FEDERAL REGISTER

Vol. 87 Monday

No. 190 October 3, 2022

Pages 59633–60056

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[FNS–2019–0055]

RIN 0584–AE75

Supplemental Nutrition Assistance Program: Requirement for Interstate Data Matching To Prevent Duplicate Issuances

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Interim final rule.

SUMMARY: The Agriculture Improvement Act of 2018 requires the Secretary of Agriculture to establish an interstate data system called the National Accuracy Clearinghouse (NAC) to prevent issuance of Supplemental Nutrition Assistance Program (SNAP) benefits to an individual by more than one State agency simultaneously (also known as interstate duplicate participation). This interim final rule requires SNAP State agencies to provide information to the NAC regarding individuals receiving SNAP benefits in their States in order to ensure they are not already receiving benefits in another State. It also requires State agencies to take appropriate action with respect to each indication from the NAC that an individual may already be receiving SNAP benefits from another State agency. This rule aims to enhance Program integrity by reducing the risk of improper payments and improve customer service by incorporating best practices and lessons learned from the NAC pilot to require that State agencies take appropriate and timely action to resolve NAC matches. This rule also establishes safeguards to ensure households receive benefits for which they are eligible and are not incorrectly removed from the Program.

DATES:

Effective date: This rule is effective December 2, 2022.

Implementation date: The USDA (or Department) intends to implement this nationwide NAC matching solution using a phased approach that will allow all State agencies to onboard over a period of 5 years. State agencies must comply with the provisions of this interim final rule no later than October 4, 2027.

Comment date: To be considered, written comments on this interim final rule must be received on or before December 2, 2022.

ADDRESSES: Comments may be submitted in writing by one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send written comments to State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 1320 Braddock Place, 5th floor, Alexandria, VA, 22314.
- All written comments submitted in response to this interim final rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maribelle Balbes, Chief, State Administration Branch, Program Accountability and Administration Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, USDA, 1320 Braddock Place, 5th floor, Alexandria, VA 22314, by phone at (703) 605–4271 or via email at *SM.FN.SNAPSAB@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 4011 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334, the ''Farm Bill'') amended Section 11 of the Food and Nutrition Act of 2008 (''the Act'') (7 U.S.C. 2020) by creating a new subsection (x). Section 11(x) of the Act requires that ''[t]he Secretary . . . establish an interstate data system, to be known as the 'National Accuracy Clearinghouse,' to prevent multiple issuances of supplemental nutrition assistance program benefits to an individual by more than 1 State agency simultaneously.'' The Act further requires the Secretary to promulgate regulations to prevent multiple issuances of SNAP benefits, including specific mandates to ''incorporate best practices and lessons learned from the pilot program under Section 4032(c) of the Agricultural Act of 2014'' and to ''require a State agency to take appropriate action, as determined by the Secretary, with respect to each indication of multiple issuance of supplemental nutrition assistance program benefits, or each indication that an individual receiving such benefits in 1 State has applied to receive such benefits in another State.''

Section 4009 of the Farm Bill amended Section 11 of the Act. As amended, Section 11(e) of the Act states ''that for a household participating in the supplemental nutrition assistance program, the State agency shall pursue clarification and verification, if applicable, of information relating to the circumstances of the household received from data matches for the purpose of ensuring an accurate eligibility and benefit determination, only if the information . . . is obtained from data matches carried out under subsection (q), (r), or (x).''

B. Authority for Interim Final Regulation

The Department is issuing this interim final rule at the direction of Congress. The Act, in a sub-section entitled ''Issuance of Interim Final Regulations'' provides that ''not later than 18 months after the date of enactment of the Agriculture Improvement Act of 2018, the Secretary shall promulgate regulations (which shall include interim final regulations) to carry out this subsection . . .'' 7 U.S.C. 2020(x)(3). The Department will issue a final rule after considering public comments and obtaining additional information during the initial implementation.

C. Existing Requirements for Residency, Duplicate Participation, Recipient Claims, and Intentional Program Violations

Residency Requirement

Under existing Program rules, an individual may not receive SNAP benefits from more than one State agency that administers the Program (henceforth referred to as State or State agency) for the same benefit month. Regulations at § 273.3 require that a household live in the State where it files a SNAP application and stipulate that no individual may participate as a member of more than one household or in more than one project area (*i.e.,* a State) in any month, unless an individual is a resident of a shelter for battered women and children as defined at § 271.2. Program regulations at § 273.2(f)(1)(vi) also require that State agencies verify applicants' residency before certifying a household initially applying.

Duplicate Participation

Current SNAP regulations at § 272.4(e) also require State agencies to establish systems to prevent individuals from participating in more than one household within one State (duplicate participation). The regulation stipulates that State agencies match against names and Social Security numbers at a minimum, and other identifiers such as birth dates or addresses as appropriate.

Recipient Claims

Per § 272.2(d)(1)(x), State agencies must submit a claims management plan as part of their State plan of operations, for informational purposes only, that describes their procedures for establishing and collecting overpayment claims. If duplicate participation is identified, State agencies follow the regulations at § 273.18 to establish and collect claims for the amount of benefits overpaid. These claim regulations provide State agencies with flexibility to compromise or terminate claims under certain conditions and provide States with collection options. SNAP also participates in the Treasury Offset Program and provides assistance to help State agencies collect unpaid balances.

Intentional Program Violation

An intentional Program violation, defined at § 273.16(c), occurs when an individual intentionally makes a false or misleading statement or withholds facts; or an individual commits any act that constitutes a violation of the regulations for the purpose of trafficking SNAP benefits, which is the exchange of benefits for cash or other considerations. The regulations at § 273.16(a) provide that State agencies shall be responsible for investigating any case of alleged intentional Program violation and ensuring that cases are acted upon, as appropriate, either through administrative disqualification hearings or referral to a court of appropriate jurisdiction. Furthermore, Section 6(j) of the Act states that members of a household who make a fraudulent statement or representation about their residence so as to receive multiple benefits simultaneously must be disqualified for a period of 10 years.

However, an instance of duplicate participation does not necessarily indicate an intentional Program violation or fraud. For example, an individual may have recently moved between States and inadvertently failed to close their case, or a State agency failed to timely close a case for an individual that it knew had moved. The timeframe for when an individual must report a move depends on the reporting system to which the State agency has assigned the individual. However, prior to receiving benefits in a new State, the individual's existing case must either be closed or the individual must be removed from the previous household's existing case as an individual cannot participate in more than one project area in any given month. When a State agency receives a report of an out of State move, it must take action to close the case or remove the individual from a case in a timely manner. Failure by an individual to report a move, or a State agency to take prompt action to remove an individual from SNAP when reported, may lead to instances of duplicate participation but would not be considered an intentional Program violation or fraud. In these instances, the individual is not intentionally receiving benefits from more than one State agency simultaneously. Comments from the Congressional record regarding the Farm Bill [1] state, ''We know that duplicate participation, when it does occur, is rarely intentional fraud, but rather is a result of a household or household member simply moving from one State to another and not successfully disenrolling in their previous home State. This could be caused by households not being able to get through to a call center to report the move or a State not taking the proper action to close the case or remove the household member [after a move is reported].''

Therefore, in order to determine whether fraud has occurred, a State agency is responsible for investigating and either: (1) determining through an administrative disqualification hearing if an individual committed an intentional Program violation or (2) referring a case for prosecution for fraud. Additional comments from the Congressional record on the Farm Bill further state that ''without evidence of a client's intent to defraud the program, State agencies should assume that dual enrollment discovered through the NAC is unintentional''.[2] Given that the regulatory definition of an intentional Program violation at § 273.16(c) requires that acts be committed intentionally, this is in keeping with the current Program operations. These Congressional Record comments also align with Section 6(j) of the Farm Bill and § 273.16(b)(5), both of which focus on an individual making fraudulent statements or representations concerning their residency. Thus, a State agency may only determine an individual has done this when there is evidence that the applicant knowingly engaged in duplicate participation with the intent to collect SNAP benefits in more than one State simultaneously. This is opposed to instances of administrative oversight, such as an applicant reporting a move and the State agency failing to close the case, which do not arise as a result of an individual's fraudulent statements or representations.

D. The Current State of Interstate Duplicate Participation

Individuals are prohibited from participating in SNAP as a member of more than one household or in more than one project area, except for residents of a shelter for battered women and children. Per § 272.4(e), State agencies already use existing processes to prevent duplicate participation within their States including, but not limited to validation of Social Security numbers, verification of identity and residency, and matching personal identifiers against its caseload. Additionally, many State agencies rely on a question on the SNAP application about receiving benefits in another State in order to prevent duplicate participation. An applicant's affirmative response to this question starts a manual process that can involve emailing or calling another State agency to inquire about the applicant, which may result in delays in the application process and prevent the applicant from receiving their benefits in a timely manner. A lack of comprehensive and automated data

[1] *https://www.congress.gov/115/crec/2018/12/19/CREC-2018-12-19-pt1-PgS7918.pdf,* paragraph 7.

[2] *https://www.congress.gov/115/crec/2018/12/19/CREC-2018-12-19-pt1-PgS7918.pdf,* paragraph 7.

sharing between State agencies can result in duplicate participation, as State agencies will have to determine eligibility within the application processing timeframe before verification from the previous project area is received. A manual process of resolving instances of duplicate participation also requires waiting to issue benefits because another State agency failed to take action to close a case, which can result in a delay of benefit determination. These challenges highlight the need for enhanced and required communication and data sharing between State agencies which are discussed later in this rule.

