growers may need to keep payment records for a longer period of time than they do today, but AMS experience indicates that most live poultry dealers already keep the records for a longer period. Live poultry dealers keep lists of the growers under contract, and AMS reviews indicate that most keep list of growers for at least 5 years.

Paragraph (f) of § 201.102 requires live poultry dealers to create a governance framework to ensure the accuracy of the disclosure documents and paragraph (g) requires live poultry dealers to keep a receipt from growers indicating that the grower received the disclosure document. The records required in paragraphs (f) and (g) would be records that live poultry dealers currently do not keep. Live poultry dealers will need to develop new recordkeeping systems to retain them.

Paragraph (a) of final § 201.104 requires live poultry dealers to retain payment records for 5 years. Current regulations require live poultry dealers to retain records for 2 years. Some live poultry growers may need to keep payment records for a longer period of time as result of the rule, but AMS experience indicates that most live poultry dealers already keep the records for a longer period. The remainder of final § 201.104 requires live poultry dealers to disclose information to poultry growers about flocks placed with each grower, including when the flocks are placed and when the live poultry dealers make payment for raising the flocks.

Paragraph (b) requires live poultry dealers to make disclosures when flocks are placed with the broiler grower. Paragraph (c) requires live poultry dealers to make disclosures when the live poultry dealer makes payment to the broiler grower. Paragraph (b) and (c) requires the live poultry dealer to retain records for each flock of the stocking density, ratios of the breeds delivered in the flock, ratios of each sex in the lot if the live poultry dealers has determined it, age of the breeder flock, known health impairments in the breeder flock, and adjustments that live poultry dealers make to a grower's payment based on any of the disclosed information. Paragraph (c) also requires live poultry dealers to disclose the number feed outages that lasted more than twelve hours at each grower's facility.

Paragraphs (b) and (c) require live poultry dealers to maintain the same type of records that AMS commonly requests from live poultry dealers during compliance reviews,¹³⁹ and are records that most live poultry dealers already retain. An exception would be live poultry dealers that purchase chicks from outside hatcheries, as they may not already be retaining records concerning the breeder flock. The records would be available from the hatchery, but some live poultry dealers may have to keep records that they do not otherwise keep.

Although live poultry dealers will need to keep considerable amounts of records to comply with the disclosures required in final §§ 201.102 and 201.104, live poultry dealers already retain most of the records necessary. Live poultry dealers will need to create relatively few new records beyond those that they already retain, and AMS expects that additional costs to live poultry dealers associated with creating and maintaining records will be relatively small.

AMS also estimates the amount of time that broiler growers would take to review the information provided to them by live poultry dealers. Estimates of the amount of time required by live poultry dealers to create and distribute the disclosures and for growers to review the information were provided by AMS subject matter experts. These experts were supervisors and auditors with many years of experience in working with growers and with auditing live poultry dealers for compliance with the Act. Estimates for the value of the time are U.S. Department of Labor (DOL) Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) released May 2022.¹⁴⁰ Occupations used in the estimation

¹³⁹ AMS routinely conducts reviews of live poultry dealers for compliance with the Packers and Stockyards Act and regulations. Some of the applicable regulations in live poultry compliance reviews include § 201.43 Payment and accounting for livestock and live poultry; § 201.49 Requirements regarding scale tickets evidencing weighing of livestock, live poultry, and feed; § 201.71 Scales and or Electronic Evaluation Devices or Systems; accurate weights and measures, repairs, adjustments or replacements after inspection; § 201.73 Scale operators to be qualified; § 201.82 Care and promptness in weighing and handling livestock and live poultry; § 201.95 Inspection of business records and facilities; § 201.100 Records to be furnished poultry growers and sellers; § 201.108–1 Instructions for weighing live poultry or feed; § 201.211 Undue or unreasonable preferences or advantages; § 201.215 Suspension of delivery of birds; § 201.216 Additional capital investments criteria; and § 201.217 Reasonable period of time to remedy a breach of contract among others.

¹⁴⁰ See U.S. Bureau of Labor Statistics, *May 2021 National Occupational Employment and Wage Estimates*, May 2021. https://www.bls.gov/oes/current/oes_nat.htm#00-0000.

were Executive Secretaries and Executive Administrative Assistants (occupation code 43–6011) for live poultry dealers' administrative assistants, General and Operations Managers (Occupation code 11–1021) for live poultry dealers' managers, Lawyers (occupation code 23–1011) for attorneys for live poultry dealers and for growers, Agricultural Workers (occupation code 45–2090), Computer and Information Systems Managers (occupation code 11–3021), Software and Web Developers, Programmers, and Testers (occupation code 15–1250) for information technology managers, Accountants and Auditors (occupation code 13–2011) for accountants for live poultry dealers, Bookkeeping, Accounting, and Auditing Clerks (occupation code 43–3031) for bookkeepers for live poultry dealers, and Management Occupations (occupation code 11–0000) for poultry growers.

AMS marked up the wages 41.82 percent to account for benefits. This results in a cost per hour of \$41.71 ($\$29.41 \times 1.4182$) for live poultry dealers' administrative assistants, \$84.27 ($\$59.42 \times 1.4182$) for live poultry dealers' managers, \$131.38 ($\$92.64 \times 1.4182$) for attorneys for live poultry dealers and for growers, \$92.91 ($\$65.51 \times 1.4182$) for information technology managers, \$56.27 ($\$39.68 \times 1.4182$) for information technology staff, \$49.98 ($\$35.24 \times 1.4182$) for accountants for live poultry dealers, \$27.44 ($\$19.35 \times 1.4182$) for bookkeepers for live poultry dealers, and \$60.70 ($\$42.80 \times 1.4182$) for poultry growers.

Costs of § 201.102

Section 201.102 lists several new disclosure and recordkeeping requirements for live poultry dealers engaged in the production of broilers. These new and extended requirements are in addition to those already included in current § 201.100 that would create additional costs above the *status quo*.

The new provisions in § 201.102 require large live poultry dealers to disclose a true written copy of the growing agreement and a new Disclosure Document any time a live poultry dealer seeks to renew, revise, or replace an existing broiler growing arrangement that does not contemplate modifications to the existing housing specifications. Small live poultry dealers that process less than 2 million pounds of broilers per week are excluded from this disclosure requirement. Before a live poultry dealer enters a broiler growing arrangement that would require an original capital

investment or requires modifications to existing housing, both large and small live poultry dealers must provide a copy of the broiler growing agreement, the housing specifications, a letter of intent, and the new Disclosure Document.

The Disclosure Document requires live poultry dealers to disclose summaries of litigation over the prior five years with any broiler growers, bankruptcy filings, and the live poultry dealer's policy regarding a grower's sale of the farm or assignment of the contract.

Live poultry dealers are required to disclose growers' variable costs if it collects the information. Live poultry dealers are required to establish, maintain, and enforce a governance framework that is reasonably designed to audit the information to ensure accuracy, ensure compliance with the Act, and obtain and file signed receipts certifying that the live poultry dealer provided the required Disclosure Document.

Section 201.102 requires live poultry dealers to include a statement in the disclosure document describing existing policies and procedures, as well as any appeal rights arising from increased lay-out time; sick, diseased, and high early mortality flocks; natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability. If no policy and procedures exist, the live poultry dealer will acknowledge "no policy exists".

The Disclosure Document requires specific financial disclosures to broiler growers. The first required disclosure is a set of tables showing average annual gross payments in U.S. dollars per farm facility square foot in each quintile or mean and standard deviation to broiler growers for each of the 5 previous years, organized by housing specification at each complex. Based on comments received to the proposed rule, AMS has provided instructions in the final rule for calculating average annual gross payments in each quintile or mean and standard deviation. The second required disclosure is a table showing the average annual broiler grower turnover rates for the previous calendar year and the average of the 5 previous calendar years at a company level and at a local complex level.

AMS estimates the aggregate one-time costs of setting up the Disclosure Document will require 4,128

management hours, 1,512 legal hours, 1,016 administrative hours, and 1,079 information technology hours costing \$689,000 in the first year for live poultry dealers to initially review the regulation and set up the Disclosure Document.^{141 142} A more detailed explanation of the one-time first-year costs associated with § 201.102 is in Table 1 in Appendix 1.

AMS expects the ongoing costs of updating and distributing the Disclosure Document to growers renewing or revising existing contracts, new growers entering into contracts, existing growers required to make additional capital investments to require in aggregate 2,061 management hours, 273 legal hours, 836 administrative hours, and 805 information technology hours to produce and distribute to growers the gross payment disclosure information annually for an aggregate annual cost of \$319,000 to live poultry dealers. AMS expects the total cost of producing the annual gross payment disclosure information to consist of \$689,000 in the first year to set up the systems and controls, plus \$319,000 in costs the first year and annually thereafter to compile, distribute, and maintain the disclosure data and documents. Thus, the first-year aggregate total costs of § 201.102 to live poultry dealers are expected to be \$1.0 million and then \$319,000 annually on an ongoing basis. A more detailed explanation of the ongoing costs associated with § 201.102 is in Table 2 in Appendix 1.

With the exception of signing a receipt—itself not mandatory—the rule does not impose any requirement on broiler growers to review the information provided by live poultry dealers. However, to benefit from the Disclosure Document, growers will need to review the information provided. According to AMS subject matter experts, broiler growers will spend the most time on their first review of the Disclosure Document in order to understand the information and then spend less time reviewing subsequent disclosures. For § 201.102 (a)(1), AMS expects that growers will take about one hour to review the documents each time documents are disclosed to them in the first year. Live poultry dealers processing fewer than an average of 2

¹⁴¹ Average hourly wage rates used to estimate dealer costs include a 41.82% markup for benefits and are as follows: Management—\$93.20, Legal—\$113.80, Administrative—\$39.69, and Information Technology—\$82.50.

¹⁴² The one-time set-up costs are not equal to the first-year costs of § 201.102 because the first-year costs include the one-time set-up costs and the ongoing costs that would be incurred in the first year as contracts are renewed, revised, or originated.

million pounds of broilers weekly will be exempt from the reporting requirements, but large live poultry dealers are required to provide disclosures to growers for each of 19,417¹⁴³ contracts that come up for renewal in the first year. AMS expects that 74.71 percent of the contracts will require renewal in the first year. This includes all flock-to-flock contract, one-year contracts, and the portion of the longer-term contracts that will expire in the first year. At an hourly wage of \$60.70 AMS expects the requirements associated with § 201.102 (a)(1) will cost about \$881,000¹⁴⁴ in the aggregate in the first year. After the first year, as broiler growers get familiar with the disclosures, AMS expects growers to spend less time reviewing the documents. AMS expects growers to take about five minutes reviewing each Disclosure Document for an aggregate cost of \$73,000¹⁴⁵ per year.

For the remaining contracts that will not be renewed in the first year, AMS expects that 5 percent of the contracts will be renewed in each of the next five years for a yearly cost of \$59,000.¹⁴⁶

Section 201.102 (a)(2) and (3) will only apply to broiler growers that are new entrants requiring an original capital investment and to broiler growers making significant capital improvements. AMS expects that each of these groups of growers will account for 5 percent of the 20,000¹⁴⁷ contracts live poultry dealers reported in their annual reports to AMS. If growers require one hour at \$60.70 per hour, growers' aggregate costs will be \$60,000¹⁴⁸ for reviewing documents required in § 201.102(a)(2) and an

¹⁴³ Live poultry dealers processing an average of more than 2,000,000 pounds of broiler per week, reported a combined 19,417 broiler contracts in their fiscal year 2021 annual reports to AMS. All live poultry dealers are required to annually file PSD form 3002 "Annual Report of Live Poultry Dealers," OMB control number 0581-0308. The annual report form is available to public on the internet at <https://www.ams.usda.gov/sites/default/files/media/PSF3002.pdf>.

¹⁴⁴ 1 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 74.71 percent of the contracts renewed in the first year = \$880,541.

¹⁴⁵ 1/12 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 74.71 percent of the contracts renewed in the first year = \$73,378.

¹⁴⁶ 1 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 5 percent of the contracts renewed per year = \$58,931 per year.

¹⁴⁷ Live poultry dealers reported a combined total of 19,808 contracts for their fiscal year 2021. Smaller live poultry dealers would not be exempt from reporting requirements in § 201.102(a)(2) or (3).

¹⁴⁸ 1 hour to review each disclosure × \$60.70 per hour × 19,808 contracts × 5 percent of growers that are new entrants = \$60,117.

additional \$60,000¹⁴⁹ for reviewing documents required in § 201.102(a)(3) in the first year and in each successive year.

AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with § 201.102 to be \$1.2 million in the initial year, \$253,000 through year five, and then \$194,000 in each succeeding year.¹⁵⁰ The costs will decline after year five because AMS expects that all contracts will have been renewed by the end of year five and that all growers would have reviewed the Disclosure Document at least one time by year six. The Agricultural Census reports that there were 16,524 contract broiler growers in the United States in 2017.¹⁵¹

The ten-year total costs of § 201.102 to all 42 of the affected live poultry dealers are estimated to be \$3.9 million and the present value (PV) of the ten-year total costs to be \$3.4 million discounted at a 3 percent rate and \$2.9 million at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be \$398,000 and \$411,000 discounted at a 7 percent rate.

The ten-year aggregate total costs of § 201.102 to broiler growers are estimated to be \$3.2 million and the present value of the ten-year total costs to be \$2.8 million discounted at a 3 percent rate and \$2.5 million at a 7 percent rate. The annualized costs of the PV of ten-year costs to broiler growers discounted at a 3 percent rate are expected to be \$331,000 and \$351,000 discounted at a 7 percent rate.

The ten-year aggregate total costs of § 201.102 to live poultry dealers and broiler growers are estimated to be \$7 million. The present value of the ten-year total costs are estimated to be \$6.2 million discounted at a 3 percent rate and \$5.4 million at a 7 percent rate. The annualized costs of the PV of ten-year costs to live poultry dealers and broiler growers discounted at a 3 percent rate are expected to be \$728,000 and \$762,000 discounted at a 7 percent rate.

Costs of § 201.104

Disclosures that are required in § 201.104 are associated with poultry grower ranking systems. At the time of broiler placement, § 201.104 requires

live poultry dealers to disclose information about inputs, such as stocking density, breed and breeder flock information for each flock placed with a grower within 24 hours of flock placement. At the time of settlement, it requires the live poultry dealer to disclose information about the housing specifications for each grower grouped or ranked during the specified period and the distribution of inputs to each grower in each tournament for each flock settled in the tournament system.

AMS estimates that the live poultry dealers' one-time aggregate costs of reviewing the regulation and developing the placement and settlement disclosure documents will require 630 management hours, 462 administrative hours, and 1,764 information technology hours costing \$236,000 in the first year to initially set up the disclosure documents required by § 201.104.¹⁵² A more detailed explanation of the one-time first-year costs associated with § 201.104 is in Table 3 in Appendix 1.

AMS expects the § 201.104 disclosure documents will require an additional 2,640 hours divided evenly among management, administrative, and information technology staff to produce, distribute, and maintain the disclosure documents each year on an ongoing basis for an aggregate annual cost of \$193,000. A more detailed explanation of the ongoing costs associated with § 201.104 is in Table 4 in Appendix 1.

AMS expects the aggregate cost of producing the § 201.104 pre-flock placement and settlement disclosure documents to consist of \$236,000, in the first year to review the regulation and to set up the systems and controls, plus \$193,000 in costs the first year and annually thereafter to compile, distribute, and maintain the placement and settlement disclosure documents. Thus, the aggregate first-year total costs to live poultry dealers of § 201.104 are expected to be \$429,000 and then \$193,000 annually on an ongoing basis.

Section § 201.104(b) concerns disclosures of inputs placed with broiler growers in tournament settlement systems. Live poultry dealers will be required to disclose information about inputs, such as feed, medication, chicks, etc. for each flock placed with a grower. AMS expects that, the first time a grower receives the disclosure, he or she will require about 10 minutes to review each of the disclosure's documents. At \$60.70 per hour, the first disclosure

document will cost growers \$134,000.¹⁵³ After reviewing the documents the first time, AMS expects that growers will need only 5 minutes to review successive disclosures. Because growers average 4.5 flocks per year, AMS expects that reviewing the disclosure documents concerning inputs will cost in the aggregate an additional \$234,000¹⁵⁴ for the remaining 3.5 flocks in the first year and \$301,000¹⁵⁵ for the 4.5 flocks in each successive year.

Section 201.104(c) concerns disclosures about the group of growers in settlement groups in tournament settlement systems. Live poultry dealers are required to disclose information about growers in each tournament for each flock settled in tournament system. AMS expects that the cost to growers associated with § 201.104(c) will be identical to the costs of reviewing the disclosures required in § 201.104(b). Aggregate costs would be \$134,000¹⁵⁶ for the disclosures reviewed. AMS expects that reviewing the disclosure documents will cost an additional \$234,000¹⁵⁷ for the remaining 3.5 flocks in the first year and \$301,000¹⁵⁸ for the 4.5 flocks in each successive year.

AMS estimates growers' aggregate costs for reviewing disclosures associated with § 201.104 to be \$736,000 in the first year and \$602,000 in each subsequent year. AMS expects that broiler growers will spend the most time on their first review of the placement and settlement disclosures in order to understand the information, with less time for each subsequent review.

The ten-year aggregate total costs of § 201.104 to live poultry dealers are estimated to be \$2.2 million and the present value of the ten-year total costs to be \$1.9 million discounted at a 3 percent rate and \$1.6 million at a 7 percent rate. The annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be \$219,000 and \$224,000 discounted at a 7 percent rate.

¹⁵³ 1/6 hours × \$60.70 per hour × 16,524 broiler growers × 80 percent of broilers raised in tournament systems = \$133,731.

¹⁵⁴ 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 3.5 additional flocks in the first year × 80 percent of broilers raised in tournament systems = \$234,029.

¹⁵⁵ 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 4.5 flocks per year × 80 percent of broilers raised in tournament systems = \$300,894 per year.

¹⁵⁶ 1/6 hours × \$60.70 per hour × 16,524 broiler growers × 80 percent of broilers raised in tournament systems = \$133,731.

¹⁵⁷ 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 3.5 additional flocks in the first year × 80 percent of broilers raised in tournament systems = \$234,029.

¹⁵⁸ 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 4.5 flocks per year × 80 percent of broilers raised in tournament systems = \$300,894 per year.