Although SNAP regulations do not mandate it, most State agencies use the Department of Health and Human Services' Public Assistance Reporting Information System (PARIS) to identify individuals who may be current SNAP participants in more than one State. State agencies submit data to PARIS on varying schedules; some provide information once per quarter while others submit less often. PARIS checks for matches on a quarterly basis. Due to its quarterly matching frequency, PARIS can only help State agencies identify duplicate participation after-the-fact and does not enable State agencies to prevent it from occurring. For example, there could be up to three months of duplicate participation before the State agency receives a match, resulting in the establishment of larger claims for the individual to repay than if the match had been detected immediately. Additionally, because PARIS conducts data matches on State-submitted data at a frequency of once per quarter or less, a match merely indicates that an individual was active in two States during the months being matched, but this does not necessarily indicate benefit receipt occurred simultaneously in a single month. For example, if duplicate participation is identified during the match of October, November, and December data, it's possible that the individual was participating in one State in October and another State in November and December. Determining any overlap in benefit issuance in such an instance typically involves a manual process and can be burdensome to State agencies to resolve.

These existing processes that identify overpaid benefits after-the-fact may have unintended consequences for households, oftentimes including unnecessary household burden, and can result in poor or inconsistent customer service. Because of the delays associated with after-the-fact matches and manual processes, there is an increased likelihood that an applicant who reported a move could still be flagged for duplicate participation and must navigate the claims recovery process even though they complied with Program rules.

E. The National Accuracy Clearinghouse Pilot

The following paragraphs provide context surrounding the establishment of the National Accuracy Clearinghouse (NAC) pilot, its independent evaluation, lessons learned, final points, and Department's expectations for the NAC moving forward. The business process and system discussion in this section references how the NAC pilot operates, which is separate and different from the nationwide NAC being established by this rule. The nationwide NAC will be discussed in Section II.

Beginning in 2013, the State of Mississippi established a pilot that was funded by the Office of Management and Budget's (OMB) Partnership Fund for Program Integrity Innovation.[3] The pilot was designed to test the feasibility of improving upon existing processes by establishing a real-time interstate data matching system to prevent duplicate participation, this system is called the NAC pilot. The NAC pilot data matching operations began in June 2014 and consisted of five participating State agencies: Alabama, Florida, Georgia, Louisiana, and Mississippi. The NAC pilot is still in operation under administrative waivers. However, there are only four State agencies still operating the pilot under administrative waivers: Alabama, Florida, Georgia, and Mississippi.

As part of the pilot, each participating State agency submits a daily file of its entire SNAP participant caseload, which is then integrated into a list of all SNAP participants receiving benefits in the participating States. State agencies query the system when they receive SNAP applications or add new members to an existing household. The NAC pilot checks these individuals against the list of active SNAP participants in the other pilot States. When a State agency identifies that an applicant is receiving benefits in another State, the SNAP State agency staff in the applicant State contact the State agency where the applicant is already receiving benefits to close the individual's case or remove the individual from the household. Once the applicant's out-of-State case is closed or the individual is removed from the household, the State agency receiving the application can move forward with the certification process. If the applicant is checked against the NAC pilot's list of active SNAP participants in other States and the applicant is not identified as receiving SNAP benefits elsewhere, then the State agency proceeds with the certification process as usual.

The NAC pilot allowed for estimation on the prevalence of interstate duplicate participation in the five participating States. Analysis of data from before the NAC pilot began operations suggested that between 0.09 percent and 0.17 percent of the individual SNAP participants active in each pilot State's caseload in May 2014 were also receiving benefits in another one of the pilot States in May 2014. The Department notes, however, that this data only represent instances of interstate duplicate participation where both States issuing benefits were participating in the pilot. Accordingly, the NAC pilot could not discover any potential matches between a State participating in the NAC pilot and a State that was not participating in the NAC pilot. This limited ability to detect matches suggests that the nationwide NAC will only increase positive match frequency when new State agencies are added to the system. The positive match frequency is also expected to decrease gradually as State agencies adopt the nationwide NAC and NAC business processes implemented by this rule.

Independent Evaluation of the NAC Pilot[4]

Pursuant to Section 4032(c) of the Agricultural Act of 2014, an independent evaluation assessed the NAC pilot's detection and prevention of duplicate participation between May 2013 and August 2015 and reported on variations in implementation among the five State agencies. As the NAC pilot focused exclusively on interstate duplicate participation, intrastate duplicate participation was not assessed as a part of the NAC pilot evaluation. Overall, the evaluation found a relatively low occurrence of duplicate participation—ranging from less than one-tenth of one percent of Louisiana's eligible individuals in May 2014 to just below two-tenths of one percent of Georgia's.[5] The evaluation report indicated that a significant percentage of duplicate participation occurs when a new member is being added to a

[3] *https://obamawhitehouse./archives.gov/sites/default/files/omb/memoranda/2011/m11-01.pdf.*

[4] *https://risk.lexisnexis.com/-/media/files/government/report/b7de1d11976a4bdd82a039a8f272265busdareportonnac2016117614%20pdf.pdf.*

[5] *https://risk.lexisnexis.com/-/media/files/government/report/b7de1d11976a4bdd82a039a8f272265busdareportonnac2016117614%20pdf.pdf,* page 10.

household with an existing case. As presented in Table 19 of the evaluation report, an average of 47 percent of duplicate participation instances found were from individuals residing in households where all members are not duplicate participants. The Department interprets these occurrences of duplicate participation as instances where administrative processes need to be improved and better customer service provided, particularly for individuals or households that move between States. It is likely that these individuals either failed to report their move or were not promptly disenrolled by the State agency. Table 21 further emphasizes the need for greater customer service by evaluating claims data on cases including duplicate participants identified at initial matching of the NAC pilot. Out of the claims data reported, more than 27 percent of claims were due to State agency error or inadvertent client error. Based on this information, the Department determines that there is a greater need for enhanced customer service for applicants and participants who move between States or households, as well as better training for eligibility workers to identify these individuals and prevent inadvertent household errors and State agency errors that may result in the establishment of a claim and added burden.

Although the evaluation found that the rate of duplication participation is infrequent, the report found a 46 percent reduction in the number of SNAP participants receiving benefits in more than one pilot State after one year of NAC pilot operation. Each of the five States experienced a reduction in duplicate participation, but the scale of the reductions varied. Two of the five States had 81 percent fewer instances of SNAP participants receiving benefits in another State compared to pre-NAC pilot levels (for example, from a monthly average of 882 instances down to 166 in Mississippi), while another two saw reductions of less than 30 percent (for example, from a monthly average of 3,383 to 2,446 instances in Florida). The Department believes that improving administrative processes will further diminish households' inadvertent duplicate participation.

The NAC pilot evaluation also measured each State agency's effectiveness in using the NAC pilot to prevent duplicate participation, comparing positive matches generated by queries regarding SNAP applicants or new household members to subsequent positive indications of active duplicate participation. Matches on SNAP applicants or new household members that subsequently became active duplicate participants indicate that the information from the NAC pilot failed to prevent an individual from receiving benefits from more than one State agency simultaneously due to participant State agencies not taking appropriate actions when notified of a match and/or a lack of communication between State agencies. Again, there was significant variation in how effectively the five pilot State agencies used the NAC pilot to prevent duplicate participation. In two of the five States, less than 10 percent of individuals identified in NAC pilot matches resulted in subsequent duplicate participation. Other pilot State agencies were not as effective. The least effective State agency consistently saw about 40 percent of instances of individuals identified in matches resulting in duplicate participation.

NAC Pilot Lessons Learned

The overall findings from the evaluation indicate that the rate of duplicate participation is low; that when it does occur, it is sometimes inadvertent, such as a State agency failing to promptly disenroll an individual that had moved between States and/or households, and not fraud; and that use of the NAC can effectively reduce duplicate participation if State agencies apply lessons learned from the pilot as they implement the nationwide NAC data match. The pilot State agencies with larger reductions in duplicate participation were the same State agencies with better rates of preventing duplicate participation. The NAC pilot evaluation found that these State agencies were more successful largely due to the extent that they automated NAC processes. They used web services to link their State systems with the NAC pilot. This enabled real-time querying of the NAC pilot in a manner similar to a manual portal query, where eligibility workers checked for NAC matches by manually inputting data, with the added advantage of limiting eligibility worker intervention to only those instances in which a match is generated. For example, if a State agency eligibility worker needs to process an application on the same day the application is received, the web services approach allows for sending and receiving information from the NAC pilot that same day. Pilot States that were less effective in terms of preventing and reducing duplicate participation used a batch process model where information is not returned until the following day. This sometimes led to the certification of an application before the caseworker became aware that there was a positive match from the NAC pilot indicating an active case in another State.

The more successful States in the NAC pilot also integrated the pilot with their SNAP eligibility systems and into existing workflows. State agency eligibility workers received flags to take additional steps only in the event of a positive match, rather than having to check the NAC pilot portal for every application they processed and every person they added to a case.

The differences in business processes and systems integration not only provide at least a partial explanation for the varied outcomes achieved by State agencies, but also support a set of practices that may be adopted to improve upon and maximize the effectiveness of the NAC pilot. Additionally, the evaluation report recommended that State agencies conduct comprehensive front-line training. This includes dedicating resources to delivering hands-on training for eligibility workers using real-world examples for the approach the State agency will use to operationalize the tool and communicate with other State agencies. These best practices from the NAC pilot combined with feedback from State agencies inform the design and implementation of the nationwide NAC solution created by this rule.