¹⁴⁹ 1 hour to review each disclosure × \$60.70 per hour × 19,808 contracts × 5 percent of growers that require significant housing upgrades = \$60,117.

¹⁵⁰ The average hourly wage rate used to estimate broiler grower costs includes a 41.56% markup for benefits and is as follows: Management—\$70.94.

¹⁵¹ USDA, NASS. 2017 Census of Agriculture: United States Summary and State Data, (April 2019).

¹⁵² IT staff will be required to modify integrator information systems to compile information from past settlements to calculate the information required to be disclosed to growers.

The ten-year aggregated total costs of § 201.104 to broiler growers are estimated to be \$6.2 million and the present value of the ten-year total costs to be \$5.3 million discounted at a 3 percent rate and \$4.4 million at a 7 percent rate. The annualized costs of the PV of ten-year costs to broiler growers discounted at a 3 percent rate are expected to be \$617,000 and \$620,000 discounted at a 7 percent rate.

The costs from § 201.104 are higher for broiler growers than for live poultry dealers. There are two reasons for this. First, the rule only affects 42 live poultry dealers while it affects 16,524 broiler growers. Secondly, the primary costs to the live poultry dealers are the development of the placement and settlement disclosures, while the ongoing costs to distribute and maintain them are relatively small. Each broiler grower would receive and review both a placement and settlement disclosure for each flock placed and then settled in each tournament. Thus, there are many broiler growers who would receive and review the placement and settlement disclosures with each flock every year, which explains the higher cost relative to live poultry dealers. The relative higher cost to the broiler growers would be more than offset by the benefits of the extra information they can use to make financial business decisions. The benefits will be discussed in a later section.

The ten-year aggregate total costs of § 201.104 to live poultry dealers and broiler growers are estimated to be \$8.3 million and the present value of the ten-year total costs to be \$7.1 million discounted at a 3 percent rate and \$5.9 million at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers and broiler growers discounted at a 3 percent rate are expected to be \$836,000 and \$844,000 discounted at a 7 percent rate.

Combined Costs of §§ 201.102 and 201.104

Combined costs to live poultry dealers for §§ 201.102 and 201.104 are expected to be \$1.4 million in the first year, and \$512,000 in subsequent years. These combined costs are also reported above the Paperwork Reduction Act section as the combined costs to live poultry dealers for compliance with the reporting and recordkeeping requirements of §§ 201.102 and 201.104. The combined costs for broiler growers are expected to be \$1.9 million in the first year, \$854,000 in years two through five, and \$795,000 after year five on an ongoing basis.

The ten-year aggregate combined costs of §§ 201.102 and 201.104 to live poultry dealers are estimated to be \$6.0 million and the present value of the ten-year total costs to be \$5.3 million discounted at a 3 percent rate and \$4.5 million at a 7 percent rate. The annualized aggregate combined costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be \$617,000 and \$635,000 discounted at a 7 percent rate.

The ten-year aggregate combined costs of §§ 201.102 and 201.104 to broiler growers are estimated to be \$9.3 million and the present value of the ten-year total costs to be \$8.1 million discounted at a 3 percent rate and \$6.8 million at a 7 percent rate. The annualized aggregate combined costs of the PV of ten-year costs to broiler growers discounted at a 3 percent rate are expected to be \$948,000 and \$971,000 discounted at a 7 percent rate. The costs to broiler growers from §§ 201.102 and 201.104 are higher for broiler growers than live poultry dealers for the reasons discussed above.

The ten-year aggregate combined costs of §§ 201.102 and 201.104 to live poultry dealers and broiler growers are estimated to be \$15.4 million and the present value of the ten-year aggregate combined costs to be \$13.3 million discounted at a 3 percent rate and \$11.3 million at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers and broiler growers discounted at a 3 percent rate are expected to be \$1.6 million and \$1.6 million discounted at a 7 percent rate.

Benefits of §§ 201.102 and 201.104

As discussed above, AMS will estimate the industry benefits from §§ 201.102 and 201.104 in two parts, one quantifiable and the other non-quantifiable. For the quantifiable part, AMS will provide a minimum value of the combined benefit to broiler growers from the additional information in the disclosures required under §§ 201.102 and 201.104 and will refer to this minimum benefit as $G_{\min}$. AMS first estimates $G_{\min}$ and discusses the non-quantifiable benefits of the final rules immediately below and after the discussion of the benefit estimates.

Poultry growers are expected to benefit from the information in two ways. First, growers will benefit as live poultry dealers lose some potential market power. Second, the Disclosure Documents will provide growers more information on their anticipated revenue variability than they currently have, which will assist in supporting future income projections. This

additional information can give growers greater economic and financial certainty. While the economic literature does not address the relationship between asymmetric information and market power in the relationship among broiler growers and live poultry dealers, or in any directly analogous relationships, firms with information that other market participants do not have can command considerable monopoly and monopsony power.¹⁵⁹ As an example of the monopsony power of information, imperfect information in the market about an employee's training level limits the wages that a trained worker can obtain in the outside market, and it gives monopsony power to the employer that supported the training.¹⁶⁰ This concept extends to the grower-live poultry dealer relationship, substituting for training the marketing and production information about the contract grower that one live poultry dealer possesses but which is not available to other live poultry dealers, thus lowering the open market value of the grower's services. Further, in this example the grower has limited information on returns to other growers in their market due to the live poultry dealer's ability to shield this information. Thus, it is more difficult for the grower to make business decisions such as choosing whether to deal with the current live poultry dealer or sign a contract with another live poultry dealer, should one be available in the region.

In an example of large grain traders that have oligopsony and oligopoly market power, one analysis finds that large grain traders manipulate prices and market information.¹⁶¹ The analysis contends that these major firms move prices to their benefit by taking advantage of information they alone possess, *e.g.*, information on foreign subsidiaries, contract positions, the price-reporting system, export data, and commodity exchanges. Likewise, live poultry dealers have information they alone possess and can use to their advantage.

In a third example specific to broiler contracting, but with information exchange not being explicitly addressed, live poultry dealers will have monopsony-oligopsony power in a

¹⁵⁹ Allen, B. 1990. "Information as an Economic Commodity," *American Economic Review*, Vol. 80:2, pages 268–273.

¹⁶⁰ Acemoglu, D. and J. Piskchke. 1998. "Why do Firms Train? Theory and Evidence," *Quarterly Journal of Economics* Vol 113(1):79–119.

¹⁶¹ See Perloff, J., and G. Rausser. 1983. "The Effect of Asymmetrically Held Information and Market Power in Agricultural Markets", *American Journal of Agricultural Economics* Vol 65(2): 366–372.

given geographical area to the extent that growers have limited opportunity to contract with other live poultry dealers. Grower capital investments (poultry housing and specialized equipment) have little use outside of raising broilers. Being aware of the possibility that they may be held-up by live poultry dealers, growers will sub-optimally invest in specific assets.¹⁶² Implicitly then, knowledge of the possibility that they will be held-up will affect the growers' capital investment decisions.

If the market were less oligopsonistic, with live poultry dealers facing more competition between themselves for growers, individual live poultry dealers would have to make a case for why growers should grow for them rather than for competing live poultry dealers. In the extreme case of perfect competition, all price and other market information is known by all participants. While the nature of the broiler market means full competition and hence full market information cannot be achieved, the Disclosure Document does include the grower turnover rates and quintiles of average annual gross payment per square foot for the calendar year for the complex. Absent the Disclosure Document from the live poultry dealer, the typical grower is unlikely to have this market information. With this information, the grower can make more informed business decisions, including whether to move to another live poultry dealer upon contract completion, thus lowering the current live poultry dealer's market power, at least when alternative live poultry dealers are available. The information on grower turnover rates from the Disclosure Document should give the grower a better idea of their probability of being held-up, thus better informing their capital investment decisions. While lowering information asymmetry increases benefits to growers, live poultry dealers will suffer losses by losing market power.

AMS does not have the data necessary for estimating the economic impacts of

a loss of market power on the part of live poultry dealers due to information transfer nor the benefits to growers. However, according to basic economic principles, increasing competition—i.e., reducing the market power advantage of a buyer or seller—leads to increases in economic efficiency in the market. Based on these principles, we expect that a reduction in dealer market power would, if it occurs, result in net economic benefits. AMS also expects the grower to benefit simply from having more information on the potential variability of returns, even if average returns do not change. According to economic principles of expected utility, a risk averse producer will benefit economically from a reduction in revenue variability.¹⁶³ Purely addressing information exchange, the live poultry dealer is not losing the information it supplies the grower via the Disclosure Document. The live poultry dealer's quantified costs are associated with creating the Disclosure Document.

The act of supplying past revenue information in the disclosures may alter the statistical distribution of revenue the grower thinks they will face (including statistics that describe the distribution, such as mean and variance), mostly likely increasing expected mean revenues. By simply having more market information (e.g., the revenue quintiles from the Disclosure Document), presumably the grower will be able to place a smaller variability on their projected revenue than they would with less information. If they are risk averse, by the principle of expected utility, they will receive an economic benefit from being able to place a lower variability on his projected revenue. AMS estimates $G_{\min}$ as the combined benefits to growers of §§ 201.102 and 201.104 from the reduction in profit uncertainty due to obtaining the revenue information from the Disclosure Document. AMS expects the majority of the benefits of reduced profit uncertainty will result from additional information in the financial disclosures

under § 201.102 as these disclosures provide revenue projections at different performance percentiles over different housing types. AMS expects that the additional information received in placement and settlement disclosures under § 201.104 regarding the effects of input variability on revenue variability will also result in reduced profit uncertainty, though to a lesser extent than the financial disclosures. AMS was not able to allocate the benefits between §§ 201.102 and 201.104 and presents just the total combined minimum quantifiable benefits of both rules.

Given assumptions about the level of risk aversion of the producer, the distribution of a contract grower's revenue, and the grower's utility function,¹⁶⁴ it is possible to calculate a grower's benefits of decreased revenue uncertainty associated with greater transparency. AMS relied on an empirical approach to estimate the minimum benefits, defined as a Risk Premium (RP), to contract broiler growers of a range of reductions in the variability of their net revenue.¹⁶⁵

The following table presents the $G_{\min}$ benefit estimates based on RP estimates for the first year for several scenarios of reduction in the variability of net revenue and two assumptions for a risk aversion premium (RAP) and two assumptions for how risk aversion changes with wealth. For the latter, constant absolute risk aversion (CARA) assumes that the grower's risk aversion does not change as wealth increases. Decreasing absolute risk aversion (DARA) assumes the grower's risk aversion increases as wealth decreases. Another possibility is that the grower's risk aversion is increasing with wealth (IARA). While no evidence exists one way or another for how the risk preference of broiler contract growers changes with wealth, the agricultural economics literature generally assumes DARA over IARA.

¹⁶⁴ A utility function is an economic concept that measures an individual's preferences over a set of goods and services.

¹⁶⁵ AMS prepared a technical appendix (Appendix 2) that provides an explanation of the empirical approach used to estimate the Risk Premium and is included at the end of this document.

¹⁶² Vukina, Tom, and Poramet Leegommonchai. "Oligopsony Power, Asset Specificity, and Hold-Up: Evidence from the Broiler Industry." *American Journal of Agricultural Economics* 88 (2006).

¹⁶³ Garcia, P., B. Adam, and R. Hauser. 1994. The Use of Mean-Variance for Commodity Futures and Options Hedging Decisions". *Journal of Agricultural and Resource Economics*, 19(1): 32–45.

TABLE 2—MINIMUM QUANTIFIABLE BENEFITS, $G_{\min}$, (RISK PREMIUM) TO CONTRACT GROWERS OF REDUCTIONS IN NET REVENUE VARIABILITY

Grower risk aversion (risk aversion premium)	Reduction in coefficient of variation of net revenue ^b			
	1%	2%	5%	10%
One year value				
Moderate (20%)	\$1,350,000	\$2,690,000	\$6,610,000	\$12,840,000
High (40%)	3,210,000	6,380,000	15,700,000	30,540,000
DARA, High/Moderate	1,839,000	3,655,000	8,966,000	17,365,000
PV over 10 years discounted at 3%				
Moderate (20%)	11,515,774	22,946,246	56,384,641	109,527,804
High (40%)	27,381,951	54,422,694	133,924,185	260,512,395
PV over 10 years discounted at 7%				
Moderate (20%)	9,481,835	18,893,434	46,425,874	90,182,787
High (40%)	22,545,697	44,810,450	110,270,230	214,500,180

^a The risk aversion premium (RAP) varies between 0 and 100 percent of the potential lost revenue, with higher values reflecting higher risk aversion. A value of 20 percent is considered a reasonable reflection of moderate aversion to risk and 40 percent being reflection of high-risk aversion.

^b The coefficient of variation of net revenue is a standardized measure of variability, and is defined as the standard deviation of net revenue divided by its mean.

The RAP varies between 0 and 100 percent of the potential lost revenue, with higher values reflecting higher risk aversion. The RP estimates assume that mean net returns are unchanged, *i.e.*, this exercise is solely valuing the reduction in grower revenue uncertainty. AMS estimates benefits under two CARA scenarios, one where the growers have moderate risk aversion, with one with a RAP of 20 percent and a high RAP of 40 percent, using contract producer revenue data for 2020. The parameters used for the DARA scenario are chosen such that the grower has a RAP of 40 percent when wealth is zero, and a RAP of 20 percent at mean wealth.

As the above table shows, one-year benefits range from \$1.4 million with a 1 percent reduction in the variability of net revenue when moderate risk aversion is assumed to \$31 million with a 10 percent reduction in the variability of net revenue when high risk aversion is assumed. AMS assumes growers will receive the same benefit of reduced variability of net revenue every year in which they contract. Discounting these annual values over ten years leads to a range in benefit estimates from \$9.5 million to \$261 million depending on the combination of risk aversion assumption, reduction in variability in net returns, and the discount rate.

With assumptions of moderate risk aversion and that the rule would lead to a two percent reduction in the coefficient of variation in net revenue, the benefit estimate is \$19 million with a discount rate of seven percent PV. The

analysis summarized in Table 2 assumes that the grower maximizes an absolute risk aversion (ARA) utility function, whether CARA or DARA. The alternative to an ARA function is a relative risk aversion function (RRA) (see Appendix 2 for a discussion of ARA and RRA).

As discussed above, §§ 201.102 and 201.104 have additional, other non-quantified benefits to the industry, referred to as B_o . First, if broiler growers did not expect to receive at least as much in benefits as it takes in time to review the disclosures, they would not review them. Some of these benefits are captured in the quantitative estimates of the value of reduction in revenue uncertainty, but there are others benefits the growers would likely expect from these disclosures. The other benefits would arise from a reduction in risk of retaliation and the potential for fraud and deception by live poultry dealers. The additional information to growers may lead to a more optimal allocation of capital and labor resources (such as increased capital investment through the reduction in perceived hold-up risk, and more informed decisions on whether and with whom to enter into a growing arrangement), leading to improved efficiencies across the entire industry.

The combined minimum benefits for broiler growers, $G_{\min}$, from reduced revenue uncertainty are expected to be \$2.7 million in the first year and on an

ongoing basis.¹⁶⁶ The ten-year total minimum benefits of §§ 201.102 and 201.104 to broiler growers are estimated to be \$26.9 million and the present value of the ten-year total minimum benefits to be \$22.9 million discounted at a 3 percent rate and \$18.9 million at a 7 percent rate. The annualized PV of ten-year minimum benefits to broiler growers discounted at 3 and 7 percent rates are expected to be \$2.7 million. The total benefits to the industry, B_T , from §§ 201.102 and 201.104 would be the sum of the minimum benefits to all growers, $G_{\min}$, and the other non-quantified benefits to the industry from growers' risk reductions and a more efficient allocation of labor and capital, B_o . The values appear in Table 3 in the next section. AMS expects the total benefits to the industry from the rule—as is the case for total costs, noted above—will be very small in relation to the total value of industry production.

Chicken sales in the U.S. for 2019 were approximately \$58.6 billion. Total quantified cost of §§ 201.102 and 201.104 is estimated to be greatest in the first year at \$3.4 million, or 0.0006 percent of revenues. A relatively small improvement in efficiency from improved allocation of capital and labor resources in the industry would more than outweigh the cost of this rule.

¹⁶⁶ All benefits estimates assume a moderate (20 percent) RAP and a 2 percent reduction in coefficient of variation of net revenue.

Total Quantified Combined Costs and Benefits of §§ 201.102 and 201.104

The cost and benefit estimates of §§ 201.102 and 201.104 presented above appear in the following table.

TABLE 3—QUANTIFIABLE COSTS AND BENEFITS ¹⁶⁷ OF §§ 201.102 AND 201.104

Preferred alternative	Cost			Benefits	
	Live poultry dealers	Broiler growers	Industry total	Individual grower (G _{min}) ^a	Total industry (B _T)
§ 201.102:					
First-Year	\$1,008,000	\$1,180,000	\$2,188,000	G _{min}	G _{min} + B _O
Ten-Year Total	3,881,000	3,158,000	7,039,000	G _{min}	G _{min} + B _O
PV of Ten-Year Discounted at 3 Percent	3,392,000	2,822,000	6,214,000	G _{min}	G _{min} + B _O
PV of Ten-Year Discounted at 7 Percent	2,886,000	2,468,000	5,354,000	G _{min}	G _{min} + B _O
PV of Ten-Year Annualized at 3 Percent	398,000	331,000	728,000	G _{min}	G _{min} + B _O
PV of Ten-Year Annualized at 7 Percent	411,000	351,000	762,000	G _{min}	G _{min} + B _O
§ 201.104:					
First-Year	429,000	736,000	1,164,000	G _{min}	G _{min} + B _O
Ten-Year Total	2,162,000	6,152,000	8,314,000	G _{min}	G _{min} + B _O
PV of Ten-Year Discounted at 3 Percent	1,872,000	5,263,000	7,135,000	G _{min}	G _{min} + B _O
PV of Ten-Year Discounted at 7 Percent	1,573,000	4,352,000	5,925,000	G _{min}	G _{min} + B _O
PV of Ten-Year Annualized at 3 Percent	219,000	617,000	836,000	G _{min}	G _{min} + B _O
PV of Ten-Year Annualized at 7 Percent	224,000	620,000	844,000	G _{min}	G _{min} + B _O
§§ 201.102 and 201.104:					
First-Year	1,437,000	1,916,000	3,353,000	2,690,000	G _{min} + B _O
Ten-Year Total	6,043,000	9,310,100	15,353,000	26,900,000	G _{min} + B _O
PV of Ten-Year Discounted at 3 Percent	5,264,000	8,085,000	13,349,000	22,946,000	G _{min} + B _O
PV of Ten-Year Discounted at 7 Percent	4,459,000	6,820,000	11,279,000	18,893,000	G _{min} + B _O
PV of Ten-Year Annualized at 3 Percent	617,000	948,000	1,565,000	2,690,000	G _{min} + B _O
PV of Ten-Year Annualized at 7 Percent	635,000	971,000	1,606,000	2,690,000	G _{min} + B _O

^a AMS estimates G_{min} as the combined benefits to growers of §§ 201.102 and 201.104.

^b Estimates do not include unquantified costs of risk increases.

The quantified costs and minimum quantifiable benefits to the industry in the first year are \$3.4 million and \$2.7 million, respectively. The quantified costs exceed the minimum quantifiable benefits in the first year only. The minimum quantifiable benefits exceed the quantified costs in the ten-year total, the PVs on the ten totals, the annualized PV of ten-year totals. This is a function of quantified costs being higher at the beginning of the program and falling off over time while the quantified benefits remain constant over the entire estimation period.

AMS expects that the net benefits to the industry from §§ 201.102 and 201.104 will be very small in relation to the total value of industry production. Thus, AMS expects the impacts of the net benefits on total industry supply to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

Costs and Benefits of the Small Business Exemption Alternative

AMS estimated costs and benefits for an alternative to the preferred option for

the rule. It would be the same as §§ 201.102 and 201.104, with the exception that the alternative would exempt live poultry dealers that process less than 2 million pounds of broilers per week from all provisions of the two final rules. In the preferred alternative, small businesses would be exempt from the disclosure requirements in § 201.102(a)(1) only. The rest of the provisions of §§ 201.102 and 201.104 would still apply.

The costs associated with this alternative are similar, but smaller than the preferred option. According to annual reports that live poultry dealers file with AMS,¹⁶⁸ small live poultry dealers processing broilers make up 35.7 percent of all live poultry dealers but have only 2 percent of broiler growing contracts. The estimation of the costs and benefits of the small business exemption alternative will follow the same format as the preferred alternative.

¹⁶⁸ All live poultry dealers are required to annually file PSD form 3002 "Annual Report of Live Poultry Dealers," OMB control number 0581-0308. The annual report form is available to public on the internet at <https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf>.

Costs of § 201.102—Small Business Exemption Alternative

AMS estimates the one-time costs for live poultry dealers of setting up the Disclosure Document for the small business exemption alternative would require 2,914 management hours, 972 attorney hours, 722 administrative hours, and 884 information technology hours costing \$486,000 in the first year for live poultry dealers to set up the Disclosure Document.¹⁶⁹ A more detailed explanation of the one-time first-year costs associated with the alternative § 201.102 is in Table 1 in Appendix 3.

AMS expects the ongoing costs for live poultry dealers for the small business exemption alternative of updating and distributing the Disclosure Document to broiler growers renewing or revising existing contracts, new growers entering into contracts, existing growers required to make additional capital investments to require 1,617 management hours, 176 legal hours, 726

¹⁶⁹ As discussed previously, the one-time set-up costs are not equal to the first-year costs of § 201.102 because the first-year costs include the one-time set-up costs and the ongoing costs that would be incurred in the first year as contracts are renewed, revised, or originated.

¹⁶⁷ Ibid.

administrative hours, and 733 information technology hours to produce, distribute to growers, and maintain the Disclosure Document annually for an annual cost of \$258,000. A more detailed explanation of the ongoing costs associated with the alternative § 201.102 is in Table 2 in Appendix 3.

AMS expects the total cost of producing the disclosure information to be \$486,000 in the first year to set up the systems and controls, plus \$258,000 in costs the first year and annually thereafter to compile and distribute the disclosure data and documents. Thus, the first-year total costs of § 201.102 for live poultry dealers are expected to be \$743,000 for the small business exemption alternative and then \$258,000 annually on an ongoing basis.

For alternative § 201.102(a)(1), AMS expects that broiler growers would take about 1 hour to review the documents each time documents are disclosed to them in the first year. The alternative would exempt live poultry dealers processing fewer than an average of 2 million pounds of broilers weekly from the reporting requirements, but large live poultry dealers would be required to provide disclosures to broiler growers for each of 19,417¹⁷⁰ contracts that come up for renewal in the first year. AMS expects that 74.71 percent of the contracts will require renewal in the first year. This includes all flock-to-flock contracts, one-year contracts, and the portion of the longer-term contracts that will expire in the first year. At a wage of \$60.70, AMS expects the requirements associated with § 201.102 (a)(1) will cost broiler growers about \$881,000¹⁷¹ in the first year in the aggregate. After the first year, as broiler growers get familiar with the disclosures, AMS expects growers to spend less time reviewing the documents. AMS expects broiler growers to take about five minutes reviewing each Disclosure Document for an aggregate cost of \$73,000¹⁷² per year.

For the remaining contracts that will not be renewed in the first year, AMS expects that 5 percent of the contracts

will be renewed in each of the next 5 years for a yearly cost of \$59,000.¹⁷³

Paragraphs 201.102(a)(2) and (3) would only apply to broiler growers that are new entrants with original capital investments and to growers making significant upgrades with additional capital investments to broiler houses. AMS expects that each of these groups of broiler growers will account for 5 percent of the 19,417 broiler growing contracts live poultry dealers reported in their annual reports¹⁷⁴ to AMS. If growers require one hour at \$60.70 per hour, growers' aggregate costs would be \$59,000¹⁷⁵ for reviewing documents required in § 201.102 (a)(2) and an additional \$59,000¹⁷⁶ for reviewing documents required in § 201.102 (a)(3) in the first year and in each successive year.

AMS estimates broiler growers' aggregate costs for reviewing the Disclosure Document associated with § 201.102 for the small business exemption alternative to be \$1.2 million in the initial year, \$250,000 through year five, and then \$191,000 in each succeeding year.

The ten-year aggregate total costs for the live poultry dealers of § 201.102 for the small business exemption alternative are estimated to be \$3.1 million. The present value of the ten-year aggregate total costs of § 201.102 to live poultry dealers are estimated to be \$2.7 million discounted at a 3 percent rate and \$2.3 million at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be \$313,000 and \$322,000 discounted at a 7 percent rate.

The ten-year aggregate total costs to broiler growers of § 201.102 for the small business exemption alternative are estimated to be \$3.1 million. The present value of the ten-year total costs of § 201.102 to broiler growers are estimated to be \$2.8 million discounted at a 3 percent rate and \$2.4 million at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to broiler growers discounted at a 3 percent rate are expected to be

\$328,000 and \$349,000 discounted at a 7 percent rate.

The first-year aggregate total costs to broiler growers and live poultry dealers of § 201.102 for the small business exemption alternative are estimated to be \$1.9 million and the ten-year aggregate total costs of § 201.102 for the small business exemption alternative for live poultry dealers and broiler growers are estimated to be \$6.2 million. The present value of the ten-year aggregate total costs of § 201.102 to live poultry dealers and broiler growers are estimated to be \$5.5 million discounted at a 3 percent rate and \$4.7 million at a 7 percent rate. The annualized costs of the PV of ten-year aggregate costs to live poultry dealers and broiler growers discounted at a 3 percent rate are expected to be \$641,000 and \$671,000 discounted at a 7 percent rate.

Costs of § 201.104—Small Business Exemption Alternative

AMS estimates that the aggregate one-time costs of developing the placement and settlement disclosure documents for live poultry dealers under the small business exemption alternative would require 405 management hours, 297 administrative hours, and 1,134 information technology hours costing \$152,000 in the first year to initially set up the placement and settlement disclosure documents. A more detailed explanation of the one-time first-year costs associated with the alternative § 201.104 is in Table 3 in Appendix 3.

AMS expects the disclosure documents to require an additional 1,697 hours divided evenly among management, administrative, and information technology staff to produce, distribute, and maintain the disclosure documents each year on an ongoing basis for an annual cost of \$124,000. Thus, the aggregate first-year costs are estimated to be \$276,000, including the one-time set up costs and the costs of producing and distributing the placement and settlement disclosures. A more detailed explanation of the ongoing costs associated with the alternative § 201.104 is in Table 4 in Appendix 3.

For the alternative § 201.104(b), live poultry dealers would be required to disclose information about inputs, such as stocking density, breed and breeder flock information for each flock placed with a grower. AMS expects that, the first time a broiler grower receives the disclosure, he or she would require about 10 minutes to review each of the disclosure's documents. At \$60.70 per hour, the first disclosure document would cost growers \$86,000 in the

¹⁷⁰ Live poultry dealers processing an average of more than 2,000,000 pounds of broilers per week, reported a combined 19,417 broiler contracts in their fiscal year 2021 annual reports to AMS. All live poultry dealers are required to annually file PSD form 3002 "Annual Report of Live Poultry Dealers," OMB control number 0581-0308. The annual report form is available to public on the internet at <https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf>.

¹⁷¹ 1 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 74.71 percent of the contracts renewed in the first year = \$880,541.

¹⁷² 1/12 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 74.71 percent of the contracts renewed in the first year = \$73,386.

¹⁷³ 1 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 5 percent of the contracts renewed per year = \$58,929 per year.

¹⁷⁴ All live poultry dealers are required to annually file PSD form 3002 "Annual Report of Live Poultry Dealers," OMB control number 0581-0308. The annual report form is available to public on the internet at <https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf>.

¹⁷⁵ 1 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 5 percent of growers that are new entrants = \$58,929.

¹⁷⁶ 1 hour to review each disclosure × \$60.70 per hour × 19,417 contracts × 5 percent of growers that require significant housing upgrades = \$58,929.

aggregate.¹⁷⁷ After the reviewing the documents the first time, AMS expects that broiler growers would only need 5 minutes to review successive disclosures. Since growers average 4.5 flocks per year, AMS expects that reviewing the disclosure documents concerning inputs would cost an additional \$150,000¹⁷⁸ for the remaining 3.5 flocks in the first year and \$193,000¹⁷⁹ for the 4.5 flocks in each successive year.

Alternative § 201.104(c) concerns disclosures about the group of broiler growers in settlement groups in broiler tournament systems. Live poultry dealers would be required to disclose information about the housing specifications for each grower grouped or ranked during the specified period and the distribution of inputs to each grower in each tournament for each flock settled in tournament system. AMS expects that the cost to broiler growers associated with § 201.104(c) will be identical to the costs of reviewing the disclosures required in § 201.104(b). Aggregate costs would be \$86,000.¹⁸⁰ for the disclosures reviewed. AMS expects that reviewing the disclosure documents would cost, in the aggregate, an additional \$150,000¹⁸¹ for the remaining 3.5 flocks in the first year and \$193,000¹⁸² for the 4.5 flocks in each successive year.

AMS estimates growers' aggregate costs for reviewing the placement and settlement disclosures associated with § 201.104 under the small business exemption alternative to be \$473,000 in the first year and \$387,000 in each subsequent year. As discussed previously, AMS expects that broiler

growers would spend the most time on their first review of the placement and settlement disclosures in order to understand the information, with less time for each subsequent review.

The ten-year aggregate total costs to live poultry dealers of § 201.104 under the small business exemption alternative are estimated to be \$1.4 million. The present value of the aggregate ten-year total costs of § 201.104 to live poultry dealers are estimated to be \$1.2 million discounted at a 3 percent rate and \$1.0 million at a 7 percent rate. The annualized costs of the PV of aggregate ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be \$141,000 and \$144,000 discounted at a 7 percent rate.

The ten-year aggregate total costs to broiler growers of § 201.104 for the small business exemption alternative are estimated to be \$4.0 million. The present value of the aggregate ten-year total costs of § 201.104 to broiler growers are estimated to be \$3.4 million discounted at a 3 percent rate and \$2.8 million at a 7 percent rate. The annualized aggregate costs of the PV of ten-year costs to broiler growers discounted at a 3 percent rate are expected to be \$397,000, and \$398,000 discounted at a 7 percent rate.

The first-year aggregate total costs to live poultry dealers and broiler growers of § 201.104 under the small business exemption alternative are estimated to be \$749,000 and the ten-year aggregate total costs are estimated to be \$5.3 million. The present value of the ten-year aggregate total costs of § 201.104 to live poultry dealers and broiler growers are estimated to be \$4.6 million discounted at a 3 percent rate and \$3.8 million at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers and broiler growers discounted at a 3 percent rate are expected to be \$538,000 and \$542,000 discounted at a 7 percent rate.

Combined Costs of §§ 201.102 and 201.104—Small Business Exemption Alternative

Aggregate combined costs to live poultry dealers for §§ 201.102 and 201.104 for the small business exemption alternative are expected to be \$1.0 million in the first year, and \$381,000 in subsequent years. The combined costs for broiler growers are expected to be \$1.6 million in the first year, \$637,000 in years two through five, and \$578,000 after year five on an ongoing basis.

The aggregate ten-year combined quantified costs to live poultry dealers of §§ 201.102 and 201.104 for the small

business exemption alternative are estimated to be \$4.5 million and the present value of the ten-year combined costs are \$3.9 million discounted at a 3 percent rate and \$3.3 million at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers discounted at a 3 percent rate are expected to be \$454,000 and \$466,000 discounted at a 7 percent rate.

The aggregate ten-year combined costs to broiler growers of §§ 201.102 and 201.104 for the small business exemption alternative are estimated to be \$7.1 million and the present value of the ten-year combined costs are estimated to be \$6.2 million discounted at a 3 percent rate and \$5.2 million at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to broiler growers discounted at a 3 percent rate are expected to be \$725,000 and \$747,000 discounted at a 7 percent rate. As under the preferred alternative, the costs to broiler growers from §§ 201.102 and 201.104 under the small business exemption alternative would be higher for broiler growers than live poultry dealers for the reasons discussed above.

The aggregate combined costs to live poultry dealers and broiler growers of §§ 201.102 and 201.104 under the small business exemption alternative are estimated to be \$2.7 million in the first year, \$1.0 million in years two through five, and \$960,000 in years six and beyond. The aggregate ten-year combined costs of §§ 201.102 and 201.104 for the small business exemption alternative for live poultry dealers and broiler growers are estimated to be \$11.5 million and the present value of the ten-year combined costs are estimated to be \$10.1 million discounted at a 3 percent rate and \$8.5 million at a 7 percent rate. The aggregate annualized costs of the PV of ten-year costs to live poultry dealers and broiler growers discounted at a 3 percent rate are expected to be \$1.2 million and \$1.2 million discounted at a 7 percent rate. Additionally, there may be costs of bearing increased risk that AMS has not estimated of increasing transparency in broiler grower contracting and tournaments, which would have different effects on more or less diversified live poultry dealers.

Combined Benefits of §§ 201.102 and 201.104—Small Business Exemption Alternative

According to PSD records, only 2 percent of broiler growing contracts are between small live poultry dealers and broiler growers. Thus, 98 percent of all broiler growers will receive the benefits

¹⁷⁷ 1/6 hours × \$60.70 per hour × 16,524 broiler growers × 80 percent of broilers raised in tournament systems × 64.3 percent of live poultry dealers that process more than 2,000,000 head per week = \$85,970.

¹⁷⁸ 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 3.5 additional flocks in the first-year × 80 percent of broilers raised in tournament systems × 64.3 percent of live poultry dealers that process more than 2,000,000 head per week = \$150,447.

¹⁷⁹ 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 4.5 flocks per year × 80 percent of broilers raised in tournament systems × 64.3 percent of live poultry dealers that process more than 2,000,000 head per week = \$193,432 per year.

¹⁸⁰ 1/6 hours × \$60.70 per hour × 16,524 broiler growers × 80 percent of broilers raised in tournament systems × 64.3 percent of live poultry dealers that process more than 2,000,000 head per week = \$85,970.

¹⁸¹ 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 3.5 additional flocks in the first-year × 80 percent of broilers raised in tournament systems × 64.3 percent of live poultry dealers that process more than 2,000,000 head per week = \$150,447.

¹⁸² 1/12 hours × \$60.70 per hour × 16,524 broiler growers × 4.5 flocks per year × 80 percent of broilers raised in tournament systems × 64.3 percent of live poultry dealers that process more than 2,000,000 head per week = \$193,432 per year.

of §§ 201.102 and 201.104 under the small business exemption alternative. To estimate the minimum quantified benefits to broiler growers, G_{min} , under the small business exemption alternative, AMS multiplied the minimum quantified benefits under the preferred alternative in Table 3 by 98 percent.

AMS estimates the aggregate minimum benefits to growers, G_{min} , from §§ 201.102 and 201.104 under the small business exemption alternative from reduced profit uncertainty to be \$2.6 million in the first year and on an ongoing basis.¹⁸³ The ten-year total minimum benefits of §§ 201.102 and 201.104 to broiler growers are estimated to be \$26.4 million and the present value of the ten-year total minimum benefits to be \$22.5 million discounted at a 3 percent rate and \$18.5 million at a 7 percent rate. The annualized PV of ten-year minimum benefits to broiler

growers discounted at 3 and 7 percent rates are expected to be \$2.6 million.

The total benefits to the industry, B_T , from §§ 201.102 and 201.104, under the small business exemption alternative, would be the sum of the minimum benefits to all broiler growers, G_{min} , and the other benefits to the industry from extra information and a more efficient allocation of labor and capital, B_O . The values of the estimated benefits appear in Table 4 in the next section. AMS expects the quantified minimum benefits to growers from §§ 201.102 and 201.104, combined with the other non-quantified benefits to growers, to exceed the costs of §§ 201.102 and 201.104 under the small business exemption alternative.

Combined Costs and Benefits of §§ 201.102 and 201.104

The aggregate cost and benefit estimates of §§ 201.102 and 201.104 under the small business exemption

alternative presented above appear in the following table. The quantified costs and minimum quantifiable benefits to the industry in the first year under the small business exemption alternative are \$2.7 million and \$2.6 million, respectively. The minimum quantifiable benefits exceed the quantified costs on a ten-year and ten-year annualized basis.