NAC Pilot Final Results

The NAC pilot evaluation estimated the total benefit overpayments averted by the NAC pilot and the potential benefit overpayments that could be saved if the NAC were implemented nationwide. The evaluation compared the decay rate (the decline in the percentage of clients who remain duplicate participants in the five months following program entry) of duplicate participation by comparing entries from December 2013 (pre-pilot) and December 2014 (during pilot), and following the same individuals for five months between January and May. The difference represents the effectiveness of using the NAC pilot to prevent and timely resolve duplicate participation. In each State, the entries of duplicate participation fell from December 2013 to December 2014. However, anywhere from 25.8 percent to 41.45 percent of instances of duplicate participation identified in December 2013 continued five months later into May 2014. Once the NAC pilot was implemented, the total number of duplicate participant instances fell for each State and the percentage of individuals remaining as duplicate participants after five months fell from 21 percent to 0 percent in

Alabama, 51.4 percent to 17.8 percent in Florida, 49.6 percent to 17.1 percent in Georgia, 41.4 percent to 6.5 percent in Louisiana, and 34.9 percent to 3.2 percent in Mississippi. In each case, the NAC pilot was effective as reducing the rate of duplicate participation.

The NAC evaluation also calculated savings resulting from the pilot by estimating the savings per month per instance of duplicate participation prevention in each of the pilot States and multiplying those savings by the median months of duplicate participation avoided. To establish the median length of duplicate participation for an individual, the NAC evaluation identified the eligibility date in each State, selected the latest of the two dates to establish when overlapping eligibility began, identified the next recertification date for the individual's case in each State, and selected the soonest of the two recertification months. The number of months between the start of overlapping eligibility and the next recertification month establishes the median expected length of duplicate participation per State, which ranged from 6 to 11 months. The evaluation avoided double counting the prevention of duplicate participation in both States by assuming the individual was eligible to participate in one of the States. The estimated State agency costs of NAC participation were then subtracted from these savings to yield a total estimated net impact for the NAC pilot of more than $5.6 million per year in the five NAC pilot States.

The evaluation estimated the potential impact of a nationwide NAC from the results of the NAC pilot, including the potential cost savings associated with its implementation. These savings estimates of the pilot States were converted to percentages of total fiscal year (FY) 2014 SNAP benefit issuance in each pilot State, then averaged and applied to the Program-wide total FY 2014 benefit issuance. The evaluation estimated that nationwide implementation of the NAC would have saved more than $114 million in SNAP benefit overpayments in FY 2014, or 0.16 percent of total SNAP issuance. As a result of this successful pilot, as evidenced by the evaluation report findings, Congress passed legislation to expand the NAC nationwide and mandated State agency participation.

Nationwide NAC

The Department finds, based in part on the NAC pilot discussed above and feedback from State agencies and FNS Regional offices, that an automated and real-time nationwide NAC will help State agencies more effectively prevent duplicate participation and facilitate communication among State agencies, which can improve application processing timeliness and Program access. The NAC will prevent and detect interstate duplicate participation by ensuring that State agencies are accurately issuing benefits to individuals in the State in which they are eligible to receive them. State agencies will verify residency and identity prior to checking the NAC using existing verification requirements at § 273.2(f). If State agencies receive a positive match from the NAC for an individual, the State agency will work to quickly resolve the match and communicate with the other State agency identified in the match to ensure the individual's timely access to benefits. The State where the household previously resided will promptly respond to the other State agency identified in the match and work with the other State agency and the household to ensure proper and timely disenrollment as applicable. The NAC also requires and improves State-to-State communication and collaboration through automation and improved tracking. State agencies must take appropriate actions to resolve match results and provide adequate notice to individuals who are identified as potential duplicate participants to ensure the timely processing of applications. SNAP applicants and participants will be relieved of the burden they previously had to resolve a positive match, as these new requirements place the burden on State agencies to resolve a match and communicate with one another once notified of a match. Through the use of the NAC, State agencies will be able to more effectively and timely disenroll and enroll individuals in the appropriate States. Clients are less likely to be adversely impacted by inaccurate flags that could result in burdensome or costly claims collections processes with an automated NAC process. Senator Stabenow, chairwoman of the Committee on Agriculture, Nutrition, and Forestry, reiterated the importance of timely processing of applications by stating ''the conference committee expects that USDA's Food and Nutrition Service, FNS, and States will establish procedures for the NAC that will not interfere with current application and enrollment procedures, particularly, the speedy processing of applications.'' [6]

This rule does not change the existing requirements for household member residency, monitoring of intrastate duplicate participation, or claims against households. Additionally, it does not change existing requirements and procedures for investigating and disqualifying violators.

The Department intends to implement a nationwide NAC using a phased approach that will onboard all State agencies over a period of 5 years, depending on their readiness, emphasizing training and proper implementation to minimize undue burden on the State agencies, Program participants, and applicants. The nationwide NAC will incorporate best practices and lessons learned from the NAC pilot in order to implement a system that prevents and detects duplicate participation efficiently and effectively, in a manner that does not delay the certification process. The NAC will allow FNS and State agencies to meet the statutory and regulatory requirements for NAC matches. The Department will provide technical assistance to State agencies to assist with NAC implementation and ensure State agencies take appropriate actions in response to NAC matches. The improved data sharing between State agencies is expected to reduce duplicate participation, reduce claims issued against individuals found to be duplicate participants, and help streamline the application process all while ensuring there is no delay in benefit determination.

II. Discussion of the Interim Final Rule

State Agency Stakeholder Sessions

The Department conducted 28, hour-long stakeholder sessions with 20 State agencies to better shape this rule, develop the system, and apply lessons learned from the NAC pilot. These sessions were held from December 2020 through August 2021 and included State agencies from Texas, Louisiana, Massachusetts, Montana, Iowa, Missouri, New Jersey, Illinois, Idaho, Utah, Maryland, Arizona, South Dakota, Nebraska, Connecticut, Kentucky, South Carolina, Washington, Nevada, and Alabama. These sessions informed the Department about State agency eligibility systems, existing State agency workflows, how State agencies currently process duplicate enrollment, capabilities and limitations of State agency technology, and how existing required data matches currently work from a front- and back-end perspective. FNS followed these sessions with technical email inquiries to the States to gather additional details needed to create a user-friendly system.

[6] *https://www.congress.gov/115/crec/2018/12/19/CREC-2018-12-19-pt1-PgS7918.pdf,* paragraph 8.

State Agency Requirements

Section 11(x)(2) of the Act requires the Secretary to ''establish an interstate data system, to be known as the 'National Accuracy Clearinghouse,' to prevent multiple issuances of [SNAP] benefits to an individual by more than 1 State agency simultaneously.'' Therefore, to establish a system that is truly interstate, the Department is adding § 272.18(a)(1) and (2) through this interim final rule that establish the NAC and require each State agency to participate in the NAC matching program and use information from it to achieve the purpose set forth in Section11(x)(2) of the Act. The NAC will, in real or near-real time, receive information from State agencies about all individuals receiving SNAP benefits in each State and notify State agencies when an individual is receiving SNAP benefits in another State.

The Department is committed to ensuring all statutory and regulatory requirements for the system and its documentation will be met and all required information will be provided in the Computer Matching Agreement (CMA), but many details that must be provided are dependent on the final System design. Therefore, this interim final rule includes several requirements for State agencies for which the exact procedures for completing them through the system will be provided in the CMA and related documents. State agencies are required to provide information to the NAC on all individuals participating in SNAP, except as provided in newly created § 272.18(b)(3). The Department has determined that the elements that are necessary to determine a match and that must be reported to the NAC are an individual's name, Social Security number, and date of birth. However, since these data elements are personally identifiable information (PII), the Department is establishing secure procedures for submitting this information to the NAC and requiring State agencies to abide by them. In order to protect participant information, State agencies will not submit the names, Social Security numbers, and dates of birth to the NAC. Rather, State agencies will use a privacy-preserving record linkage (PPRL) process to convert these data elements to a secure cryptographic hash before sharing the information to the NAC. The PPRL process allows the NAC to accurately match individuals, while preventing the collection and storage of the names, Social Security numbers, and dates of birth in the NAC system. A positive match is identified by the NAC when two or more hashes match. State agencies are also required to provide a participant ID to the NAC to allow the State agency to connect the match in the NAC to an individual in the State agency's system. In other words, the participant ID is used to help the State agency resolve a match. When a match is found, the NAC will create a match record with a unique match ID and notify the affected State agencies of the match. State agencies will use the participant ID they provided previously, now included in the match record, to find the matched individual in the State agency's eligibility system. This approach enhances security and privacy protections of applicant and participant information by ensuring the NAC does not store names, Social Security numbers and dates of birth. Additional security measures employed by the NAC include encryption of information in transit between State agencies and the NAC and within the NAC, as well as controlled access through e-authentication and role-based permissions.

Currently, under § 272.4(e)(1), each State agency must establish a process to prevent duplicate participation, while also ensuring that applications are processed timely and participants only receive benefits in the State in which they reside and are otherwise eligible, in accordance with regulations §§ 273.2(a)(2) and 273.3, respectively. Now that the Department is establishing the NAC and associated procedures through this interim final rule, the process provided for under § 273.4(e)(1) must include compliance with the NAC data matching regulations and other related requirements including the Privacy Act at 5 U.S.C. 552a, a signed Computer Matching Agreement (CMA) and Interconnection Security Agreement (ISA), and the NAC System of Record Notice that will be published in the **Federal Register** after publication of this interim final rule. FNS will provide technical assistance for State agency integration with the NAC system.

Section 11(x)(2)(B) of the Act specifically authorizes the Department ''to require that State agencies make available to the National Accuracy Clearinghouse only such information as is necessary for the purpose . . .'' of preventing duplicate participation. Through this interim final rule, the Department is adding § 272.18(b) to require State agencies to provide such information to the NAC. Section 272.18(b)(1) requires that each State agency provide information on all active SNAP participants to the NAC. This paragraph also defines, for the purpose of the NAC, an ''active participant'' as an individual who is approved to receive benefits for the month in which the State agency is uploading the data. The Department is adding § 272.18(b)(2), which indicates that all State agencies will use the information provided to the NAC to identify duplicate participation via NAC matches and that each State agency shall provide information on all active SNAP participants once per working day in accordance with the procedures provided by FNS in the CMA. It is important that information in the NAC be as current as possible to prevent a ''false positive'' match, indicating duplicate participation, that could generate unnecessary work for another State agency or the household. Conversely, any delay in adding an individual who has become part of a State agency's active caseload would limit the NAC's ability to prevent or curtail duplicate participation, potentially resulting in false positives and months of undetected duplicate participation, as has been the case when using the quarterly PARIS match to detect duplicate participation in SNAP.

To discover if an individual is already receiving SNAP benefits, information on that individual must be compared to the information previously provided by all other State agencies, as described later in this rule. The Department has identified three data elements that are essential for a positive match and that must be submitted to the NAC. These NAC data matching elements are: name, date of birth, and Social Security number. However, in order to prevent this information from being stored in the NAC, the Department is establishing secure procedures to protect this information and is requiring State agencies to abide by them. These requirements and procedures are described in the Computer Matching and Interconnection Security Agreement package. The Department is adding § 272.18(c)(1) to outline the NAC matching process. State agencies must report the NAC data matching elements using the secure procedures established by FNS. The use of these data elements is necessary to implement a critical finding of the NAC pilot evaluation, which found that, with virtually no exceptions, matches using these combined data elements were valid. By comparison, Social Security number-only matches were often the result of data entry errors. Therefore, to avoid false positives and the burdens they place on State agencies and households to resolve, all three data elements must match to be deemed a positive match by the NAC.

A Social Security number is required as a NAC data matching element because a Social Security number is a

requirement for SNAP participation. Regulations at § 273.6 require that a household participating or applying for participation in SNAP provide the State agency with the Social Security number of each household member or apply for one before certification. If the individual does not yet have a Social Security number but can provide proof that a Social Security number has been applied for, the State agency will continue with the eligibility determination process as appropriate. Once the individual receives a Social Security number and reports it to the State agency, it shall be added to the daily active participant upload using procedures established by FNS and any potential match will be indicated during the monthly bulk match.

The new regulation at § 272.18(b)(4) will require State agencies to submit additional data elements to help them resolve matches and to better protect those who may be considered vulnerable individuals. These additional required data elements include a vulnerable individual flag if applicable, and a participant ID, as previously mentioned. The NAC will share these additional data elements with State agencies as part of the notification of a NAC match to provide useful context about the SNAP case in the other State and aid in the match resolution process. The additional data elements will have no impact on what is considered a positive match and is information that can be obtained by the State agency during the certification process.

While the NAC protects the information of all individuals throughout the matching process, this rule adds additional protection for those who are considered vulnerable individuals. The Department is requiring that a vulnerable individual flag be provided to the NAC, when applicable, because Section 11(x)(2)(C)(iv) specifies that information made available to the NAC be used in a manner that protects the identity and location of SNAP applicants and participants who are vulnerable. (Vulnerable individuals, defined by the newly created § 272.18(c)(9), are discussed later in this rule.) Automatically including a vulnerable individual flag at the time of the match, rather than relying on manual sharing of this information, ensures each State agency is immediately aware of the individual's vulnerable status and the need to take extra precautions to protect the identity and location of that person as they verify information and take action on the related SNAP case. The Department requires extra precautions to include removing the location of vulnerable individuals when issuing a notice of match results or a combined notice. States must also exclude location information from any written or verbal communications that happen as a result of a NAC match. For example, absent this requirement, an abusive spouse who received a notice of match results could attempt to bypass protections by contacting a toll-free State hotline and asking a call center employee to identify the source State of the NAC data match. Thus, the Department expects that State agencies take preventive measures to ensure the privacy and protection of vulnerable individuals, including those required by this rule, and that these practices are established in State agency business processes, documented in writing, and that State agency employees are trained regarding how to implement these protections.

The Department requires State agencies to provide a participant ID that identifies an individual within the State agencies' own system to allow them to identify those individuals for whom they have received a notification of a NAC match. When a match is found, the NAC will create a match record with a unique match ID and notify the affected State agencies of the match. State agencies will then use the participant ID they provided previously, which is included in the match record in the NAC, to find the matched individual in the State agency system. The participant ID shall not use any sensitive PII.

The Department is aware that there are other data elements that, while not necessary for the match, could help a State agency resolve a match, such as a case number, a case closure date, or the date of last issuance. However, not all States have these data elements available, and of those that do, not all States have the same understating of what data is meant by these terms. While the Department can define such elements in regulation, making the terms uniform throughout the States, the impact a new definition and the immediacy of the implementation of this interim rule would have on the various State systems is not clear. Additionally, there may also be other data elements that the Department is unaware of that would help State agencies resolve a match. Therefore, in this interim final rule, the Department is not requiring State agencies to report additional data elements to the NAC but is signaling its intent to require in the final rule that State agencies report additional data elements if available, including a case number, a case closure data, and the date of last issuance. The Department is soliciting comments regarding these data elements, additional data elements State agencies have the ability to report, which data elements would be most helpful, and how they would be most helpful.

The Department is adding § 272.18(c)(2) requiring that State agencies follow existing verification procedures outlined at § 273.2(f)(1)(v), (vi), and (vii) for verifying Social Security numbers, residency, and identity prior to checking the NAC. This will ensure that State agencies have reliable information prior to checking the NAC. This requirement is based on existing regulations that require other data matches to verify match data at the time of application, including the prisoner verification system required at § 272.13(c), the deceased matching system required at § 272.14(c)(1), and the disqualified recipient database required at § 273.2(f)(11)(i)(B). These existing regulations require data matches ''prior to certification'' or ''at the time of application'' but do not further specify the timing of the required match. The State agency must follow Social Security number, residency, and verification requirements for a household as described at § 273.2(f)(1)(v), (vi), and (vii) before checking the NAC to ensure that they are potentially eligible to receive benefits in the State in which they are applying. This step is being added to minimize the likelihood of inaccurate data matches. Once the State agency completes these verification requirements, it may continue with the application process and the State agency may check the NAC for a match. The Department will assist the State agency in providing training to eligibility workers on their State agency's processes for using the NAC, which may include information on how and when to conduct matches, how to respond in the event of a match, verifying information, ensuring timely application processing, and providing necessary notices. The Department further recommends that State agencies automate NAC processes to the greatest extent possible. This is a significant recommendation from the NAC pilot evaluation that suggests integrating the NAC with existing eligibility systems, real time queries of the NAC, and the automation of match notification emails as options for further automation.

It is important that new individuals who join existing SNAP households are checked against the NAC's database of active participants in other States. The NAC pilot evaluation found that 47 percent of individuals receiving SNAP benefits from multiple State agencies were part of households where all other

household members were *not* receiving benefits from multiple State agencies. These data suggest that a significant percentage of interstate duplicate participation occurs when a new member is added to an existing case. For example, if an individual is a member of a household receiving benefits in one State, but then moves to another State and applies for benefits, a NAC match will indicate that that individual is already participating in another State as a part of a household. The previous household that the individual has moved away from will receive a notice from the State agency indicating that a NAC match was received and that they will need to either contest the findings or update their household composition to indicate the individual separated from them so that the individual can begin receiving benefits in the new State without causing duplicate participation. This follows the existing process for data matches in notifying the previous address of the match, providing them with an opportunity to contest, prior to taking adverse action. In this example, the previous household was not attempting to receive duplicate benefits from multiple States, and they were entitled to receive benefits in the State in which they reside. In a scenario where a State agency receives a positive match for a child moving between households due to a custody arrangement the State agency must resolve the match in order to determine what actions must be taken on the case. The State agency may be able to resolve the match based on existing information known to the State agency or it may need to pursue additional information or verify questionable information.

There is flexibility on exact timing when the State agency must submit new household member information to the NAC, but it must do so before adjusting household benefits to account for the new member as described in § 273.12(c)(1)(ii). Depending on a household's reporting system, it is not always required to immediately report changes in household composition. Therefore, a household may report a new member before the prior household reports losing the individual without either household committing a violation of Program rules.

The Department is adding § 272.18(c)(6) requiring State agencies to note instances where there is a match in the participant's casefile. This requirement is necessary to ensure proper case documentation for the purposes of oversight as described in part 275, regarding performance reporting systems.