As with the preferred option, AMS expects that the net benefits to the industry from §§ 201.102 and 201.104 under the small business exemption alternative will be very small in relation to the total value of industry production. Thus, AMS expects the impacts of the net benefits on total industry supply under the small business exemption alternative to be immeasurably small, leading to immeasurably small indirect effects on industry supply and demand, including price and quantity effects.

TABLE 4—QUANTIFIABLE COSTS AND BENEFITS OF §§ 201.102 AND 201.104—SMALL BUSINESS EXEMPTION

Small business exemption alternative	Cost			Benefits	
	Live poultry dealers	Broiler growers	Industry total	Individual grower (G_{min}) ^a	Total industry (B_T)
§ 201.102:					
First-Year	\$743,000	\$1,175,000	\$1,918,000	G_{min}	$G_{min} + B_O$
Ten-Year Total	3,062,000	3,132,000	6,194,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	2,669,000	2,799,000	5,469,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	2,264,000	2,449,000	4,713,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Annualized at 3 Percent	313,000	328,000	641,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Annualized at 7 Percent	322,000	349,000	671,000	G_{min}	$G_{min} + B_O$
§ 201.104:					
First-Year	276,000	473,000	749,000	G_{min}	$G_{min} + B_O$
Ten-Year Total	1,390,000	3,955,000	5,345,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	1,204,000	3,383,000	4,587,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	1,011,000	2,798,000	3,809,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Annualized at 3 Percent	141,000	397,000	538,000	G_{min}	$G_{min} + B_O$
PV of Ten-Year Annualized at 7 Percent	144,000	398,000	542,000	G_{min}	$G_{min} + B_O$
§§ 201.102 and 201.104:					
First-Year	1,019,000	1,648,000	2,667,000	2,637,000	$G_{min} + B_O$
Ten-Year Total	4,452,000	7,087,000	11,539,000	26,369,000	$G_{min} + B_O$
PV of Ten-Year Discounted at 3 Percent	3,873,000	6,183,000	10,056,000	22,493,000	$G_{min} + B_O$
PV of Ten-Year Discounted at 7 Percent	3,275,000	5,247,000	8,522,000	18,520,000	$G_{min} + B_O$
PV of Ten-Year Annualized at 3 Percent	454,000	725,000	1,179,000	2,637,000	$G_{min} + B_O$
PV of Ten-Year Annualized at 7 Percent	466,000	747,000	1,213,000	2,637,000	$G_{min} + B_O$

^a AMS estimates G_{min} as the combined benefits to growers of §§ 201.102 and 201.104.

^b Estimates do not include unquantified cost of risk increases.

AMS considered the small business exemption alternative in part because of concerns that, due to scale economies, smaller live poultry dealers would not be able to absorb the cost of the required information disclosures as well as the large live poultry dealers. If the costs are disproportionately large for smaller live poultry dealers, large dealers might have

an advantage possibly driving further consolidation chicken production. AMS subject matter experts do not expect that the costs of the rule will result in any additional consolidation by large live poultry dealers acquiring small live poultry dealers. The reasons are a lack of additional economies of scale from a large firm acquiring a small firm and the increase in costs to the large firm from no longer having the exemptions to small live poultry dealers offered in the preferred alternative.

AMS also had to consider the rights of the growers who contracted with the smaller live poultry dealers. Those growers would be denied the benefits of the rule under the small business exemption. Also, AMS estimates that costs associated with the required information disclosures will be small relative to the size of the industry. Given these considerations, AMS chose final §§ 201.102 and 201.104, which exempts small live poultry dealers from some, not all, of the disclosures required

¹⁸³ All benefits estimates assume a moderate (20 percent) RAP and a 2 percent reduction in coefficient of variation of net revenue.

of the large firms over the alternative rule that would exempt all live poultry dealers producing less than 2 million pounds of chicken per week.

C. Regulatory Flexibility Analysis

AMS is adding §§ 201.102 and 201.104 to the regulations under the Act. Section 201.102 will require live poultry dealers that deal in broilers to make disclosures before entering into new contracts or renewing existing contracts. Section 201.104 will require live poultry dealers that deal in broilers to disclose information at the settlement of each flock. Sections 201.102 and 201.104 will not apply to live poultry dealers that deal in turkeys, ducks, geese, or other fowl if the live poultry dealer does not deal in broilers.

The provisions in § 201.102 will require large live poultry dealers to disclose a true written copy of the growing agreement and a new Disclosure Document any time a live poultry dealer seeks to renew, revise, or replace an existing poultry growing arrangement that does not contemplate modifications to the existing housing specifications. Small live poultry dealers that process less than 2 million pounds of poultry per week will be excluded from this disclosure requirement. Before a live poultry dealer enters a poultry growing arrangement that would require an original capital investment or requires modifications to existing housing, both large and small live poultry dealers must provide a copy of the growing agreement, the housing specifications, a letter of intent, and the new Disclosure Document.

The Disclosure Document will require live poultry dealers to disclose summaries of litigation with any broiler grower, bankruptcy filings, and the live poultry dealer's policy regarding a grower's sale of the farm or assignment of the contract.

Live poultry dealers will be required to disclose growers' variable costs if it collects the information. Live poultry dealers will be required to audit the information to ensure accuracy and obtain and file signed receipts certifying that the live poultry dealer provided the required Disclosure Document. Live poultry dealers will be required to describe policies and procedures, as well as any appeal rights arising from increased lay-out time; sick, diseased, and high early mortality flocks; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability. Live poultry dealers will be required to

disclose annual grower turnover rates as well.

The Disclosure Document will require two separate financial disclosures to growers. The first disclosure will be a table indicating average annual gross payments to broiler growers for the previous calendar year. The table will be organized by housing specification at each complex located in the United States that is owned or operated by the live poultry dealer and should express average payments on the basis of U.S. dollars per farm facility square foot. The second disclosure will be a set of tables with the average annual gross payments per farm facility square foot in each quintile to broiler growers for each of the five previous years, organized by housing specification at each complex.

Live poultry dealers will also be required to make reasonable efforts to assist growers in translating the Disclosure Document. The rule will also prevent live poultry dealers from restricting growers or potential growers from sharing the Disclosure Document with a translator. Disclosures required in § 201.104 are associated with poultry grower ranking systems. At the time of placement, § 201.104 requires live poultry dealers to provide specific information concerning the inputs, including feed, chicks, medication, etc., that the live poultry dealer provided to the grower. At the time of settlement, it will require the live poultry to provide specific information about inputs provided to every other grower in the tournament or ranking pool within 24 hours of flock delivery. Similar information on inputs will also be disclosed at settlement.

AMS expects the disclosure requirements in §§ 201.102 and 201.104 will mitigate effects associated with asymmetric information between broiler growers and live poultry dealers. Some of the information held by live poultry dealers will be valuable to growers because it influences grower compensation in tournament contracts and might help growers in negotiating contract terms and making decisions about capital investments.

The contracts themselves are often incomplete and exhibit asymmetry in the information available to live poultry dealers and contract growers. Because live poultry dealers supply most of the inputs, much of the production information is available only to the grower from the live poultry dealer. For example, the contract grower may not know precisely how much feed it used, or how much weight the flock gained under his or her care, unless the live poultry dealer provides the information.

The proposed rule would have amended § 201.100 and added new § 201.214 to the regulations under the Act. The final rule will leave the current § 201.100 unchanged, and it will add two new regulations, §§ 201.102 and 201.204.

The proposed rule would have required live poultry dealers to provide growers with copies of the disclosure document and a true written copy of the contract 7 calendar days prior to executing the contract. The final rule changes the 7-day requirement to a 14-day requirement, but the broiler grower has the option to waive 7 calendar days of that time period.

The proposed rule also would have required live poultry dealers to obtain the broiler grower's or prospective broiler grower's dated signature as evidence of receipt of the Disclosure Document. The final rule will require live poultry dealers to obtain the broiler grower's or prospective broiler grower's dated signature as evidence of receipt but will also permit a live poultry dealer to obtain alternative documentation to evidence delivery and that best efforts were used to obtain grower receipt. The proof of delivery and best-efforts requirement, as an alternative, provide reasonable assurance in circumstances where the grower refuses to sign or where the grower has made him or herself unavailable that the grower receives and is able to evaluate in a timely manner the Disclosure Document. The grower receipt requirement, and this alternative, are comparable in cost and achieve the goal of this rule to minimize the risk that live poultry dealer deliver the Disclosure Document through means that, in practice, are not be read or noticed by the grower under the time frames provided, and so obstruct the purposes of ensuring the grower can evaluate the information before the grower makes significant decisions.

In response to comments to the proposed rule, AMS changed the final rule to make it applicable only to live poultry dealers that deal in broilers. The rule will not apply to live poultry dealers that deal with turkeys, ducks, geese, or other fowl unless the live poultry dealer also deals in broilers. For live poultry dealers that deal in broilers as well as turkeys or other fowl, the final rule only applies to the broiler operations.

In response to comments, AMS also added provisions to § 201.102 that will require live poultry dealers to assist growers with understanding the Disclosure Documents for broiler growers that do not speak English as a primary language. AMS also added

provisions requiring live poultry dealers to describe policies and procedures, as well as any appeal rights arising increased lay-out time; sick, diseased, and high early mortality flocks; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability.

Applying the rule to fewer firms considerably reduces the aggregate cost to small businesses. The proposed rule would have applied to 54 small live poultry dealers. The final rule will apply to 20 live poultry dealers that are small businesses. This is mostly due to removing live poultry dealers that handle turkeys. There were very few live poultry dealers active in the markets for ducks, geese, and other fowl. Also, the smallest of the small live poultry dealers do not deal in broilers, and while they would have been required to comply with the proposed rule, the final rule will not apply to them.

AMS also added disclosure requirements to the final rule that were not required in the proposed rule, and those disclosures will increase costs to the small businesses that will be required to comply with the final rule.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). SBA considers broiler producers, NAICS 112320, small if sales are less than \$3.5 million per year. Live poultry dealers, NAICS 311615, are considered small businesses if they have fewer than 1,250 employees.¹⁸⁴

AMS maintains data on live poultry dealers from the annual reports these firms file with PSD. Data from the annual reports indicate that 42 live poultry dealers would have been subject to the regulation in their fiscal year 2021. Twenty of the live poultry dealers would be small businesses according to the SBA standard. In their fiscal year 2021, live poultry dealers reported that they had 19,808 broiler production contracts with broiler growers. Small live poultry dealers accounted for 950 contracts.

Annual reports from live poultry dealers indicate they had 19,808 contracts, but a broiler grower can have more than one contract. The 2017 Census of Agriculture indicated that there were 16,524 poultry growers in the

United States.¹⁸⁵ AMS has no record of the number of broiler growers that qualify as small businesses but expects that nearly all of them are small businesses.

Costs of §§ 201.102 and 201.104 to live poultry dealers will primarily consist of the time required to gather the information and distribute it among the growers. Sections 201.102 and 201.104 will also cost broiler growers the value of the time they put into reviewing and acknowledging receipt of the disclosures.

Expected costs are estimated as the total value of the time required to produce and distribute the disclosures that will be required by §§ 201.102 and 201.104 as well as the time to create and maintain any necessary additional records, although live poultry dealers already keep nearly all of the required records. Estimates of the amount of time required to create and distribute the disclosure documents were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Act. Estimates for the value of the time are DOL BLS OEWS estimated released May 2022.¹⁸⁶ AMS marked up the wages 41.82 percent to account for benefits.

AMS expects § 201.102 will initially require 1,589 hours of management time at \$84.27 per hour costing \$134,000, 720 hours of attorney time at \$131.38 per hour costing \$95,000, 487 hours of administrative time at \$41.71 per hour costing \$20,000, and 396 hours of information technology staff hours at \$92.91 per hour costing \$37,000 to keep and maintain records and produce and distribute the disclosures. AMS expects § 201.102 will annually require an additional 578 hours of management time at \$84.27 per hour costing \$49,000, 116 hours of attorney time at \$131.38 per hour costing \$15,000, 254 hours of administrative time at \$41.71 per hour costing \$11,000, and 148 hours of information technology staff hours at \$92.91 per hour costing \$14,000. Total aggregate first-year one-time set up costs to small live poultry dealers for § 201.102 are expected to be \$286,000. AMS expects aggregate cost to small live poultry dealers to be \$88,000 annually, for a first-year total cost of \$374,000.

¹⁸⁵ USDA, NASS. *2017 Census of Agriculture: United States Summary and State Data*. Volume 1, Part 51. Issued April 2019. p. 56. https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_US/usv1.pdf.

¹⁸⁶ See U.S. Bureau of Labor Statistics, *May 2021 National Occupational Employment and Wage Estimates*, May 2022. <https://www.bls.gov/oes/special.requests/oesm21all.zip>. Viewed January 31, 2023.

AMS estimated § 201.104 will require a one-time first year aggregate investment of 300 hours of management time at \$84.27 per hour costing \$25,000, 220 hours of administrative time at \$41.71 per hour costing \$9,000, and 840 hours of information technology staff time at \$92.91 per hour costing \$78,000. Total aggregate first-year setup costs are expected to be \$112,000.

AMS expects § 201.104 will annually require an aggregate additional 1,257 hours distributed evenly across management, administrative, and information technology staff at \$84.27, \$41.71, and \$92.91 per hour, respectively, costing \$35,000, \$17,000, and \$39,000 respectively to keep and maintain records and produce and distribute the disclosures. Total aggregate first-year costs to small live poultry dealers for § 201.104 are expected to be \$204,000. After the first year, aggregate costs are expected to be \$92,000 annually.

The rule will regulate live poultry dealers' contracts. AMS expects that costs per live poultry dealer would be correlated with number of contracts. All expected costs of § 201.102 are associated with maintaining records and producing and distributing Disclosure Documents among contract growers. AMS expects that firms that contract with few growers will have lower costs. Larger live poultry dealers will tend to have more contracts and will likely have more costs. Section 201.104 only concerns poultry ranking systems. Smaller live poultry dealers that do not have tournament contracts will not have any of the costs associated with § 201.104, and some live poultry dealers have few contracts with broiler growers and raise broiler in their own facilities. Those dealers will have relatively lower costs.

AMS does not regulate poultry growers, and the rule has no requirements of poultry growers. To benefit from the disclosures, growers will need to review the information provided. Growers are not required to review the disclosure information in §§ 201.102 and 201.104, and growers that do not expect a benefit from reviewing the disclosure information likely will not review it.

AMS estimates aggregate growers' costs for reviewing disclosures associated with §§ 201.102 and 201.104 combined to be \$93,000 in the initial year. After broiler growers become familiar with the disclosures, they will likely require less time to review the documents, and AMS expects annual aggregate costs to growers will be \$41,000 for years two through five and \$38,000 each year thereafter. This

¹⁸⁴ U.S. Small Business Administration. *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*. Effective December 19, 2022.

amounts to \$117 per grower in the first year. The table below summarizes costs of §§ 201.102 and 201.104 to small live poultry dealers and small broiler growers.

TABLE 5—ESTIMATED COSTS TO SMALL BUSINESSES OF §§ 201.102 AND 201.104

Type of cost	Regulated live poultry dealers (dollars)	Unregulated growers (dollars)	Total (dollars)
§ 201.102:			
First-year Cost	374,000	58,000	432,000
First-year Cost per Firm	19,000	73	NA
PV of Ten-year Cost Discounted at 3 Percent	1,031,000	137,000	1,168,000
PV of Ten-year Cost Discounted at 7 Percent	888,000	120,000	1,008,000
Ten-year Cost Annualized at 3 Percent	121,000	16,000	137,000
Ten-year Cost Annualized at 7 Percent	126,000	17,000	143,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	6,100	20	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	6,300	22	NA
§ 201.104:			
First-year Cost	204,000	35,000	239,000
First-year Cost per Firm	10,000	45	NA
PV of Ten-year Cost Discounted at 3 Percent	891,000	252,000	1,144,000
PV of Ten-year Cost Discounted at 7 Percent	749,000	209,000	958,000
Ten-year Cost Annualized at 3 Percent	105,000	30,000	134,000
Ten-year Cost Annualized at 7 Percent	107,000	30,000	136,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	5,300	37	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	5,400	37	NA
§§ 201.102 and 201.104:			
First-year Cost	578,000	93,000	671,000
First-year Cost per Firm	29,000	117	NA
PV of Ten-year Cost Discounted at 3 Percent	1,923,000	389,000	2,312,000
PV of Ten-year Cost Discounted at 7 Percent	1,637,000	329,000	1,966,000
Ten-year Cost Annualized at 3 Percent	225,000	46,000	271,000
Ten-year Cost Annualized at 7 Percent	233,000	47,000	280,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	11,300	58	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	11,700	59	NA

Live poultry dealers report net sales in annual reports to AMS. Table 6 below groups small live poultry dealers' net sales into quartiles, reports the average net sales in each quartile, and compares average net sales to average expected first-year costs per firm for each of § 201.102 and § 201.104 and total first-year costs. Estimated first-year costs are

higher than 10-year annualized costs, and for the threshold analysis, first-year costs will be higher than annualized costs as percentage of net sales. Correspondingly, the ratio of ten-year annualized costs to net sales is lower than their corresponding first-year cost ratios listed in Table 6. If estimated costs meet the threshold in the first

year, they will in the following years as well.

Estimated first-year costs per firm are small. The ratio is less than 0.1 percent of average net sales in the three largest quartiles. Percentage of net sales are about 0.26 percent in the smallest quartile.

TABLE 6—COMPARISON OF SMALL LIVE POULTRY DEALERS' NET SALES TO EXPECTED ANNUALIZED COSTS OF §§ 201.102 AND 201.104

Quartile	Average net sales (dollars)	First year costs related to § 201.102 as a percent of net sales (percent)	First year costs related to § 201.104 as a percent of net sales (percent)	Total first year costs as a percent of net sales (percent)
0 to 25 percent	11,173,037	0.260	0.101	0.105
25 to 50 percent	30,021,116	0.097	0.038	0.039
50 to 75 percent	73,471,776	0.039	0.015	0.016
75 to 100 percent	193,207,736	0.015	0.006	0.006

AMS also estimated costs of an alternative proposal that would exempt most small live poultry dealers from the requirements of the regulations. The alternative would exempt all live poultry dealers that process less than 2 million pounds of poultry per week

from all reporting requirements. The alternative would only apply to five small business under the SBA standard.