Bulk Data Matching Requirements

The NAC will automatically conduct bulk matches on a monthly basis (''monthly bulk matches'') of the NAC data matching elements provided by all participating State agencies. The monthly bulk match compares the secure hash of all active participants included in the most current daily upload from each participating State agency to discover all instances of duplicate participation that exist at the time the match is conducted. The NAC will create a match record for each instance of duplicate participation found and will notify State agencies when duplicate participation is discovered for participants in their State. The Department is adding § 272.18(c)(4) to reflect this. The Department considers information that is received by State agencies as a result of a monthly bulk match unclear information because it is a match received during the certification period for an individual currently participating in SNAP. State agencies must pursue clarification and verification of this information by following the unclear information procedures provided in § 273.12(c)(3)(iv) (discussed in the next section) to provide notice and an opportunity to contest the information received before taking any adverse action. The NAC pilot evaluation indicated that bulk matches alone were insufficient in identifying and preventing duplicate participation; however, when implemented with other matches, bulk matching better identified matches that were missed or not acted upon. The Department will provide ongoing technical assistance to State agencies emphasizing the importance of States approaching the resolution of these matches consistently as well as maintaining Program access for SNAP applicants and recipients to State agencies.

Procedures and Requirements for Acting on NAC Data Matches

State agencies using matching information from the NAC must comply with the requirements set forth at 5 U.S.C. 552a(p) and § 272.12(c). Pursuant to these requirements, State agencies may not take any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or SNAP participant based on information produced by the NAC until the information has been independently verified by the State agency and the applicant or participant receives a notice from the State agency containing a statement of its findings, informing the individual of the opportunity to contest such findings, and the allowable timeframe to do so. State agency action upon receiving a NAC match varies depending on when the match is received; for example, during the certification period versus at the time of application. Therefore, the Department is adding § 272.18(c)(3) to describe the actions a State agency must take in response to a positive NAC match received at application, recertification, and addition of a new household member. When a State receives a positive NAC match on an individual at initial application, recertification, or when a new household member is added, the State agency must independently verify the information if there is a potential for adverse action in accordance with § 272.12(c)(1). Action only needs to be taken on positive matches. If there is no positive match, benefit determination continues following existing regulations.

The Department also establishes at § 272.18(c)(3) a 10-day timeframe for State agencies to initiate action to resolve a positive match at application, recertification, and addition of a new household member; as well as a requirement to promptly inform the other State agency indicated in the match of the initiated action. The 10-day timeframe is consistent with existing timeframes for other certification and recertification matches at § 273.2(f) and will help prevent delays in eligibility determination.

While State agencies have 10 days to initiate action to resolve a match and report that action to the other State agency, they are encouraged to resolve matches as quickly as possible. State agencies are also encouraged to maintain contact with one another throughout the match resolution process to quickly resolve a match and keep the applicant informed of progress. After State agencies have determined the appropriate disposition on the case, they must also notify each other of the final resolution of the match. If there is no match indicated during a NAC query, then the State agency must continue with the eligibility determination process. The requirement for State agency communication addresses a key finding of the NAC pilot evaluation where pilot States identified examples of SNAP cases not being closed due to another State not communicating or taking timely action. Greater communication also ensures that State agencies are assisting the applicant in the event of the match by being required to issue notices to the client to verify information obtained through a NAC match as well as providing an opportunity to contest. Applicants are

also aided through State-to-State communication as State agencies are required to communicate with one another within 10 days of a match and communicate case disposition to the other State to ensure the individual is receiving benefits in the State in which they are eligible.

If there has been no contact from the other State agency within the established timeframe, and all other eligibility and verification requirements are met, the State agency must continue processing the application and issue benefits to the applicant. A NAC data match shall not delay processing of the application and provision of benefits beyond the normal processing standards in §§ 273.2(g) and 273.14(d), or expedited service standards in § 273.2(i), whichever applies to the applicant household. If a State agency is not notified of initial action from the other State agency indicated in the match within 10 days, then the application can continue to be processed. Delays in processing caused by a positive NAC match where household verification is otherwise incomplete shall be handled in accordance with § 273.2(h). However, delays in communication or action between State agencies regarding verification of information associated with a positive NAC match must not prevent the eligibility determination of an applicant, recertifying participant, or newly added household member per the added regulation at § 272.18(c)(3)(v).

The Act provides that an applicant's right to an eligibility determination is triggered by the filing of an application and not by State action. Section 11(e)(2)(B)(iv) of the Act requires that State agencies consider an application that contains the name, address, and signature of the applicant to be filed on the date the applicant submits the application. Additionally, Section 11(e)(2)(B)(i) requires timely, accurate, and fair service to applicants for, and participants in, SNAP. As a result, the Department expects State agencies to be responsive in resolving NAC data matches to ensure applications are processed timely, in accordance with the Act, and to assist households to resolve residency issues due to a NAC data match.

A State agency that is notified of a NAC match during the certification period is required to take initial action to resolve a match as well as issue a combined notice. The State agency is also encouraged to assist the individual with closing their case, when applicable. For example, if an individual indicated in the match contacts a State agency and verbally requests it to expedite the closure of their case, that State agency must take prompt action to do so and provide a letter confirming voluntary withdrawal to the address on file, or the new one as specified by the individual making the request, consistent with regulations at § 273.13(b)(12) to ensure the individual has proof of closure so that they can apply for benefits in the new State. Per newly established regulations at § 272.18(b)(5), State agencies are required to maintain accurate and up to date daily uploads of NAC data elements regarding the status of individuals participating in SNAP to prevent the possibility of false positives and any delays in benefit issuance. This would include maintaining appropriate security and privacy standards per the NAC CMA and ISA. If the NAC system is not operational due to unforeseen circumstances, as will be outlined in the CMA and technical guidance, State agencies will continue the eligibility determination process without the initial NAC query. Any instances of duplicate participation will be discovered during the monthly bulk match once the system is again operational. For disaster situations, State agencies should follow their Disaster SNAP (D–SNAP) procedures for data entry and certification per FNS guidance.[7] This guidance explains that State agencies are required to screen for duplicate participation in disaster situations. State agencies must either check for duplicate participation utilizing the NAC in the State's D–SNAP system, or the State agency must accept applications and inform applicants that eligibility is contingent upon a subsequent check for duplicate participation. Any check for duplicate participation must be done using the NAC.

Section 11(e)(26) of the Act requires States to ''pursue clarification and verification, if applicable, of information relating to the circumstances of the household'' when that information is received from data matches related to prisoners, deceased individuals, and the NAC. The Department considers match information that is received from the NAC during the certification period to be unclear information. This is consistent with how information from other Federal systems such as the Prisoner Verification system and Deceased matching system, is treated by the Department. The procedures for pursuing clarification and verification of unclear information received from prisoner and deceased individual data matches during the certification period are described in existing regulations at § 273.12(c)(3). Therefore, the Department is adding § 273.12(c)(3)(iv) to describe what actions a State agency must take when it receives unclear information during the certification period from a NAC match. Those actions are described below.

This interim final rule amends § 273.12(c)(3)(i) to add information received from NAC matches to the types of unclear information for which State agencies must pursue clarification and verification when received during a certification period. Unclear information is defined per § 273.12(c)(3) as information that is not verified or information that is verified but additional information is needed to act on the change. The Department is adding § 272.18(c)(5) to describe procedures to be followed for matches containing unclear information related to a NAC match during the certification period and further describes those procedures in § 273.12(c)(3)(iv). These procedures are different from procedures related to information received from a NAC match at application, recertification, or for a newly added household member as further discussed earlier in this rule. These procedures for unclear information are different from existing procedure for Deceased Matching and Prisoner Match as the added regulations at § 273.12(c)(3)(iv) implements the requirement to initiate action to resolve the match and to communicate with the other State agency within 10 days of receipt of the match notification. Additionally, the added regulation § 273.12(c)(3)(iv)(A) implements the combined notice of match result and notice of adverse action.

To maintain consistency with timeframes established during application and recertification, the newly established regulations at § 272.18(c)(3)(i) establishes that State agencies will have 10 days from the time a match is received to initiate action to resolve a match and to notify the other State agency of that initiating action. State agencies must also provide resolution of the match to the other State agency, similar to regulations at § 272.18(c)(3).

NAC Data Match Notice Requirements

This interim final rule requires that State agencies send a notice of match results to households that received a positive match at application, at recertification, or for a newly added household member if the information indicated in the match could lead to a

[7] *https://www.fns.usda.gov/snap/dsnap/state-agencies-partners-resources.*

denial of benefits or other adverse action on the case. The Department is adding this requirement for a notice of match results at § 272.18(c)(3)(iii)(A) to provide the individual with an opportunity to contest findings in a data match prior to adverse action or denial of benefits. The notice of match results must clearly explain what information is needed from the household, and that failing to respond within 10 days, could result in a denial of benefits or adverse action, as appropriate.

To aid the NAC resolution process for applicants, recertifying participants, and newly added household members and ensure they are receiving their benefits in a timely manner, this interim final rule clarifies that if State agencies have enough information to resolve the match, and there is no potential for adverse action, State agencies are not required to send a notice of match results. The Department is adding § 272.18(c)(3)(iii)(B) to clarify the NAC match resolution process for the individual if there is no potential of adverse action. For example, if a positive match is identified for an individual during the interview process and the individual can immediately verify the information from the match, and there is no potential of adverse action, no notice of match results is required. In situations like this, the State agency must provide a verbal notification of a match and must document that verbal notification in the case file before continuing with the eligibility determination process.

This interim final rule requires that State agencies send a combined notice of match results and notice of adverse action to households that received a positive NAC match during the certification period. The Department is adding this requirement for a combined notice for action on NAC matches at § 273.12(c)(3)(iv)(A) to streamline the notice process for State agencies, reduce the likelihood of duplicate participation and the need to establish claims, while still providing the household with an opportunity to contest per 5 U.S.C. 552a(p). To maintain compliance with the notice of adverse action requirements at § 273.13, the Department is also amending § 273.13(a)(2) to add language stating that a notice of match results and notice of adverse action may be combined to meet the requirements in § 273.12(c)(3)(iv). This change is consistent with similar allowances provided for Income Eligibility Verification System (IEVS) and Systematic Alien Verification for Entitlements (SAVE) computer matches at § 273.2(f).

The consequences for failing to respond to the combined notice depend on the reporting system to which the household has been assigned as explained at § 273.12(c)(3)(iii)(A) and (B). If the household is subject to change reporting and fails to respond to the combined notice, which clearly explains what information is needed from the household and the consequences of failing to respond, the State agency must terminate the case. If the household is assigned to any other reporting system besides change reporting and the household fails to respond sufficiently to the combined notice, then the State agency must remove the subject individual and the individual's income from the household and adjust the benefits accordingly.

III. Discussion of Limited Use of NAC, Use and Disclosure, Protecting Vulnerable Individuals, and Privacy Act Implications

Limited Use of NAC

Section 11(x)(2)(C) of the Act explicitly limits the use of the NAC to preventing duplicate participation—it may be not used for other Federal, State, or local programs or other purposes. In compliance with both this requirement and Section 11(x)(3)(D) of the Act, which requires the establishment of safeguards for information submitted to or retained by the NAC, the NAC will not retain SNAP applicant or participant information longer than needed to accomplish the purpose of preventing duplicate participation. To comply with this requirement, only NAC data matching elements on active participant information will be uploaded to the system once each working day. This information will not be stored in the NAC. Upon match, only the match record is stored in the system. Additionally, the NAC data elements will be submitted using the secure procedures established by FNS. Once an individual is no longer an active SNAP participant, that individual's information will no longer be included in the daily upload, and their information can no longer be matched against. The Department is codifying these procedures to safeguard information submitted or retained to the NAC at § 272.18(b)(5).

Use and Disclosure

Current disclosure requirements at Section 11(e)(8)(A) of the Act, and regulations at § 272.1(c) permit the disclosure of SNAP applicant or participant information to persons directly administering assistance programs. Section 11(x)(2)(B) and (C) of the Act only allow the Department to require State agencies to submit to the NAC information needed to prevent interstate duplicate participation and prohibits the use of information from the NAC beyond preventing interstate duplicate participation. This restricts the use and disclosure of information from the NAC beyond the disclosure requirements in current regulations at § 272.1(c). The Department acknowledges the blanket authorities for data sharing provided by other Federal laws; however, sharing of NAC data beyond its original intent is currently prohibited by Section 11(x)(2)(C) of the Act. Congressional action to amend the Act would be required to allow data sharing beyond the purpose of preventing duplicate participation in SNAP.

Accordingly, the Department is adding § 272.1(c)(4) through this interim final rule to limit the disclosure of NAC data ''to only persons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act of 2008 or regulations.'' The regulation also requires that NAC data may only be used for the purpose of preventing multiple issuances of SNAP benefits.

Protecting Vulnerable Individuals

Section 11(x)(2)(C)(iv) of the Act requires that information made available to the NAC be used in a manner that protects the identity and location of SNAP applicants and participants who are vulnerable individuals. Also, Section 3(m)(5)(C) of the Act and existing regulations at § 273.3(a) exempt certain residents of shelters for battered women and children from the requirement that SNAP participants not participate as a member of more than one household or in more than one project area, in any month. Effectively, duplicate participation is permitted temporarily among this vulnerable portion of SNAP participants. Consistent with these existing requirements and reflecting the Congressional mandate in the Act to protect such individuals, a process to protect the identity and whereabouts of vulnerable individuals will be established in the NAC system, including location protection of individuals in verbal and written communication with any household associated with a vulnerable individual match. Therefore, the Department is adding § 272.18(c)(9) which establishes a definition for vulnerable individuals specific to the NAC. This definition covers those who would be endangered by the dissemination of their information, including but not limited

to, residents of shelters for battered women and children as defined in § 272.1, residents of domestic violence shelters, or a person who self-identifies as fleeing domestic violence at any point during application, recertification, during the certification period, or when there is a newly added household member, regardless of the individual's age or gender.

Additionally, current regulations at § 273.11(g) require the State agency to take prompt action to ensure the former household's eligibility or allotment reflects the change in the household's composition by issuing a notice of adverse action in accordance with § 273.13. However, any communication with a household as a result of a NAC match, whether written via a notice or verbal, cannot contain the location of the individual indicated in the match per the newly added § 272.18(c)(3)(iii). To ensure consistency across notices, the new regulations at § 272.18(c)(9) also describes that when a vulnerable individual is indicated in a positive match, State agencies must take steps to ensure that any information resulting from a NAC match, including identity and location, is protected during verification and resolution. The State's determination of the individual's status as a vulnerable individual could come from information reported by the household on its application or voluntarily disclosed during its interview, or from knowledge of the individual's residence at a domestic violence shelter or shelter for battered women and children; however, the Department does not require or expect the State agency to solicit this information as a part of the certification process. Furthermore, the Department expects State agencies to include processes for protecting vulnerable individuals and ensure all applicable staff, including front line eligibility workers, call center operators, fraud investigators, and claims staff—receive hands-on training using real-world examples of how to protect vulnerable individuals.

Privacy Act Implications

The Privacy Act of 1974 (Privacy Act), as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protection Amendments of 1990, set the requirements for matching programs at 5 U.S.C. 552a(o). As a Federal system of records being used in a matching program, the NAC is subject to these requirements. The Department will ensure all requirements of the Privacy Act, Federal Information Security Management Act of 2002 (FISMA), and National Institute of Standards and Technology (NIST) are met within the system development process, including the development of all documentation required for approval of the matching program by the Department's Data Integrity Board. Documentation will include a System of Records Notice (SORN), a Computer Matching Agreement (CMA), and multiple system-specific documents that provide details about system design and data security and privacy protocols. Agencies participating in a matching program are required to enter into a written agreement, referred to here as a CMA. This interim final rule includes this requirement in § 272.18(a)(3).

IV. Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This interim final rule has been determined to be economically significant and has been reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required by Executive Order 12866, a Regulatory Impact Analysis (RIA) was developed for this interim final rule. It follows this rule as an appendix. The following summarizes the conclusions of the regulatory impact analysis:

The Department estimates the net reduction in Federal SNAP spending associated with the interim final rule to be nearly $463 million over the five years 2022–2026. This reduction in spending represents a decrease in Federal transfers (SNAP benefit payments) of approximately $498 million over five years due to prevention of duplicate participation, partially offset by increases in Federal systems costs related to implementing, operating, and maintaining the system ($18.3 million) and in the Federal share of State administrative costs (nearly $16 million). In addition, the Department estimates an increase in the State share of administrative costs (nearly $16 million over five years) for start-up costs and costs associated with submitting data and following up on matches. This rule will also increase administrative burden on SNAP households by nearly $1.2 million over five years. Households identified as potential duplicate participants through NAC matches will need to provide verification and respond to notices and requests for information from State Agencies.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. This interim final rule will not have an impact on small entities because the rule primarily impacts SNAP State agencies. As part of the requirements, State agencies will have to develop procedures for submitting data and following up on matches when they occur. Small entities, such as smaller retailers, will not be subject to any new requirements.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget Office of Information and Regulatory Affairs has designated this as a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA) established requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under Section 202 of UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This interim final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for

State, local and tribal governments, or the private sector, of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the **Federal Register** notice, published June 24, 1983 (48 FR 29115), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of the NAC and determined that this rule has federalism impacts. However, this rule is required by statute, so under Section (6)(b) of the Executive order, a federalism summary is not required. The Department requests comments from State and local officials as to the need for the NAC and any alternatives to the regulations proposed.

Executive Order 12988, Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the interim final rule, in accordance with Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the interim final rule, including an analysis of participant data and provisions contained in the interim final rule. The CRIA outlines outreach, mitigation, and monitoring strategies to lessen any possible civil rights impacts. The CRIA concludes by stating FNS believes that the promulgation of this interim final rule will impact State Agencies and the way they process applications for SNAP benefits. Additionally, the rule may impact SNAP applicants and participants if identified by the NAC for duplicate participation. However, FNS finds that the implementation of the outreach, mitigation, and monitoring strategies may lessen these impacts. Outreach initiatives will include making the publication of the interim final rule available in alternative formats, including 508 compliant and in other language for persons with limited English proficiency, upon request. Additionally, the Department will work with the Office of Tribal Relations to ensure meaningful consultation is provided. To lessen any possible impact of the interim final rule, the program will implement a phased approach over a period of 5 years from the date of publication. If deemed necessary, FNS will propose further mitigation and outreach strategies to alleviate impacts that may result from the implementation of the final rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation.

This regulation does not appear to have significant tribal implications, so consultation is not required. Additionally, FNS discussed this rule at a listening session on February 12, 2020, and no issues with the rule were identified. No tribes have requested consultation to this point, but if consultation is requested, the USDA Office of Tribal Relations (OTR) will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this interim final rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is requesting a new OMB Control Number 0584–NEW. Upon approval, FNS intends to merge a portion of these burden estimates into OMB Control Number: 0584–0064, Expiration Date: 2/29/2024. These burden estimates are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the final rulemaking information collection request is approved, the Department FNS will publish a separate notice in the **Federal Register** announcing OMB's approval.