AMS estimated the alternative to § 201.102 would require a one-time first year aggregate investment of 488 hours of management time at \$84.27 per hour

costing \$41,000, 180 hours of attorney time at \$131.38 per hour costing \$24,000, 145 hours of administrative time at \$41.71 per hour costing \$6,000, and 163 hours of information technology staff time at \$92.91 per hour costing \$15,000. Aggregate total first-

year setup costs are expected to be \$86,000. AMS expects the alternative proposal for § 201.102 will annually require an additional aggregate 198 hours of management time at \$84.27 per hour costing \$17,000, 29 hours of attorney time at \$131.38 per hour costing \$4,000, 92 hours of administrative time at \$41.71 per hour costing \$4,000, and 64 hours of information technology staff hours at \$92.91 per hour costing \$6,000 to keep and maintain records and produce and distribute the disclosures. Aggregate total first-year costs to small live poultry dealers for § 201.102 are expected to be \$116,000. After the first year AMS expects aggregate costs to small live poultry dealers to be \$30,000 annually.

AMS estimated alternative § 201.104 will require a one-time first year

aggregate investment of 75 hours of management time at \$84.27 per hour costing \$6,000, 55 hours of administrative time at \$41.71 per hour costing \$2,000, and 210 hours of information technology staff time at \$92.91 per hour costing \$20,000. Aggregate total first-year setup costs are expected to be \$28,000.

AMS expects alternative § 201.104 will annually require an additional aggregate 70 hours distributed evenly across management, administrative, and information technology staff at \$84.27, \$41.71, and \$92.91 per hour, respectively, costing \$2,000, \$1,000, and \$2,000 respectively to keep and maintain records and produce and distribute the disclosures. Aggregate total first-year costs to small live poultry dealers for alternative § 201.104 are

expected to be \$33,000. After the first year, costs are expected to be \$5,000 annually.

The alternative would have a relatively small effect on costs to broiler growers on a per grower basis, and growers will only review the disclosures if they perceive that they are beneficial. AMS estimates growers' aggregate costs for reviewing and acknowledging receipt of disclosures associated with §§ 201.102 and 201.104 to be \$55,000 in the initial year. AMS expects annual aggregate costs to growers would be \$24,000 for years two through five and \$22,000 each year thereafter. Table 7 below summarizes aggregate costs of alternative §§ 201.102 and 201.104 combined to small live poultry dealers and small broiler growers.

TABLE 7—ESTIMATED COSTS TO SMALL BUSINESSES OF ALTERNATIVE §§ 201.102 AND 201.104

Type of cost	Regulated live poultry dealers (dollars)	Unregulated growers (dollars)	Total (dollars)
Alternative § 201.102:			
First-year Cost	116,000	34,000	150,000
First Year-Cost Per Firm	6,000	43	NA
PV of Ten-year Cost Discounted at 3 Percent	342,000	81,000	422,000
PV of Ten-year Cost Discounted at 7 Percent	293,000	71,000	364,000
Ten-year Cost Annualized at 3 Percent	40,000	9,000	50,000
Ten-year Cost Annualized at 7 Percent	42,000	10,000	52,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	2,000	12	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	2,100	13	NA
Alternative § 201.104:			
First-year Cost	33,000	21,000	54,000
First Year-Cost Per Firm	2,000	26	NA
PV of Ten-year Cost Discounted at 3 Percent	71,000	149,000	220,000
PV of Ten-year Cost Discounted at 7 Percent	62,000	123,000	185,000
Ten-year Cost Annualized at 3 Percent	8,000	17,000	26,000
Ten-year Cost Annualized at 7 Percent	9,000	17,000	26,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	400	22	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	500	22	NA
Alternative §§ 201.102 and 201.104:			
First-year Cost	150,000	55,000	204,000
First Year-Cost Per Firm	7,000	69	NA
PV of Ten-year Cost Discounted at 3 Percent	413,000	229,000	642,000
PV of Ten-year Cost Discounted at 7 Percent	355,000	193,000	549,000
Ten-year Cost Annualized at 3 Percent	48,000	27,000	75,000
Ten-year Cost Annualized at 7 Percent	51,000	28,000	78,000
Average Ten-Year Cost per Firm Annualized at 3 Percent	2,400	34	NA
Average Ten-Year Cost per Firm Annualized at 7 Percent	2,600	35	NA

Net sales for small live poultry dealers that will be required to make disclosure under alternative §§ 201.102 and 201.104 averaged \$159 million for their fiscal year 2020. Expected first-year cost per live poultry dealer will be well below 0.1 percent. Clearly, exempting live poultry dealers that process less than 2 million pounds of poultry per week will reduce cost to small live poultry dealers, but the benefits of the rule will also be less. AMS prefers the final §§ 201.102 and 201.104 to the alternative because it considers the

information in the disclosures to be important for broiler growers for making investment and production decisions and necessary for the efficient functioning of the market.

AMS made considerations for small live poultry dealers in drafting §§ 201.102 and 201.104. Section 201.102 makes several exemptions for live poultry dealers producing less than 2 million pounds of poultry per week. AMS chose not to make the final rule applicable to live poultry dealers that deal in turkeys, ducks, geese, or other

fowl, which were some of the smallest live poultry dealers.

Although costs would be smaller with the alternative, the costs associated with §§ 201.102 and 201.104 are relatively small. The rule seeks only to require live poultry dealers to provide its contract growers with information relevant to their operations, and AMS made every effort to limit the disclosures to information that live poultry dealer already possessed. First-year costs to regulated live poultry dealers are expected to be \$578,000,

which would be about \$29,000 per firm. Present value of ten-year costs annualized at 7 percent are expected to be \$1.6 million, and ten-year costs annualized at 7 percent are expected to be \$233,000. These amounts are small considering that small live poultry dealers averaged nearly \$60 million in sales annually. Although estimates of costs relative net sales increase for the smallest live poultry dealers, §§ 201.102 and 201.104 only apply to tournament contracts. Some of the smallest live poultry dealers do not use tournament contracts and will not incur any costs. While §§ 201.102 and 201.104 would have an effect on a substantial number (20) of small businesses, the economic impact would not be significant.

Costs to growers will be limited to the time required to review the disclosure and acknowledge receipt of the disclosures. AMS expects that §§ 201.102 and 201.104 will have effects on a substantial number of growers however, the costs will not be significant for any of them.

Based on the above analyses regarding §§ 201.102 and 201.104, this rule is not expected to have a significant economic impact on a substantial number of small business entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS published a 60-day notice and requested comments on the information collection and recordkeeping requirements of the proposed rule when it proposed revisions to §§ 201.100 and 201.214 in the **Federal Register** on June 8, 2022 (87 FR 34980).¹⁸⁷ The proposed information collection was for a total of 19,993 hours for the first year, and 6,066 hours per year thereafter. In response to comments, AMS revised the information collection requirements for the final rule and recalculated the information collection burden estimates accordingly, for a total of 17,205 hours for the first year, and 6,615 hours thereafter. The comment period was open for 60 days and was extended for an additional 15 days. The comment period closed on August 23, 2022. Below is a summary of the final rule's information collection requirements, the comments AMS received relating to the information collection requirements of the proposed

rule, and any changes AMS made in response to the comments.

This final rule requires live poultry dealers engaged in the production of broilers to provide certain disclosures to broiler growers in advance of entering into production contracts. Under the final rule, live poultry dealers engaged in the production of broilers are required to make certain disclosures to poultry growers with whom they contract. To assist with compliance, AMS is providing Form PSD 6100 (Live Poultry Dealer Disclosure Document Form Instructions), which includes instructions for developing the Disclosure Document and performing necessary calculations.

This final rule also requires live poultry dealers engaged in the production of broilers who group and rank broiler growers for settlement purposes to disclose essential information to broiler growers about the flocks placed with individual growers at the time of placement. Live poultry dealers are also required to disclose information about the flocks and associated production inputs delivered to all broiler growers in the settlement group, as well as each grower's ranking within the group, at the time of settlement. Broiler growers are not required to provide information but can use the information provided by live poultry dealers to improve flock management practices and evaluate grower treatment under broiler grower ranking systems.

Summary information on the burdens of these new information collection and recordkeeping requirements follows below. Additional detail can be found in the Regulatory Impact Analysis (RIA).

AMS estimates each of 42 live poultry dealers engaged in the production of broilers would develop an average of 472 Disclosure Documents for broiler growers relating to new, renewed, revised, or updated broiler growing arrangements, as required under § 201.102. AMS arrived at its estimate of 472 developed Disclosure Documents per live poultry dealer from AMS records which show 42 live poultry dealers engaged in the production of broilers filed annual reports with AMS, and their reports indicate that they had 19,808 growing contracts with broiler growers during their fiscal year 2021. AMS divided the 19,808 growing contracts by the 42 live poultry dealers to arrive at 472 Disclosure Documents per live poultry dealer.

Live poultry dealers with current contracts with broiler growers would not be required to provide the Disclosure Document to those growers unless the dealer is renewing, revising,

or replacing an existing contract or proposing modifications to the broiler housing specifications under the existing contract. AMS estimates first year development, production, and distribution of the Disclosure Documents in § 201.102, including management, legal, administrative, and information technology time, would require an average 0.59 hours each, while ongoing annual production and distribution of each Disclosure Document would take 0.20 hours. AMS arrived at the estimates of the number of hours per response to set up, produce, distribute, and maintain each Disclosure Document by dividing the annual number of hours to set up, produce, and distribute the disclosures (11,709 first year hours and 3,975 ongoing hours) by the annual number of responses for all live poultry dealers (19,808). AMS estimated the number of hours for all live poultry dealers to develop, produce, distribute, and maintain each Disclosure Document required under § 201.102 from the number of hours estimated and the expected cost estimates in Tables 1 and 2 in Appendix 1.

AMS estimates 42 live poultry dealers engaged in the production of broilers would each provide placement and settlement records to an average of 628 broiler growers annually under tournament ranking systems, as required under § 201.104. AMS estimated the annual number of placement and settlement records by multiplying the number of relevant slaughter plants in AMS records from the reports that live poultry dealers file with AMS (188) by the average number of tournaments at each plant per week from AMS subject matter experts (1.35) by 52 weeks. This product is then multiplied by two to account for both placement and settlement records. AMS then divided the estimated annual number of responses (26,395) by the number of live poultry dealers (42) engaged in the production of broilers to arrive at its estimate of 628 placement and settlement disclosure records for each live poultry dealer on an annual basis.

AMS estimates first year development, production, and distribution of the required placement and settlement records, as required under § 201.104, including management, legal, administrative, and information technology time, will require approximately 0.21 hours. AMS estimates ongoing annual production and distribution of required tournament placement and settlement information would require an average of 0.10 hours. AMS arrived at the estimates of the number of hours per response to set up,

¹⁸⁷ The new sections that AMS proposed in §§ 201.100 and 201.214 are now §§ 201.102 and 201.104 in the final rule, respectively.

produce, distribute, and maintain each disclosure document by dividing the annual number of hours to set up, produce, and distribute the disclosures (5,496 first year hours and 2,640 ongoing hours) by the annual number of responses for live poultry dealers (26,395). AMS estimated the number of hours for all live poultry dealers engaged in the production of broilers to develop, produce, and distribute each placement and settlement disclosure document required under § 201.104 from the number of hours estimated and the expected cost estimates in Tables 3 and 4 in Appendix 1.

Under § 201.102, live poultry dealers are required to certify as to the accuracy of the Disclosure Documents and are required to maintain records relating to the Disclosure Documents for three years following expiration of the broiler growing arrangement. Under § 201.104, live poultry dealers are required to maintain records related to broiler grower tournament placements and settlement for 5 years.

The required disclosures under § 201.102 include essential information about the contract, the live poultry dealer's business history, and financial projections the grower could use to evaluate entering into the contract. Under the rule, live poultry dealers are required to provide the Disclosure Documents, which include specified information and boilerplate grower notifications. AMS will make available PSD Form 6100 that dealers can download from the AMS website to assist with development of the required Disclosure Document. Live poultry dealers are required to obtain grower signatures as evidence of the grower's receipt of the Disclosure Document, or obtain alternative documentation to evidence delivery and that best efforts were used to obtain grower receipt. Live poultry dealers are also required to retain the signature pages for three years following contract expiration.

Section 201.104 requires live poultry dealers engaged in the production of broilers who group or rank broiler growers for settlement purposes to disclose information about each flock of broiler placed with growers for growout at the time of placement. Additionally, live poultry dealers are required to provide to each broiler grower in the group, at the time of settlement, information about the flocks placed with every grower in the group, as well as each grower's performance ranking within the group. Growers can use placement disclosures to inform flock management decisions during growout, and can use settlement disclosures to evaluate their growout performance,

potentially improve future performance, and evaluate whether group members are treated fairly. Live poultry dealers are required to maintain records related to these disclosures for 5 years following settlement.

Costs of Final §§ 201.102 and 201.104

The combined costs to live poultry dealers engaged in the production of broilers for compliance with the reporting and recordkeeping requirements of final §§ 201.102 and 201.104 are expected to be \$1,437,096 in the first year, and \$511,788 in subsequent years. The total hours estimated for the live poultry dealers to create, produce, distribute, and maintain these documents are 17,205 in the first year, and 6,615 in subsequent years. Complete details showing how AMS arrived at these cost estimates appear in Tables 1–4 in Appendix 1.

Comments From the Proposed Rule and Changes to the Final Rule

After consideration of public comments, AMS determined to adopt the proposed rule as a final rule with several modifications. This section provides an overview of the comments and how the final rule differs from the proposed rule.

The proposed rule would have required all live poultry dealers, and not just those engaged in the production of broilers, to provide the new disclosures required in revised § 201.102 and new § 201.104. Based on public comments and other information, AMS subsequently decided to require the new disclosures only of live poultry dealers involved in broiler production. Thus, the number of entities affected by the final rule is substantially lower than originally estimated. This change significantly reduced the recordkeeping burden. This and other changes between the proposed and final rule are discussed in more detail below.

Live poultry dealers commented that the full cost of the proposed rule would likely be many times greater than predicted by AMS. The commenters asserted AMS greatly underestimated the costs of creating the recordkeeping systems needed to comply with the proposed rule.

In drafting and in estimating the costs of proposed §§ 201.100 and 201.214, AMS consulted auditors and supervisors who are familiar with live poultry dealers' records from many years of experience in auditing live poultry dealers for compliance with the Act. AMS expects that recordkeeping systems that most live poultry dealers already have in place will enable them to gather much of the information in the

disclosures from records they already have available to them and limit the necessity of developing new recordkeeping systems. Thus, AMS made no changes to the information collection requirements of the proposed rule based on this comment.

As mentioned above and will be explained in further detail below, AMS did change the language of the proposed rule to limit its application to broiler production. In order to make compliance with the final rule as easy as possible for regulated entities to follow, AMS reorganized the final rule by moving the new disclosures required into revised § 201.102 and new § 201.104.

In the final rule, AMS removed the proposed revisions to § 201.100 requiring all live poultry dealers to provide certain additional disclosures to prospective or current growers and placed the requirements in new § 201.102. AMS also amended the proposed requirements to apply exclusively to live poultry dealers engaged in the production of broilers who use a broiler growing ranking system to calculate grower payments, and moved the requirements from proposed new § 201.214 to new § 201.104. This reorganization of the rule does not impact the recordkeeping requirements or costs of the final rule.

A commenter representing the turkey industry noted the proposed rule was largely based on research into the broiler industry. The commenter asserted it would be extremely difficult for turkey companies to implement the rule due to differences between turkey and chicken production. AMS analyzed a sample of turkey production contracts from across the country and concluded that, although research suggests broiler grower contract payments span a wide range, a similar disparity is not readily apparent in turkey production. Based on the comment and our further study, AMS has limited the applicability of final §§ 201.102 and 201.104 to live poultry dealers engaged in the production of broilers. The final rule does not apply to live poultry dealers engaged in the production of turkeys, ducks, geese, and other domestic fowl. This change reduced the information collection burden from 89 respondents made up of live poultry dealers engaged in the production of broilers, turkeys, ducks, geese, and other domestic fowl to 42 live poultry dealers engaged in the production of broilers. Accordingly, this change reduced the information collection burden on live poultry dealers between the proposed §§ 201.100 and 201.214 and final §§ 201.102 and 201.104.

AMS proposed to require live poultry dealers to make various financial disclosures to broiler growers, including a table showing “average annual gross payments” made to growers at all complexes owned or operated by the live poultry dealer for the previous calendar year, as well as to growers at the local complex. Poultry and meat trade associations suggested AMS require dealers to disclose average annual gross payments only for the grower’s local complex. These commenters noted that complexes in different geographic areas face different economic conditions, arguing that information about payments at other complexes would not be useful and would potentially confuse growers. Therefore, AMS removed the requirement proposed in § 201.100(d)(1) to disclose payment information for all complexes owned or operated by the dealer. AMS maintains the requirement proposed in § 201.100(d)(2) for live poultry dealers engaged in the production of broilers to disclose payment information only relating to the broiler grower’s local complex at § 201.102(d)(1) of the final rule. Accordingly, this change reduced the information collection burden on live poultry dealers between the proposed and final rule.

Both growers and live poultry dealers also requested in comments that AMS provide more specificity on how to calculate average annual gross payments. While the proposed rule provided detail on calculations, the commenters felt the instructions lacked sufficient specificity to assure that live poultry dealers could comply and that broiler growers received adequate data on which to base business decisions. Therefore, AMS developed more in-depth instructions on how to calculate them, which are included in Form PSD 6100 (Live Poultry Dealer Disclosure Document Form Instructions). AMS added a modest amount of time to its cost estimates for live poultry dealers to review the instructions.

Several commenters recommended that AMS also require the disclosure of grower turnover data. Grower turnover rates relate to the general risk of termination and non-renewal of contracts with a live poultry dealer. This information would allow growers to compare the turnover rates of multiple live poultry dealers as a risk factor when making contracting decisions. Therefore, AMS added a provision at § 201.102(c)(5) of the final rule requiring live poultry dealers engaged in the production of broilers to disclose average annual broiler grower turnover rates for the previous calendar

year and the average of the 5 previous calendar years at both the company level and the local complex level. AMS developed instructions for how to calculate average annual broiler grower turnover rates, which are included in Form PSD 6100. AMS added a modest amount of time to its cost estimates for live poultry dealers to review the instructions and calculate grower turnover rates.

Numerous commenters from the grower and live poultry dealer sectors expressed that these provisions should be in plain and unambiguous language to avoid discrepancies in interpretation among the various parties, regulators, and courts. Some commenters also indicated a need to ensure growers who are not native speakers of English can understand the disclosures. Therefore, AMS added a provision at § 201.102(g)(3) of the final rule to require live poultry dealers engaged in the production of broilers to present the information in the Disclosure Document in a clear, concise, and understandable manner for growers.

AMS also added a provision at § 201.102(g)(4) to require that the live poultry dealer must make reasonable efforts to ensure that growers are aware of their right to request translation assistance, and to assist the grower in translating the Disclosure Document at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement although the grower can waive 7 calendar days of that time period. Reasonable efforts include but are not limited to providing current contact information for professional translation service providers, trade associations with translator resources, relevant community groups, or any other person or organization that provides translation services in the broiler grower’s geographic area. A live poultry dealer may not restrict a broiler grower or prospective broiler grower from discussing or sharing the Disclosure Document for purposes of translation with a person or organization that provides language translation services. Nothing in the rule prevents companies from providing a translation provided it is complete, accurate, and not misleading. AMS added a modest amount of time to its cost estimates for live poultry dealers to comply with these new requirements.

In the proposed rule, AMS did not specifically propose to require live poultry dealers to disclose their policies on grower payments with respect to increased lay-out time, diseased flocks, natural disasters and other depopulation events, feed issues or outages, or

policies on grower appeal rights and processes. Multiple commenters suggested AMS include these disclosures. In the final rule, AMS added a provision at § 201.102(c)(4) requiring live poultry dealers engaged in the production of broilers to disclose policies and procedures on increased lay-out time; sick, diseased, or high early mortality flocks; natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility; other events potentially resulting in massive depopulation of flocks, affecting grower payments; feed outages including outage times; and grower complaints relating to feed quality, formulation, or suitability, as well as any appeal rights arising out of these events. AMS added a modest amount of time to its cost estimates for live poultry dealers to comply with this new requirement.

The proposed rule would have required live poultry dealers to provide growers with copies of the disclosure document and a true written copy of the contract 7 calendar days prior to executing the contract. The final rule changes the 7-day requirement to a 14-day requirement, but the broiler grower has the option to waive 7 calendar days of that time period.

The proposed rule also would have required live poultry dealers to obtain the broiler grower’s or prospective broiler grower’s dated signature as evidence of receipt or obtain alternative documentation acceptable to the Administrator as evidence of receipt. The final rule will require live poultry dealers to obtain the broiler grower’s or prospective broiler grower’s dated signature as evidence of receipt or obtain alternative documentation to evidence delivery and that best efforts were used to obtain grower receipt.

AMS proposed in § 201.100(f)(1)(i) to require live poultry dealers to establish, maintain, and enforce a governance framework reasonably designed to audit the accuracy and completeness of the disclosures in the Disclosure Document, which must include audits and testing, as well as reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers. AMS determined that the requirement in § 201.102(f)(2) for the principal executive officer or officers to certify the governance framework and the accuracy of the Disclosure Document adequately covers the intended requirement for officers of this level to be focused on the effectiveness of the governance framework. AMS concluded that this level of detail about the audit process for the Disclosure

Document was not necessary, particularly as AMS seeks to balance the need to ensure reliability of these statements with the burden on the principal executive officers regarding details of the governance process. Therefore, AMS removed the requirement proposed in § 201.100(f)(1)(i) for audit, testing, and reviews of an appropriate sampling of Disclosure Documents by the principal executive officer or officers.

E. E-Government Act

USDA is committed to complying with the E-Government Act by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

F. Executive Order 12988—Civil Justice Reform

This final rule has been reviewed under Executive Order 12988—Civil Justice Reform. This rule is not intended to have retroactive effect. This rule does not preempt State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. Nothing in this final rule is intended to interfere with a person's right to enforce liability against any person subject to the Act under authority granted in section 308 of the Act.

G. Executive Order 13175—Consultation and Coordination With Tribal Indian Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

AMS has determined that this final rule does not have substantial direct effects on one or more Tribes that would require consultation. If a Tribe requests consultation, AMS will work with USDA's Office of Tribal Relations to

ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress. AMS will also conduct outreach to ensure that Tribes and Tribal members are aware of the requirements and benefits under this final rule.

H. Civil Rights Impact Analysis

AMS has considered the potential civil rights implications of this final rule on members of protected groups to ensure that no person or group will be adversely or disproportionately at risk or discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, or protected genetic information. The rule does not create a program that would recruit or require the opt-in participation of poultry producers, growers, or live poultry dealers. This rule does not contain any requirements related to eligibility, benefits, or services that will have the purpose or effect of excluding, limiting, or otherwise disadvantaging any individual, group, or class of persons on one or more prohibited bases. In fact, the regulation will create means by which AMS may be able to address potential civil rights issues in violation of the Act.

In its review, AMS conducted a disparate impact analysis, using the required calculations, which resulted in a finding that Asian Americans, Pacific Islanders, and Native Hawaiians were disproportionately impacted by the rule, insofar as fewer farmers in those groups participate in poultry production than would be expected by their representation among U.S. farmers in general and therefore are less likely to benefit from the enhanced transparency provided by the rule. The final regulations will nevertheless provide benefits to all poultry growers. AMS will institute enhancement efforts to notify the groups found to be disproportionately impacted of the regulations and their implications. AMS outreach will specifically target several organizations that regularly engage with or otherwise may represent the interests of these impacted groups.

I. Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 9 CFR part 201 as follows:

PART 201—ADMINISTERING THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for 9 CFR part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Section 201.2 is revised to read as follows:

§ 201.2 Terms defined.

The definitions of terms contained in the Act shall apply to such terms when used in Administering the Packers and Stockyards Act, 9 CFR part 201; Rules of Practice Governing Proceedings Under the Packers and Stockyards Act, 9 CFR part 202; and Statements of General Policy Under the Packers and Stockyards Act, 9 CFR part 203. In addition, the following terms used in these parts shall be construed to mean:

Act means the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*).

Additional capital investment means a combined amount of \$12,500 or more per structure paid by a poultry grower or swine production contract grower over the life of the poultry growing arrangement or swine production contract beyond the initial investment for facilities used to grow, raise, and care for poultry or swine. Such term includes the total cost of upgrades to the structure, upgrades of equipment located in and around each structure, and goods and professional services that are directly attributable to the additional capital investment. The term does not include costs of maintenance or repair.

Administrator or agency head means the Administrator of the Agricultural Marketing Service or any person authorized to act for the Administrator.

Agency means the Agricultural Marketing Service of the United States Department of Agriculture.

Breeder facility identifier means the identification that a live poultry dealer permanently assigns to distinguish among breeder facilities supplying eggs for the poultry placed at the poultry grower's facility.

Breeder flock age means the age in weeks of the egg-laying flock that is the source of poultry placed at the poultry grower's facility.

Broiler means any chicken raised for meat production.

Broiler grower means a poultry grower engaged in the production of broilers.

Broiler growing arrangement means a poultry growing arrangement pertaining to the production of broilers.

Commerce means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia.

Complex means a group of local facilities under the common management of a live poultry dealer. A complex may include, but not be limited to, one or more hatcheries, feed mills, slaughtering facilities, or poultry processing facilities.

Custom feedlot means any facility which is used in its entirety or in part for the purpose of feeding livestock for the accounts of others, but does not include feeding incidental to the sale or transportation of livestock.

Department means the United States Department of Agriculture.

Gross payments are the total compensation a poultry grower receives from the live poultry dealer, including, but not limited to, base payments, new housing allowances, energy allowances, square footage payments, extended lay-out time payments, equipment allowances, bonus payments, additional capital investment payments, poultry litter payments, etc., before deductions or assignments are made.

Grower variable costs means those costs related to poultry production that may be borne by the poultry grower, which may include, but are not limited to, utilities, fuel, water, labor, repairs and maintenance, and liability insurance.

Housing specifications means a description of—or a document relating to—a list of equipment, products, systems, and other technical poultry housing components required by a live poultry dealer for the production of live poultry.

Inputs means the various contributions to be made by the live poultry dealer and the poultry grower as agreed upon by both under a poultry growing arrangement. Such inputs may include, but are not limited to, animals, feed, veterinary services, medicines, labor, utilities, and fuel.

Letter of intent means a document that expresses a preliminary commitment from a live poultry dealer to engage in a business relationship with a prospective poultry grower and that includes the chief terms of the agreement.

Live poultry dealer means any person engaged in the business of obtaining live poultry by purchase or under a poultry growing arrangement for the purpose of either slaughtering it or selling it for slaughter by another, if poultry is obtained by such person in commerce, or if poultry obtained by such person is sold or shipped in commerce, or if poultry products from poultry obtained by such person are sold or shipped in commerce.

Live Poultry Dealer Disclosure Document means the complete set of disclosures and statements that the live poultry dealer must provide to the poultry grower.

Minimum number of placements means the least number of flocks of poultry the live poultry dealer will deliver to the grower for growout annually under the terms of the poultry growing arrangement.

Minimum stocking density means the ratio that reflects the minimum weight of poultry per facility square foot the live poultry dealer intends to harvest from the grower following each growout.

Number of placements means the number of flocks of poultry the live poultry dealer will deliver to the grower for growout during each year of the poultry growing arrangement period.

Original capital investment means the initial financial investment for facilities used to grow, raise, and care for poultry or swine.

Packers and Stockyards Division (PSD) means the Packers and Stockyards Division of the Fair Trade Practices Program (FTPP), Agricultural Marketing Service.

Person means individuals, partnerships, corporations, and associations.

Placement means delivery of a poultry flock to the poultry grower for growout in accordance with the terms of a poultry growing arrangement.

Poultry grower means any person engaged in the business of raising and caring for live poultry for slaughter by another, whether the poultry is owned by such person or by another, but not an employee of the owner of such poultry.

Poultry grower ranking system means a system where the contract between the live poultry dealer and the poultry grower provides for payment to the poultry grower based upon a grouping, ranking, or comparison of poultry growers delivering poultry during a specified period.

Poultry growing arrangement means any growout contract, marketing agreement, or other arrangement under which a poultry grower raises and cares

for live poultry for delivery, in accord with another's instructions, for slaughter.

Poultry growout means the process of raising and caring for poultry in anticipation of slaughter.

Poultry growout period means the period of time between placement of poultry at a grower's facility and the harvest or delivery of such animals for slaughter, during which the feeding and care of such poultry are under the control of the grower.

Principal part of performance means the raising of and caring for livestock or poultry, when used in connection with a livestock or poultry production contract.

Prospective broiler grower means a person or entity with whom the live poultry dealer is considering entering into a broiler growing arrangement.

Prospective poultry grower means a person or entity with whom the live poultry dealer is considering entering into a poultry growing arrangement.

Regional director means the regional director of the Packers and Stockyards Division (PSD) for a given region or any person authorized to act for the regional director.

Registrant means any person registered pursuant to the provisions of the Act and the regulations in this part.

Schedule means a tariff of rates and charges filed by stockyard owners and market agencies.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department authorized to act for the Secretary.

Stocking density means the ratio that reflects the number of birds in a placement, expressed as the number of poultry per facility square foot.

Stockyard means a livestock market which has received notice under section 302(b) of the Act that it has been determined by the Secretary to come within the definition of "stockyard" under section 302(a) of the Act.

■ 3. Amend § 201.100 by revising paragraphs (a) and (b) to read as follows:

§ 201.100 Records to be furnished poultry growers and sellers.

(a) *Poultry growing arrangement; timing of disclosure.* A live poultry dealer who offers a poultry growing arrangement to a poultry grower must provide the poultry grower with a true written copy of the offered poultry growing arrangement on the date the dealer provides the poultry grower with poultry housing specifications.

(b) *Right to discuss the terms of poultry growing arrangement offer.* A live poultry dealer, notwithstanding any confidentiality provision in the poultry

growing arrangement, may not prohibit a poultry grower or prospective poultry grower from discussing the terms of a poultry growing arrangement offer or, if applicable, the accompanying Live Poultry Dealer Disclosure Document described in § 201.102 (b) through (d) of this part with any of the following:

- (1) A Federal or State agency.
- (2) The grower's financial advisor or lender.
- (3) The grower's legal advisor.
- (4) An accounting services representative hired by the grower.
- (5) Other growers for the same live poultry dealer.
- (6) A member of the grower's immediate family or a business associate. A business associate is a person not employed by the grower, but with whom the grower has a valid business reason for consulting with when entering into or operating under a poultry growing arrangement.

* * * * *

■ 4. Add § 201.102 to read as follows:

§ 201.102 Disclosures for broiler production.

(a) *Obligation to furnish information and documents.* In addition to the requirements of § 201.100 of this part, a live poultry dealer engaged in the production of broilers must provide the documents described in this section to the prospective or current broiler grower.

(1) Except as provided in paragraph (e) of this section, when a live poultry dealer seeks to renew, revise, or replace an existing broiler growing arrangement, or to establish a new broiler growing arrangement that does not contemplate modifications to the existing housing specifications, the live poultry dealer must provide the following documents at least 14 calendar days before the live poultry dealer executes the broiler growing arrangement (provided that the grower may waive up to 7 calendar days of that time period):

(i) A true, written copy of the renewed, revised, replacement, or new broiler growing arrangement.

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section.

(2) When a live poultry dealer seeks to enter a broiler growing arrangement with a broiler grower or prospective broiler grower that will require an original capital investment, the live poultry dealer must provide the following to the broiler grower or prospective broiler grower simultaneously with the housing specifications:

(i) A copy of the broiler growing arrangement that is affiliated with the current housing specifications.

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section.

(iii) A letter of intent that can be relied upon to obtain financing for the original capital investment.

(3) When a live poultry dealer seeks to offer or impose modifications to existing housing specifications that could reasonably require a broiler grower or prospective broiler grower to make an additional capital investment, the live poultry dealer must provide the following to the broiler grower or prospective broiler grower simultaneously with the modified housing specifications:

(i) A copy of the broiler growing arrangement that is affiliated with the modified housing specifications.

(ii) The Live Poultry Dealer Disclosure Document, as described in paragraphs (b), (c), and (d) of this section.

(iii) A letter of intent that can be relied upon to obtain financing for the additional capital investment.

(b) *Prominent Disclosures.* The Live Poultry Dealer Disclosure Document must include a cover page followed by the disclosures as required in paragraphs (c) and (d) of this section. The order, form, and content of the cover page shall be and include:

(1) The title "LIVE POULTRY DEALER DISCLOSURE DOCUMENT" in capital letters and bold type.

(2) The live poultry dealer's name, type of business organization, principal business address, telephone number, email address, and, if applicable, primary internet website address.

(3) The length of the term of the broiler growing arrangement.

(4) The following statement: "The income from your poultry farm may be significantly affected by the number of flocks the poultry company places on your farm each year, the density or number of birds placed with each flock, and the target weight at which poultry is caught. The poultry company may have full discretion and control over these and other factors. Please carefully review the information in this document."

(5) The following minimums established under the terms of the broiler growing arrangement:

(i) The minimum number of placements on the broiler grower's farm annually.

(ii) The minimum stocking density for each flock to be placed on the broiler grower's farm.

(6) The applicable of the following two statements:

(i) "This disclosure document summarizes certain provisions of your broiler growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. At least 14 calendar days before the live poultry dealer executes the broiler growing arrangement (provided that the grower may waive up to 7 calendar days of that time period), the poultry company is required to provide you with: (1) this disclosure document, and (2) a copy of the broiler growing arrangement." or

(ii) "This disclosure document summarizes certain provisions of your broiler growing arrangement and other information. You have the right to read this disclosure document and all accompanying documents carefully. The live poultry dealer is required to provide this disclosure document to you simultaneously with (a) a copy of the broiler growing arrangement, (b) any new or modified housing specifications that would require you to make an original or additional capital investment, and (c) a letter of intent."

(7) The following statement: "Even if the broiler growing arrangement contains a confidentiality provision, by law you still retain the right to discuss the terms of the broiler growing arrangement and the Live Poultry Dealer Disclosure Document with a Federal or State agency, your financial advisor or lender, your legal advisor, your accounting services representative, other growers for the same live poultry dealer, and your immediate family or business associates. A business associate is a person not employed by you but with whom you have a valid business reason for consulting when entering into or operating under a broiler growing arrangement."

(8) The following statement in bold type: "Note that USDA has not verified the information contained in this document. If this disclosure by the live poultry dealer contains any false or misleading statement or a material omission, a violation of Federal and/or State law may have occurred."

(c) *Required disclosures following the cover page.* The live poultry dealer shall disclose, in the Live Poultry Dealer Disclosure Document following the cover page, the following information:

(1) A summary of litigation over the prior 5 years between the live poultry dealer and any broiler grower, including the nature of the litigation, its location, the initiating party, a brief description of the controversy, and any resolution.

(2) A summary of all bankruptcy filings in the prior 5 years by the live poultry dealer and any parent,

subsidiary, or related entity of the live poultry dealer.

(3) A statement that describes the live poultry dealer's policies and procedures regarding the potential sale of the broiler grower's facility or assignment of the broiler growing arrangement to another party, including the circumstances under which the live poultry dealer will offer the successive buyer a broiler growing arrangement.

(4) A statement describing the live poultry dealer's policies and procedures, as well as any appeal rights arising from the following events described in paragraphs (c)(4)(i) through (c)(4)(vi) of this section. If no policy or procedure exists, the live poultry dealer will acknowledge "no policy exists" relating to the items in paragraphs (c)(4)(i) through (c)(4)(vi) of this section.

(i) Increased lay-out time.

(ii) Sick, diseased, and high early-mortality flocks.

(iii) Natural disasters, weather events, or other events adversely affecting the physical infrastructure of the local complex or the grower facility.

(iv) Other events potentially resulting in massive depopulation of flocks, affecting grower payments.

(v) Feed outages, including outage times.

(vi) Grower complaints relating to feed quality, formulation, or suitability.

(5) A table showing the average annual broiler grower turnover rates for the previous calendar year and the average of the 5 previous calendar years at a company level and at a local complex level.

(d) *Financial Disclosures.* The live poultry dealer must include in the Live Poultry Dealer Disclosure Document the following information:

(1) Tables showing average annual gross payments to broiler growers at the local complex for each of the 5 previous years. The tables must express average payments in U.S. dollars per farm facility square foot. The tables must be organized to present the following elements:

(i) Year.