Comments on this interim final rule must be received by December 2, 2022. Send comments to Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20403, Fax: 202–395–7285, or email to *oira_submission@omb.eop.gov.* Please also send a copy of your comments to Evan Sieradzki at the Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th floor, Alexandria, VA 22314. For further information please contact the State Administration Branch Chief, Maribelle Balbes, at the above address. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notification will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Supplemental Nutrition Assistance Program: Requirement for

Interstate Data Matching to Prevent Multiple Issuances.

OMB Control Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: NEW.

Abstract: The Agriculture Improvement Act of 2018 requires the Secretary of Agriculture to establish an interstate data system called the National Accuracy Clearinghouse (NAC) to prevent multiple issuances of Supplemental Nutrition Assistance Program (SNAP) benefits to an individual by more than one State agency simultaneously in the same month (also known as interstate duplicate participation). FNS is requesting a new OMB Control Number for the requirements in this interim final rule. The majority of the burden requirements established in this rule are consistent with estimates currently approved under OMB Control Number 0584–0064; Expiration Date: 2/29/2024. This rule will modify current regulations resulting in an increase in the reporting burden for State agencies and Individuals/Households. Upon approval of the new OMB control number the Department will merge the change in burden hours associated with this rule with OMB Control Number 0584–0064. Any new requirements not consistent with currently approved activities under OMB Control Number 0584–0064 are denoted as such. This interim final rule incorporates best practices and lessons learned from the NAC pilot. The NAC pilot is a shared data clearinghouse that allows States to check whether a SNAP applicant is receiving SNAP benefits in another pilot State in real or near-real time. Five States participate in the NAC pilot: Alabama, Florida, Georgia, Louisiana, and Mississippi. The NAC pilot program began exploring the prevalence of duplicate participation and the feasibility of a system to prevent it in July 2013. NAC pilot data matching operations began in June 2014 and continue today in Alabama, Florida, Georgia, and Mississippi.

In the NAC pilot, the State agencies of Alabama, Florida, Georgia, Louisiana, and Mississippi each submit a file daily of its entire SNAP caseload, which is integrated into a list of all SNAP participants receiving benefits in the participating States. State agencies query the system when they receive SNAP applications or add new members to a household. State agencies then check the new individuals against the NAC pilot's list of active SNAP participants in other States. If an applicant is identified as receiving benefits in another NAC pilot State, that State is contacted by the matching State agency responsible for administering SNAP benefits to close the individual's case. Once the applicant's out-of-State case is closed, the State receiving the application can move forward with the certification process. If the applicant is checked against the NAC pilot's list of active SNAP participants in other States and the applicant is not identified as receiving SNAP benefits elsewhere, then the State proceeds with the certification process.

In addition to screening applicants, the NAC pilot also notifies State agencies when an active member of its caseload is simultaneously active in another State. Upon receiving this information, NAC pilot States issue a Request for Contact to the individual's household, informing the household of the match and requesting proof of residency and proof of closure of the out-of-state case identified by the match. Regulations at § 273.12(c)(9) describe how State agencies must respond to information like a NAC pilot data match received during the certification period. The existing regulations prevent States from acting on NAC data matches before their next scheduled contact with the household, so States participating in the NAC pilot operate under an administrative waiver (§ 272.3(c); 17(b)(1) of the Food and Nutrition Act of 2008). The waiver allows the State to issue a Request for Contact to the household upon receiving a pilot NAC data match regarding an active member of its caseload. In lieu of a Request for Contact, the interim final rule will instead use a notice of match results or, if there is no possibility of adverse action, verbally request verification of information in the State with the new household, recertifying household, or when there is a newly added household member, and note that communication in the casefile; the notice of match results will serve the same purpose as a Request for Contact. If an individual is indicated in a positive match during the certification period, the State agency will instead issue a combined notice of match results and notice of adverse action. Each of these activities serve similar purposes and only vary depending on when the match is discovered. For example, a combined notice of match results and notice of adverse action could not be issued to an individual during the application or recertifying process, because there is not yet an active case for the State to take adverse action upon. Therefore, when a notice is sent for a match discovered during application, recertification, or for a newly added household member the activity will be known as notice of match results. When a notice is sent for a match discovered during the certification period, the activity will be known as a combined notice of match results and notice of adverse action.

This interim final rule requires SNAP State agencies to provide information to the NAC regarding individuals or households receiving SNAP benefits in their States at § 272.18(b)(1) and to screen all Individuals/Households known as SNAP Program applicants using Social Security numbers, date of birth, and name at § 272.18(b)(3), to ensure they are not already receiving benefits in another State. Per § 272.18(b)(4) State agencies are also required to submit to the NAC participant ID, and indicate if the individual is considered a vulnerable individual using the vulnerable individual flag if the State becomes aware of the status during the certification process and the information is available in the State's SNAP eligibility system. Under §§ 272.18(c)(3) and (c)(5), 273.13(a), 273.2(f)(1) and (2), and 273.12(c)(3)(iv) State agencies are required to take appropriate action with respect to each indication from the NAC that an individual is receiving SNAP benefits from more than one State agency simultaneously. This appropriate action includes either a notice of match results or, verbal indication (if there is no possibility of adverse action), or a combined notice of match results and notice of adverse action to verify information after a match, as appropriate. Following OMB approval of this NEW information collection under the Paperwork Reduction Act, the burden hours described below will be merged with the existing OMB control number 0584–0064, expiration date 2/29/2024. While the agency anticipates roughly 32 State agency respondents to be covered in this collection due to the phased approach for system operation, we are requesting 53 total respondents to cover full implementation.

First Year (One-Time Burden)

State Agencies

The one-time burden for this interim final rule includes an increase of 208,555 hours and 10,706 responses for State agency activities associated with set up, training, and computer matching agreements for the 53 State agencies participating in the NAC. Under § 272.18(b)(1), 53 State agencies must set-up a new system to report their caseloads to the NAC. FNS estimates this will produce approximately 1 response per State agency for a total of 53 responses total. FNS also estimates it

will take each State agency approximately 1,920 hours for a total of 101,760 annual burden hours. This program change reflects new one-time burden of 1,920 hours for each State Agency to reflect the time associated with the set-up of a new system. This burden is informed by the evaluation report of the NAC pilot outlining State start up time and costs. The Department assumes the set-up of a new system will require four full-time staff for approximately twelve weeks. Depending on system design, set-up can include arranging an automated daily export of active participants to send to the NAC and updating software that manages workflows for certification, recertification, as well as the addition of new household members to query the NAC before certifying benefits.

Under § 272.18(b)(1), approximately 200 eligibility workers from each of the 53 State agencies that participate in the NAC will receive one time training on how to properly incorporate the system into existing certification and recertification processes. FNS estimates this will produce approximately 200 workers per State agency for a total of 10,600 workers. FNS also estimates it will take each State agency approximately 10 hours to train an eligibility worker for a total of 106,600 new one-time burden hours. This includes general training on business practices for the NAC as well as the NAC system, testing and troubleshooting, and authentication for eligibility workers to access the system.

Under § 272.12(b), 53 State agencies will enter into a State agency computer matching agreement with FNS in order to participate in the NAC. FNS estimates this will produce approximately 1 response per State agency for a total of 53 responses. FNS estimates it will take approximately 15 hours for each State agency to review, complete any necessary draft changes, and submit a computer matching agreement to FNS for a total of 795 burden hours. The total combined new one-time burden hours for State agencies is 208,555 hours.

Ongoing Burden

Following approval of OMB control 0584–NEW, burden in the State Agencies and Individual/Households sections below will be merged with OMB Control Number 0584–0064. Burden that will remain with OMB control number 0584–NEW will be denoted as such.

State Agencies

The establishment of the NAC includes State agencies uploading their SNAP caseload data to the NAC. Under § 272.18(b)(1) and (2) and (c)(4), 53 out of 53 State agencies will submit their SNAP caseloads to the NAC once per working day. Due to the establishment of this system, State agencies have never uploaded their caseload to the NAC. As there are approximately 261 working days in a year, FNS estimates 261 annual responses per State agencies for estimated 13,833 total annual responses. The upload of this information is to ensure that State agencies can check their caseloads against the caseloads of other State agencies in real or close to real time. FNS estimates 1 hours for each State agency to reflect the time associated with uploading their caseloads to the NAC for the first time. This represents an additional annual burden of 13,833 hours for State agencies collectively. This burden will be recorded under OMB control number 0584–NEW.

Upon implementation of the NAC, State agencies will be required to query individual case files of those who are applying, recertifying, or are a newly added household member against the NAC. Under § 272.18(c)(2), all 53 State agencies will query applicants against the NAC. FNS estimates approximately 340,435.55 total annual responses per State agency will be screened for a total of 18,043,084.00 estimated total annual responses. It will take approximately 0.0167 hours (1 minute per State agency) for a total annual burden estimate of 300,718.07 ongoing burden hours. This burden will remain under OMB control number 0584–NEW.