(ii) Housing specification tier (lowest to highest).

(iii) Distribution of payments, specifically either—

(A) Quintile (lowest to highest), for a local complex comprising 10 or more growers, or

(B) Mean and one standard deviation from the mean, for a local complex comprising 9 or fewer growers.

(2) If poultry housing specifications for broiler growers under contract with the complex are modified such that an additional capital investment may be required, or if the 5-year averages

provided under paragraph (d)(1) of this section do not accurately represent projected grower gross annual payments under the terms of the applicable broiler growing arrangement for any reason, the live poultry dealer must provide the following information:

(i) Tables providing projections of average annual gross payments to broiler growers under contract with the complex with the same housing specifications for the term of the broiler growing arrangement at five quintile levels or by mean and standard deviation expressed as dollars per farm facility square foot.

(ii) An explanation of why the annual gross payment averages for the previous 5 years, as provided under paragraph (d)(1) of this section, do not provide an accurate representation of projected future payments, including the basic assumptions underlying the projections provided under paragraph (d)(2)(i) of this section.

(3) A summary of information the live poultry dealer collects or maintains relating to grower variable costs inherent in broiler production.

(4) Current contact information for the State university extension service office or the county farm advisor's office that can provide relevant information about broiler grower costs and broiler farm financial management in the broiler grower's geographic area.

(e) *Small Live Poultry Dealer Financial Disclosures.* A live poultry dealer engaged in the production of broilers is exempt from the requirements in paragraph (a)(1) of this section if the live poultry dealer, together with all companies controlled by or under common control with the live poultry dealer, slaughters fewer than 2 million live pounds of broilers weekly (104 million pounds annually).

(f) *Governance and Certification.* (1) The live poultry dealer engaged in the production of broilers must establish, maintain, and enforce a governance framework that is reasonably designed to:

(i) Audit the accuracy and completeness of the disclosures required under paragraphs (a) through (d) of this section.

(ii) Ensure compliance with all obligations under the Packers and Stockyards Act and regulations thereunder.

(2) The principal executive officer or officers, or persons performing similar functions, must certify in the Live Poultry Dealer Disclosure Document that the live poultry dealer has established, maintains, and enforces the governance framework and that, based on the officer's knowledge, the Live

Poultry Dealer Disclosure Document does not contain any untrue statement of a material fact or omit to state a material fact which would render it misleading.

(g) *Receipt by Growers.* (1) The Live Poultry Dealer Disclosure Document must include a broiler grower's signature page that contains the following statement: "If the live poultry dealer does not deliver this disclosure document within the timeframe specified herein, or if this disclosure document contains any false or misleading statement or a material omission (including any discrepancy with other oral or written statements made in connection with the broiler growing arrangement), a violation of Federal and State law may have occurred. Violations of Federal and State laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Packers and Stockyards Act, as amended. You may file a complaint at farmerfairness.gov or call 1-833-DIAL-PSD (1-833-342-5773) if you suspect a violation of the Packers and Stockyards Act or any other Federal law governing fair and competitive marketing, including contract growing, of livestock and poultry. Additional information on rights and responsibilities under the Packers and Stockyards Act may be found at www.ams.usda.gov."

(2) The live poultry dealer must obtain the broiler grower's or prospective broiler grower's dated signature on the broiler grower's signature page in paragraph (g)(1) of this section as evidence of receipt or obtain alternative documentation to evidence delivery and that best efforts were used to obtain grower receipt. The live poultry dealer must provide a copy of the dated signature page or alternative documentation to the broiler grower or prospective broiler grower and must retain a copy of the dated signature page or alternative documentation in the dealer's records for 3 years following expiration, termination, or non-renewal of the broiler growing arrangement.

(3) Information in the Live Poultry Dealer Disclosure Document must be presented in a clear, concise, and understandable manner for growers. Live poultry dealers may refer to Form PSD 6100 for further instructions on the presentation of information and certain calculations.

(4) The live poultry dealer must make reasonable efforts to ensure that growers are aware of their right to request translation assistance, and to assist the grower in translating the Disclosure Document at least 14 calendar days before the live poultry dealer executes

the broiler growing arrangement that does not contemplate modifications to the existing housing specifications (provided that the grower may waive up to 7 calendar days of that time period) or where modifications to the existing housing specifications are contemplated when the live poultry dealer provides the grower with the Disclosure Document. Reasonable efforts include but are not limited to providing current contact information for professional translation service providers, trade associations with translator resources, relevant community groups, or any other person or organization that provides translation services in the broiler grower's geographic area. A live poultry dealer may not restrict a broiler grower or prospective broiler grower from discussing or sharing the Disclosure Document for purposes of translation with a person or organization that provides language translation services.

(h) *Contract terms.* A live poultry dealer engaged in the production of broilers must specify in the true written copy of the broiler growing arrangement the following:

- (1) The minimum number of placements of poultry at the broiler grower's facility annually.
- (2) The minimum stocking density for each flock placed with the broiler grower under the broiler growing arrangement.

■ 5. Add § 201.104 to read as follows:

§ 201.104 Disclosures for broiler grower ranking system payments.

(a) *Poultry grower ranking system records.* If a live poultry dealer engaged in the production of broilers uses a poultry grower ranking system to calculate broiler grower payments, the live poultry dealer must produce records in accordance with paragraphs (b) and (c) of this section. The live poultry dealer must maintain these records for 5 years.

(b) *Placement Disclosure.* Within 24 hours of flock delivery to a broiler grower's facility, the live poultry dealer must provide all the following information to the broiler grower regarding the placement:

- (1) The stocking density of the placement.
- (2) Names and all ratios of breeds of the poultry delivered.
- (3) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry delivered.
- (4) The breeder facility identifier.
- (5) The breeder flock age.
- (6) Information regarding any known health impairments of the breeder flock or of the poultry delivered.
- (7) Adjustments, if any, that the live poultry dealer may make to the calculation of the grower's pay based on the inputs in paragraphs (b)(1) through (b)(6) of this section.

(c) *Poultry grower ranking system settlement documents.* In addition to the requirements of § 201.100 of this part, a live poultry dealer must provide disclosures to all broiler growers on the grouping or ranking sheets as described in paragraphs (c)(1) and (c)(2) of this section. The disclosures need not show the names of other growers.

(1) Live poultry dealers must disclose the housing specification for each broiler grower grouped or ranked during the specified period.

(2) Live poultry dealers must disclose all the following information to each broiler grower participant ranked under a poultry grower ranking system:

- (i) The stocking density for each placement in the ranking.
- (ii) The names and all ratios of breeds of the poultry for each placement in the ranking.
- (iii) If the live poultry dealer has determined the sex of the birds, all ratios of male and female poultry for each placement in the ranking.
- (iv) All breeder facility identifiers for each placement in the ranking.

(v) The breeder flock age(s) for each placement in the ranking.

(vi) The number of feed disruptions each ranked broiler grower endured during the growout period where the grower was completely out of feed for 12 hours or more.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1. Details of the Estimated One-Time, First-Year Costs and On-Going Annual Costs of Providing Disclosure Documents Required in §§ 201.102 and 201.104

Table 1 below provides the details of the estimated one-time, first-year costs to live poultry dealers (LPD) of providing disclosure documents required in § 201.102. AMS expects that the direct costs will consist entirely of the value of the time required to produce and distribute the disclosures and maintain proper records. The number of hours the second column were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Act. They provided estimates of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the "Regulatory Requirements" column. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2022. Wage estimates are marked up 41.82 percent to account for benefits. The "Adjustment" column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. A blank value in the Adjustment column indicates that no adjustments were made to the costs. Each adjustment is different and described in the relevant footnote. Expected costs for each "Regulatory Requirement" and are listed in the "Expected Cost" column. Summing the values in the "Expected Cost" column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with § 201.102.

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH § 201.102

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage (\$)	Number of LPDs	Adjustment (percent)	Expected cost (\$)
201.102(b)(1)–(8)	1	Manager	84.27	42		3,539
	4	Lawyer	131.38	42		22,072
201.102(c)(1)–(3)	10	Manager	84.27	42		35,393
	5	Administrative	41.71	42		8,759
	10	Lawyer	131.38	42		55,180
201.102(c)(4)	2	Manager	84.27	^a 188		31,685
	4	Manager	84.27	42		14,157
	1	Lawyer	131.38	42		5,518
201.102(c)(5)	1	Manager	84.27	^a 188		15,843
201.102(d)(1)(2)(i)	30	Manager	84.27	^b 27	^c 90	61,432
	8	Administrative	41.71	^b 27	^c 90	8,108
	22	Information Tech	92.91	^b 27	^c 90	49,667
201.102(d)(1)(2)(ii)–(v)	60	Manager	84.27	42	^d 5	10,618
	16	Administrative	41.71	42	^d 5	1,401

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH § 201.102—Continued

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage (\$)	Number of LPDs	Adjustment (percent)	Expected cost (\$)
201.102(d)(3)	44	Information Tech	92.91	42	^d 5	8,584
	20	Manager	84.27	42	^e 5	3,539
	5	Administrative	41.71	42	^e 5	438
	15	Information Tech	92.91	42	^e 5	2,927
201.102(d)(4)	6	Manager	84.27	42	.....	21,236
	2	Administrative	41.71	42	.....	3,504
201.102(d)(5)	0.5	Manager	84.27	42	.....	1,770
	0.5	Administrative	41.71	42	.....	876
201.102(f)	40	Manager	84.27	42	.....	141,572
	20	Lawyer	131.38	42	.....	110,360
	10	Administrative	41.71	42	.....	17,518
	10	Information Tech	92.91	42	.....	39,020
201.102(g)(1)(2)	1	Manager	84.27	42	.....	3,539
	1	Administrative	41.71	42	.....	1,752
201.102(i)(2)	1	Manager	84.27	42	.....	3,539
	1	Lawyer	131.38	42	.....	5,518
Total Cost .....	.....	.....	.....	.....	.....	^f 689,063

^a AMS estimated a manager's time required for each of the 188 broiler complexes rather than the 42 live dealer firms.

^b 201.102(d)(1)(i) only applies to live poultry dealers that process more than 2 million pounds of broilers per week.

^c Reduces estimated costs by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.

^d Estimates costs for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.

^e Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.

^f Total may not sum due to rounding.

Table 2 provides the details of the estimated ongoing costs of providing disclosure documents required in § 201.102. Table 2 is laid out the same as Table 1. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the “Regulatory Requirements”

column. Estimates for the value of the time are from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2022. Wage estimates are marked up 41.82 percent to account for benefits. The “Adjustment” column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. Expected costs for each

“Regulatory Requirement” and are listed in the “Expected Cost” column. Summing the values in the “Expected Cost” column provides the total expected costs for producing and distributing the disclosure documents associated with § 201.102 on an ongoing basis.

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH § 201.102

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage (\$)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost (\$)
201.102(a)(1)	0.08	Evenly distributed among management, administrative, and information tech.	^a 72.96	19,417	^b 74.72	88,212
201.102(a)(2)	0.08	Evenly distributed among management, administrative, and information tech.	¹ 72.96	19,808	^c 5	6,022
201.102(a)(3)	0.08	Evenly distributed among management, administrative, and information tech.	¹ 72.96	19,808	^d 5	6,022
201.102(b)	0.5	Manager	84.27	42	.....	1,770
201.102(c)(1)–(3)	0.5	Administrative	41.71	42	.....	876
	1	Manager	84.27	42	.....	3,539
201.102(c)(4)	1	Administrative	41.71	42	.....	1,752
	1	Lawyer	131.38	42	.....	5,518
201.102(c)(5)	0.5	Manager	84.27	^e 188	.....	7,921
	1	Manager	84.27	42	.....	3,539
201.102(d)	0.5	Lawyer	131.38	42	.....	2,759
	0.5	Manager	84.27	^e 188	.....	7,921
201.102(d)(1)(i)	0.17 (10 min.)	Administrative	41.71	^e 188	.....	1,307
201.102(d)(1)(ii)–(v)	15	Manager	84.27	^f 27	^g 90	30,716
	3	Administrative	41.71	^f 27	^g 90	3,041
	6	Information Tech	92.91	^f 27	^g 90	13,546
201.102(d)(2)	30	Manager	84.27	42	^h 5	5,309
	6	Administrative	41.71	42	^h 5	526
201.102(d)(3)	12	Information Tech	92.91	42	^h 5	2,341
	10	Manager	84.27	^f 27	ⁱ 5	1,770
201.102(d)(4)	2	Administrative	41.71	^f 27	ⁱ 5	175
	4	Information Tech	92.91	^f 27	ⁱ 5	780
201.102(f)	0.25	Manager	84.27	42	.....	885
	0.25	Administrative	41.71	42	.....	438
201.102(f)	0.25	Manager	84.27	42	.....	885
	0.25	Administrative	41.71	42	.....	438
201.102(f)	20	Manager	84.27	42	.....	70,786
	5	Lawyer	131.38	42	.....	27,590

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH § 201.102—Continued

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage (\$)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost (\$)
201.102(g)	3	Administrative	41.71	42	.....	5,255
	4	Information Tech	92.91	42	.....	15,608
	0.25	Administrative	41.71	^e 188	.....	1,960
Total Cost						ⁱ 319,206

^a \$72.96 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at \$84.27, \$41.71, and \$92.91 respectively.

^b 74.72 is the percentage of the existing poultry grower contracts that are expected to come up for renewal each year. It includes all flock-to-flock and single year contracts as well as longer term contracts that are expected to expire within a year.

^c Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

^d Estimates costs for only the 5 percent of growers that enter contract for the first time.

^e AMS estimated a manager's time required for each of the 188 broiler complexes rather than the 42 live dealer firms.

^f 201.102(d)(1)(i) only applies to live poultry dealers that process more than 2 million pounds of poultry per week.

^g Reduces estimated cost by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.

^h Estimates cost for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.

ⁱ Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

^j Total may not sum due to rounding.

Table 3 below provides the details of the estimated one-time, first-year costs to live poultry dealers of providing disclosure documents required in § 201.104. Like the previous tables, AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet

each of the elements listed in the “Regulatory Requirements” column. Values in the “Expected Wage” column are taken from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2022. Wage estimates are marked up 41.82 percent to account for benefits. The number of LPDs is the number of live poultry

dealers that filed annual reports with AMS for their 2021 fiscal years. “Expected Cost” is the estimate of the cost of each “Regulatory Requirement.” Summing the “Expected Cost” column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with § 201.104.

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH § 201.104

Regulatory requirement	Number of hours per LPD	Profession	Expected wage (\$)	Number of LPDs	Expected cost (\$)
201.104(a)	2	Manager	84.27	42	7,079
	4	Administrative	41.71	42	7,007
201.104(b)	2	Information Technology	92.91	42	7,804
	5	Manager	84.27	42	17,696
201.104(c)	2	Administrative	41.71	42	3,504
	18	Information Technology	92.91	42	70,237
	8	Manager	84.27	42	28,314
	5	Administrative	41.71	42	8,759
	22	Information Technology	92.91	42	85,845
Total Cost					^a 236,244

^a Total may not sum due to rounding.

Table 3 below provides the details of the estimated ongoing costs of providing disclosure documents required in § 201.104. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the “Regulatory Requirements” column. They also provided

the expected number of tournaments per plant. The number of processing plants was tallied from the annual reports that live poultry dealers file with AMS. Values in the “Expected Wage” column were found in U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2022. Wage estimates are marked up 41.82 percent to account for benefits.

Multiplying across the row provides the “Cost” for each “Regulatory Requirement,” and summing the “Cost” column provides the total expected costs for producing and distributing the disclosure documents associated with § 201.104 on an ongoing basis.

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH § 201.104

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage (\$)	Cost (\$)
201.104(b)	0.1	Evenly distributed among management, administrative, and information tech.	188	1.35	52	^a 72.96	96,291
201.104(c)	0.1	Evenly distributed among management, administrative, and information tech.	188	1.35	52	^a 72.96	96,291
Total Cost							192,582

^a \$72.96 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at \$84.27, \$41.71, and \$92.91 respectively.

Appendix 2. Technical Overview of Estimates of the Economic Benefits of Reduction in Profit Uncertainty to Contract Broiler Growers With Rule Changes Promoting Greater Transparency in Returns

A potential benefit of the contract disclosure rules providing increased transparency would be that doing so could lower the uncertainty in the contract broiler grower's profit stream. According to economic principles, a risk averse producer will benefit economically from a reduction in profit risk, a component of the proposed rule's benefits, discussed above. Given assumptions about the level of risk aversion of the producer, the distribution of contract grower profit, and the grower's utility function (an economic concept that in this case measures the grower's preferences over a set of goods), it is possible to calculate the range of economic benefits to contract growers of decreased profit uncertainty associated with greater transparency. For this analysis, we assume that the producer maximizes an absolute risk aversion (ARA) utility function. The alternative to an absolute risk aversion function is a relative risk aversion function (RRA). For the former, the coefficient of risk aversion is the negative of the ratio of the second to first derivatives of the utility function with respect to the good (e.g., wealth or consumption) while the latter multiplies this ratio times the level of the good. We could find only two papers that used either RRA or ARA for examining North American poultry contract growers. Hu (2015) and Hegde and Vukina (2003) assume CARA for U.S. broiler contract growers. The former is an econometric exercise that does not provide sufficient information to obtain a risk aversion parameter for use in a scenario analysis and the latter is simply a simulation exercise of a wide range of arbitrary parameter values for the absolute risk aversion parameters without referring them to a given range of risk aversion premium (RAP) levels to provide context.

A benefit of relative risk aversion is that the relative risk aversion parameter is scale free, which represents a convenience for analysis. We assume that one reason for the greater use of relative risk aversion compared to absolute risk aversion is that it saves the researcher the work of having to solve the nonlinear equations necessary to scale the risk parameters to the size of the risky bet. A nice property of the absolute risk aversion is that the preferences for risk aversion are directly reflective of where the researcher wants risk preferences to be on a 0%-100% percentage of the standard deviation of the gamble that a risk averter would pay to avoid the gamble altogether. With relative risk aversion in contrast, the researcher instead refers to say, "typical" values of the relative risk aversion coefficient. Relative risk aversion measure is sensitive to what is included or excluded when defining or measuring the outcome variable, e.g., whether wealth or profits (Meyer and Meyer, 2005). When the focus is on representing and measuring the risk preferences of the decision maker, as it is in the analysis of broiler growers, either relative or absolute

risk aversion is sufficient as the basis for the analysis, and since simple arithmetic allows one to go from model to the other, only one of these approaches is needed (*ibid.*).

Another decision to be made is how the producer's risk aversion changes with wealth. Under constant absolute risk aversion (CARA), the grower's risk aversion does not change as wealth increases. Decreasing absolute risk aversion (DARA) assumes that the grower's risk aversion increases as wealth increases. Another possibility is that the grower's risk aversion is increasing in wealth (IARA). While no evidence exists one way or another for how risk preferences of broiler contract growers change with wealth, the agricultural economics literature generally assumes DARA over IARA. We have no information one way or another on how the risk aversion of contract growers changes with wealth, and hence, we use both CARA and DARA.

First, we assume that the grower has constant absolute risk aversion (CARA) and makes management decisions to maximize the expected value of a negative exponential utility function over N simulated returns, or $U(w) = (1 - e^{-\lambda w})$

where λ is the grower's absolute risk aversion coefficient and w is the grower's wealth that proxies for a set of goods and services. The higher is λ , the higher the grower's aversion variability in w . Wealth w is a stochastic variable defined as the grower's initial (fixed) wealth w_0 plus the stochastic net returns. A negative exponential utility function conforms to the hypothesis that growers prefer less risk to more given the same expected, or average, return.

The specific functional form in the equation above also assumes that growers view the riskiness of profit variability the same without regard for their level of wealth, i.e., CARA (e.g., Goodwin, 2009). A risk averse grower will be willing to accept lower mean net returns in exchange for lower variability in returns w . Let U_0 be the grower's current utility and U_1 be the grower's utility with the new contract rules and their associated lower variability of w . Assuming mean w is constant between states, for the risk averse grower, $U_1 > U_0$. The question then becomes how to translate the benefit $U_1 - U_0$ into a dollar value. We define the Risk Premium (RP), or the dollar benefit to growers of decreased profit risk, as the amount of mean profit they would be willing to give up such that $U_1 = U_0$, i.e., such that they are indifferent between the two states (e.g., Sproul *et al.* 2013; Schnitkey *et al.*, 2003).¹⁸⁸

The first step is to construct an empirical distribution of grower profit or net revenue. The market value of contracted share of broilers in 2020 was \$20.9 billion given NASS data on their total value of production and the 96.3 percent shares that are contract.

¹⁸⁸ This Risk Premium may be considered a special case of the compensating variation concept in economics. With the proposed rule changes leading to greater transparency in returns, the grower would be getting a decrease in revenue variability but would not have to pay to get this. Hence the Risk Premium is a measure of benefit to the grower of being under the new contract rules.

Eleven percent of this value goes to contract growers, based on the ratio of the USDA's Livestock Indemnity Program (LIP) payment rate for contract growers divided by the rate for livestock owners, leading to a mean gross revenue of \$2.3 billion for broiler growers. Variable and fixed costs are assumed to be non-stochastic and are set at 24 and 19 percent of the 2020 mean gross revenue, based on the proportions from Table 1 in Maples *et al.* (2020), and net revenue is the gross revenue less the variable and fixed costs. Initial (non-stochastic) wealth w_0 is set equal to 2020 mean net revenue.¹⁸⁹ Grower net revenue is assumed to follow a normal distribution. A normal distribution of net revenue will approximate the distribution in cumulative distribution function of net revenue in Figure 1 of Maples *et al.* (2020) with a coefficient of variation of revenue of 0.16.¹⁹⁰ Given this estimate of the coefficient of variation of net revenue, and the mean net revenue of \$1.33 billion for broiler contract grower net revenue, the standard deviation can be simply found as the coefficient of variation of net revenue times this mean.

The associated absolute risk aversion coefficient λ is associated with a grower's risk aversion premium (RAP), a value that varies between 0 and 100 percent (of the potential loss) and reflects the amount the grower is willing to pay to avoid the potential loss, with higher values reflecting higher risk aversion. The λ is linked to the RAP on a theoretical basis outlined in Babcock, Choi, and Feinerman (1993). The associated absolute risk aversion coefficient λ is scaled to the standard deviation of net revenue using the approach in Babcock, Choi, and Feinerman (1993). Note that since λ is scaled to the standard deviation of net revenue, the calculation of the total Risk Premium across all growers, or $RP = \sum_i RP_i$, $i = 1 \dots G$, equal size growers is invariant to assumptions about the total number of growers G , whether set to an arbitrary value or to the 16,524 contract broiler growers per the 2017 Agricultural Census.¹⁹¹ The estimated value of λ is $1.10E-09$, $1.10E-06$, and $1.1E-05$ for $G = 1$, 1,000, and 10,000 equal sized growers, respectively, with an RAP of 20 percent.¹⁹² A von Neumann-Morgenstern expected utility is estimated over $N = 1,000$ draws of w_j where EU_0 is

¹⁸⁹ The academic literature tends to be vague as to setting w_0 , with it either set at \$0 or some unspecified amount. In principle, it could be set at the producer's net equity going into the year, but if one wants initial wealth for the purposes of utility analysis to be relative liquid assets, net equity maybe too high a value.

¹⁹⁰ To put this coefficient of variation of broiler revenue of 0.16 in perspective, note that the lower-end estimate of the coefficient of variation of farm level revenue for major row crops is considerably higher as one might expect, at 0.25 even with crop insurance (Cooper 2010; Belasco, Cooper, and Smith, 2019).

¹⁹¹ USDA, NASS. 2017 Census of Agriculture: United States Summary and State Data, (April 2019).

¹⁹² For estimation, $G = 10,000$ is used to allow for a larger λ and reduce the potential for machine error in rounding.

$$EU_0(w) = \frac{1}{N} \sum_{j=1}^N [1 - e^{-\lambda w_j}],$$
 and EU_I is

$$EU_1(w_1) = \frac{1}{N} \sum_{j=1}^N [1 - e^{-\lambda(w_{1j}-RP)}],$$

where w_{1j} are draws from the normal distribution given an assumption for a lower coefficient of variation of gross revenue with the new rules, but with the same initial wealth, costs, and mean gross revenue as in the base case. The risk premium RP that solves $EU_I(w_1) = EU_0(w)$ is found using a numerical search routine.

For the DARA scenario, we follow Hennessy (1998), and the CARA utility function becomes

$U(w) = (1 - e^{-\lambda w}) + \beta w$ where β is greater than zero. Let $\rho(w)$ be the risk aversion coefficient under DARA, i.e., $\rho(w)$ is decreasing in w . Hennessy (ibid.) shows that $\rho(w)$ is a function of λ and β as

$$\rho(w) = \frac{\lambda^2 e^{-w\lambda_1}}{\beta + \lambda_1 e^{-w\lambda_1}}$$

Per Hennessy (ibid.), we solve for the values of λ and β to simultaneously satisfy a $\rho(w = 0)$ associated with a RAP of 40 percent and

a $\rho(w = \bar{w})$ associated with a RAP of 20 percent. Like Hennessy (ibid.), we assume that the Babcock, Choi, and Feinerman approach to relate the risk coefficient to the RAP level holds approximately for DARA preferences. The rest of the approach for finding the risk premium RP that solves $EU_I(w_1) = EU_0(w)$ is the same as for the CARA scenarios. Appendix Table A1 summarizes the parameters and risk attitudes used in the analysis, with the RAP value denoted as θ .

APPENDIX TABLE A1—NATURE OF CHOSEN UTILITY FUNCTIONS

Parameters and risk attitudes	Low and CARA	High and CARA	DARA
λ	1.099164E-05	2.40788E-05	2.0533761e-05
β	0	0	3.9580000e-09
$\theta[w = 0]$	0.20	0.40	0.40
$\theta[w = \bar{w}]$	0.20	0.40	0.20
$\rho[w = 0]$	1.099164E-05	2.40788E-05	2.0529804e-05
$\rho[w = \bar{w}]$	1.099164E-05	2.40788E-05	1.0991640e-05

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Appendix 3. Details of the Estimated One-Time, First-Year Costs and On-Going Annual Costs of Providing Disclosure Documents Required in §§ 201.102 and 201.104 Under the Small Business Exemption Alternative

Costs for the alternative that would exempt live poultry dealers that produced and average of less than 2 million pounds of broilers per week were estimated similarly to cost for the §§ 201.102 and 201.104. AMS subject matter experts provided estimates of the average amount of time that would be necessary for each live poultry dealer to comply with each new requirement in §§ 201.102 and 201.104, and the hours were multiplied by wage estimates to arrive at an expected cost for each regulatory element. The tables are set up the same as before.

Multiplying across row for each regulatory element provides the expected cost for the element. Summing the expected costs for element provides the total cost.

Table 1 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in § 201.102. AMS expects that the direct costs will consist entirely of the value of the time required to produce and distribute the disclosures and maintain proper records. The number of hours the second column were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing live poultry dealers for compliance with the Act. They provided estimates of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the “Regulatory Requirements” column. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimates released May 2022. The wage estimates are marked up 41.82 percent to account for benefits. The “Adjustment” column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers. A blank value in the Adjustment column indicates that no adjustments were made to the costs. Each adjustment is different and described in the relevant footnote. Expected costs for each “Regulatory Requirement” and are listed in the “Expected Cost” column. Summing the values in the “Expected Cost” column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with § 201.102.

TABLE 1—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH § 201.102

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage (\$)	Number of LPDs ^a	Adjustment (percent)	Expected cost (\$)
201.102(b)(1)–(8)	1	Manager	84.27	27		2,275
	4	Lawyer	131.38	27		14,189
201.102(c)(1)–(3)	10	Manager	84.27	27		22,753
	5	Administrative	41.71	27		5,631
	10	Lawyer	131.38	27		35,473
201.102(c)(4)	2	Manager	84.27	^b 121		20,369
	4	Manager	84.27	27		9,101
	1	Lawyer	131.38	27		3,547
201.102(c)(5)	1	Manager	84.27	^b 121		10,184
201.102(d)(1)(2)(i)	30	Manager	84.27	27	^c 90	61,432
	8	Administrative	41.71	27	^c 90	8,108
	22	Information Tech	92.91	27	^c 90	49,667
201.102(d)(1)(2)(ii)–(v)	60	Manager	84.27	27	^d 5	6,826
	16	Administrative	41.71	27	^d 5	901
	44	Information Tech	92.91	27	^d 5	5,519
201.102(d)(3)	20	Manager	84.27	27	^f 5	2,275
	5	Administrative	41.71	27	^f 5	282
	15	Information Tech	92.91	27	^f 5	1,881
201.102(d)(4)	6	Manager	84.27	27		13,652
	2	Administrative	41.71	27		2,252
201.102(d)(5)	0.5	Manager	84.27	27		1,138
	0.5	Administrative	41.71	27		563
201.102(f)(1)(2)	40	Manager	84.27	27		91,010
	20	Lawyer	131.38	27		70,946
	10	Administrative	41.71	27		11,261
	10	Information Tech	92.91	27		25,084
201.102(g)(1)(2)	1	Manager	84.27	27		2,275
	1	Administrative	41.71	27		1,126
201.102(i)(2)	1	Manager	84.27	27		2,275
	1	Lawyer	131.38	27		3,547
Total Cost						^g 485,543

^a Annual reports filed by live poultry dealers indicated 27 processed an average of more than 2 million pounds of broilers per week.

^b AMS estimated a manager's time required for each of the 121 broiler complexes rather than the 27 live dealer firms.

^c 201.102(d)(1)(i) exempts live poultry dealers that process less than 2 million pounds of broilers per week.

^d Reduces estimated costs by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.

^e Estimates costs for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.

^f Estimates costs for the 5 percent of the growers that require upgrades to poultry housing.

^g Total may not sum due to rounding.

Table 2 provides the details of the estimated ongoing costs of providing disclosure documents required in § 201.102. Table 2 is laid out the same as Table 1. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the “Regulatory Requirements”

column. Estimates for the value of the time are from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2022. The wage estimates are marked up 41.82 percent to account for benefits. The “Adjustment” column allows for estimation of costs that will only apply to a subset of the poultry growers or to the live poultry dealers.

Expected costs for each “Regulatory Requirement” and are listed in the “Expected Cost” column. Summing the values in the “Expected Cost” column provides the total expected costs for producing and distributing the disclosure documents associated with § 201.102 on an ongoing basis.

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH § 201.102

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage (\$)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost (\$)
201.102(a)(1)	0.08	Evenly distributed among management, administrative, and information tech.	^a 72.96	19,417	^b 74.72	88,212
201.102(a)(2)	0.08	Evenly distributed among management, administrative, and information tech.	^a 72.96	19,417	^c 5	5,903
201.102(a)(3)	0.08	Evenly distributed among management, administrative, and information tech.	^a 72.96	19,417	^d 5	5,903
201.102(b)	0.5	Manager	84.27	27		1,138
	0.5	Administrative	41.71	27		563
201.102(c)(1)–(3)	1	Manager	84.27	27		2,275
	1	Administrative	41.71	27		1,126
	1	Lawyer	131.38	27		3,547
201.102(c)(4)	0.5	Manager	84.27	^e 121		5,092
	1	Manager	84.27	27		2,275
	0.5	Lawyer	131.38	27		1,774
201.102(c)(5)	0.5	Manager	84.27	^e 121		5,092
201.102(d)	0.17	Administrative	41.71	^e 121		840

TABLE 2—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH § 201.102—Continued

Regulatory requirement	Number of hours required for each LPD	Profession	Expected wage (\$)	Number of LPDs/number of contracts	Adjustment (percent)	Expected cost (\$)
201.102(d)(1)(i)	15	Manager	84.27	27	^f 90	30,716
	3	Administrative	41.71	27	^f 90	3,041
	6	Information Tech	92.91	27	^f 90	13,546
201.102(d)(1)(ii)–(v)	30	Manager	84.27	27	^g 5	3,413
	6	Administrative	41.71	27	^g 5	338
	12	Information Tech	92.91	27	^g 5	1,505
201.102(d)(2)	10	Manager	84.27	27	^h 5	1,138
	2	Administrative	41.71	27	^h 5	113
	4	Information Tech	92.91	27	^h 5	502
201.102(d)(3)	0.25	Manager	84.27	27	.....	569
	0.25	Administrative	41.71	27	.....	282
201.102(d)(4)	0.25	Manager	84.27	27	.....	569
	0.25	Administrative	41.71	27	.....	282
201.102(f)	20	Manager	84.27	27	.....	45,505
	5	Lawyer	131.38	27	.....	17,736
	3	Administrative	41.71	27	.....	3,378
	4	Information Tech	92.91	27	.....	10,034
201.102(g)	0.25	Administrative	41.71	^e 121	.....	1,260
Total Cost .....	.....	.....	.....	.....	.....	ⁱ 257,665

^a \$72.96 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at \$84.27, \$41.71, and \$92.91 respectively.

^b 74.72 is the percentage of the existing poultry grower contracts that are expected to come up for renewal each year. It includes all flock-to-flock and single year contracts as well as longer term contracts that are expected to expire within a year.

^c Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

^d Estimates costs for only the 5 percent of growers that enter contract for the first time.

^e AMS estimated a manager's time required for each of the 121 broiler complexes rather than the 27 live dealer firms.

^f Reduces estimated cost by 10 percent to exclude the 5 percent for the estimated proportion of growers that require upgrades to poultry housing and 5 percent for the estimated proportion of growers that enter a contract for the first time.

^g Estimates cost for the 5 percent of the growers that require upgrades to poultry housing and enter into contracts for the first time.

^h Estimates cost for the 5 percent of the growers that require upgrades to poultry housing.

ⁱ Total may not sum due to rounding.

Table 3 below provides the details of the estimated one-time, first-year costs of providing disclosure documents required in § 201.104. Like the previous tables, AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements

listed in the “Regulatory Requirements” column. Values in the “Expected Wage” column are taken from U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2022. The wage estimates are marked up 41.82 percent to account for benefits. The number of LPDs is the number of live poultry dealers that filed

annual reports with AMS for their 2020 fiscal years. “Expected Cost” is the estimate of the cost of each “Regulatory Requirement.” Summing the “Expected Cost” column provides the total expected first-year, one-time costs for setting-up and producing the disclosure documents associated with § 201.104.

TABLE 3—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH § 201.104

Regulatory requirement	Number of hours per LPD	Profession	Expected wage (\$)	Number of LPDs	Expected cost (\$)
201.104(a)	2	Manager	84.27	27	4,551
	4	Administrative	41.71	27	4,505
	2	Information Technology	92.91	27	5,017
201.104(b)	5	Manager	84.27	27	11,376
	2	Administrative	41.71	27	2,252
	18	Information Technology	92.91	27	45,152
	8	Manager	84.27	27	18,202
201.104(c)	5	Administrative	41.71	27	5,631
	22	Information Technology	92.91	27	55,186
Total Cost .....	.....	.....	.....	.....	^a 151,871

^a Total may not sum due to rounding.

Table 4 below provides the details of the estimated ongoing costs of providing disclosure documents required in § 201.104. AMS subject matter experts provided estimates in the second column of the average amount of time that would be necessary for each live poultry dealer to meet each of the elements listed in the “Regulatory Requirements” column. They also provided

the expected number of tournaments per plant. The number of poultry processing plants was tallied from the annual reports that live poultry dealers file with AMS. Values in the “Expected Wage” column were found in U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics released May 2022. The wage estimates are marked up 41.82 percent to

account for benefits. Multiplying across the row provides the “Cost” for each “Regulatory Requirement,” and summing the “Cost” column provides the total expected costs for producing and distributing the disclosure documents associated with § 201.104 on an ongoing basis.

TABLE 4—ONGOING EXPECTED COSTS ASSOCIATED WITH § 201.104

Regulatory requirement	Hours	Profession	Number of plants	Number of tournaments per plant	Weeks in a year	Avg. wage (\$)	Cost (\$)
201.104(b)	0.1	Evenly distributed among management, administrative, and information tech.	121	1.35	52	^a 72.96	\$61,901
201.104(c)	0.1	Evenly distributed among management, administrative, and information tech.	121	1.35	52	^a 72.96	61,901
Total Cost							^b 123,803

^a \$72.96 is the average of the average wages for poultry processing managers, administrative professionals, and information technology staff at \$84.27, \$41.71, and \$92.91 respectively.

^b Total may not sum due to rounding.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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