Under §§ 272.18(c)(3) and (5), 273.12(c)(3)(iv), and 273.2(f)(1) and (2), 53 State agencies will be required to verify information following a positive NAC match. FNS estimates this will produce approximately 4,611.57 responses per State agency for a total annual number of 244,413.10 NAC matches for State agencies to communicate and initiate action upon. This estimate is based on the NAC pilot evaluation estimates of 1.355% of initial applications for that year resulting in a positive match. FNS also estimates it will take each State agency approximately 0.1002 hours (6 minutes per State agency) for a total of 24,490.19 on-going annual burden hours. While State agencies that rely primarily on manual processes may result in a greater burden, this estimate is informed by the fact that the Department is strongly recommending the use of automated processes, including automated emails to resolve actions among States, as a lesson learned from the NAC pilot evaluation. Verification of information includes the use of documentation or contact with applicant or other State agency to confirm the accuracy of statements or additional information as needed. It can also include communicating action to resolve a match, final resolution, and additional communication with the household as needed. The previously approved burden for this activity is 29,302 burden hours approved under OMB control number 0584–0064 expiration 2/29/2024. This program change reflects an increase of 24,490.19 hours to reflect the time associated with verification of information and communication between State agencies and individuals/households. While this is an increase in burden for State agencies, the Department believes that there were components of the manual process for the monitoring of duplicate participation that was not fully accounted for in previous estimates. This increase in burden is a combination of more accurate estimation and increased burden. While components of this interim final rule, such as the daily upload of active SNAP participants, does require more effort on the part of State agencies, it is also reducing the previously manual process of checking for duplicate participation and reallocating the burden from households to State agencies to follow up on matches and resolve instances of duplicate participation.

Under § 272.18(c)(3)(iii), 53 State agencies will be required to issue a notice of match results to an individual/household following a positive NAC match on an applicant, recertifying individual, or a newly added household member. These estimates are based on data outlined in the NAC Pilot Evaluation. FNS estimates that a notice of match results-will produce approximately 7,731 responses per State agency for a total annual number of 409,709.52 notice of match results. FNS also estimates it will take each State agency approximately .0501 hours (3 minutes per State agency) for a total of 20,526.45 ongoing annual burden hours. The previously approved burden for this activity is 24,015.13 burden hours approved under OMB 0584–0064 expiration 2/29/2024. This program change reflects an increase of 20,526.45 hours to reflect the time associated with issuing a Notice of Match Results.

Under §§ 272.18(c)(5), 273.12(c)(3)(iv)(A), and 273.13(a)(2), 53 State agencies will be notified of a positive match for an individual during the certification period and will be required to issue a combined notice of match results and notice of adverse action. All 53 State agencies will be required to issue this combined notice for a match on an individual during the

certification period prior to a change in SNAP benefit allotment to a participant as a result of a match found through the NAC. These estimates are based on data outlined in the NAC Pilot Evaluation. FNS estimates this will produce approximately 7,730.37 responses per State agency for a total annual number of 409,709.52 combined notice of match results and notice of adverse action. FNS also estimates it will take each State agency approximately .0501 hours (3 minutes per State agency) for a total of 20,526.45 ongoing annual burden hours to send this notice. The previously approved burden for this activity is 72,773.21 burden hours approved under OMB control number 0584–0064 expiration 2/29/2024. This program change reflects an increase of 20,526.45 hours to reflect the time associated with issuing a notice of adverse action.

Individuals/Households Burden

Under §§ 272.18(c)(3) and (5), 273.12(c)(3)(iv), and 273.2(f)(1) and (2) approximately 244,413.1 Individuals/Households will aid in verification of information following a positive NAC match. FNS estimates this will produce approximately 1 response per individual/household for an annual total of 244,413.1 responses. FNS also estimates it will take each Individual/Household approximately .0668 hours (4 minutes) for a total of 16,326.79 ongoing annual burden hours. This is based on the assumption from the NAC pilot that the Individual/Household assistance in verification occurred within existing State business processes, such as the interview, and did not require an entirely new process. The previously approved burden for this activity is 34,289.58 burden hours approved under OMB control number 0584–0064 expiration 2/29/2024. This program change reflects an increase of 16,326.79 burden hours for this activity.

Under § 272.18(c)(3)(ii), 409,709.52 Individuals/Households will be required to respond to a notice of match results issued by the State agency following a positive NAC match. FNS estimates this will produce approximately 1 response per household for a total of 409,710 responses annually. FNS also estimates it will take each Individual/Household approximately .0835 hours (5 minutes) for a total of 34,210.75 ongoing annual burden hours. The previously approved burden for this activity is 32,020.16 burden hours approved under OMB control number 0584–0064 expiration 2/29/2024. This program change reflects an increase of 34,210.75 burden hours for this activity.

Under §§ 272.18(c)(5), 273.12(c)(3)(iv)(A), and 273.13(a)(2), 409,709.52 Individuals/Households will be required to respond to a combined notice of match results and notice of adverse action following a positive NAC match on an active participant. FNS estimates this will produce approximately 1 response per household for a total of 409,70 responses annually. FNS also estimates it will take each Individual/Household approximately .0853 hours (5 minutes) for a total of 34,210.75 ongoing annual burden hours. The previously approved burden for this activity is 97,030.92 burden hours approved under OMB control number 0584–0064 expiration 2/29/2024. This program change reflects an increase of 34,210.75 burden hours for this activity.

Reporting

Affected public: State, Local or Tribal agencies, Individuals/Households.

Estimated Number of Respondents: 53 State Agencies, 5 State agencies, 1,000 eligibility workers for NAC pilot training, 10,600 eligibility workers for NAC training, and 1,148,087.62 individuals/households.

Regulation Section: 7 CFR 272.18, 273.13.

Estimated Total annual responses: Ongoing 20,205,993.28.

Estimated Total Annual Burden Hours: Ongoing 881,952.44.

Estimated Number of Responses per Respondent: 17.43.

Regulation	Burden activity	Estimated number of respondents	Estimated responses per respondent	Estimated total annual responses	Estimated hours per response	Estimated total annual hours	Hourly cost to respondent	Estimated cost to respondent	Fringe benefits (× 0.33)	With fully loaded wages	PRA violation current burden in use without OMB control No.	Previously approved under 0584–0064	Difference due to program changes	Difference due to adjustment
REPORTING														
State Agency Burden														
Startup:														
72.18(b)(1)	Set-up for system to report case-load to NAC.	53.00	1.00	53.00	1,920.00	101,760.00	$11.33	$1,152,940.80	$380,470.46	$1,533,411.26			101,760.00	
272.18(b)(1)	Training Eligibility workers across 53 States to use NAC System.	10,600.00	1.00	10,600.00	10.00	106,000.00	11.33	1,200,980.00	396,323.40	1,597,303.40			106,000.00	
272.12(b)	State Agency matching system agreements.	53.00	1.00	53.00	15.00	795.00	11.33	9,007.35	2,972.43	11,979.78			795.00	
Startup Subtotal		10,653.00	1.00	10,706.00	19.48	208,555.00	11.33	2,362,928.15	779,766.29	3,142,694.44				
Ongoing:														
272.18(b)(1), 272.18(b)(4), 272.18(c)(3).	NAC—Data Upload.	53.00	261.00	13,833.00	1.00	13,833.00	11.33	156,727.89	51,720.20	208,448.09			13,833.00	
272.18(c)(2)	NAC—NAC Query.	53.00	340,435.55	18,043,084.00	0.0167	300,718.07	11.33	3,407,135.70	1,124,354.78	4,531,490.47			300,718.07	
272.18(c)(3), 273.2 (f)(1)(2), 272.18(c)(5), 273.12(c)(3)(iv).	NAC—Verification of questionable/unclear information following a positive NAC match.	53.00	4,611.57	244,413.10	0.1002	24,490.19	11.33	277,473.88	91,566.38	369,040.26		29,302.00	24,490.19	
272.18(c)(3)(iii)	NAC—Notice of Match Results.	53.00	7,730.37	409,709.52	0.0501	20,526.45	11.33	232,564.65	76,746.33	309,310.98		24,015.13	20,526.45	
272.18(c)(5), 273.12(c)(3)(iv)(A), 273.13(a)(2).	NAC—Combined Notice of Match Results and Notice of Adverse Action.	53.00	7,730.37	409,709.52	0.0501	20,526.45	11.33	232,564.65	76,746.33	309,310.98		72,773.21	20,526.45	
Ongoing Subtotal.		53.00	360,768.85	19,120,749.14	0.0199	380,094.15	11.33	4,306,466.75	1,421,134.03	5,727,600.78				
State Agency Grand Total.		53.00	360,970.85	19,131,455.14	0.0308	588,649.15	11.33	6,669,394.90	2,200,900.32	8,870,295.22				
Household burden														
Ongoing:														
272.18(c)(3), 273.2(f)(1)(2), 272.18(c)(5), 273.12(c)(3)(iv).	Verification of questionable/unclear information following positive NAC match.	244,413.10	1.00	244,413.10	0.0668	16,326.79	7.25	118,369.26	39,061.86	157,431.12		34,289.58	16,326.79	
272.18(c)(5), 273.12(c)(3)(iii).	NAC—Notice of Match Results.	409,709.52	1.00	409,709.52	0.0835	34,210.75	7.25	248,027.90	81,849.21	329,877.11		32,020.16	34,210.75	

272.18(c)(5), 273.13(a).	NAC—Combined Notice of Match Results and Notice of Adverse Action.	409,709.52	1.00	409,709.52	0.0835	34,210.75	7.25	248,027.90	81,849.21	329,877.11	.....	97,030.92	34,210.75	.....
Household On-going Sub-total.	.....	1,063,832.14	1.00	1,063,832.14	0.0797	84,748.29	7.25	614,425.07	202,760.27	817,185.34	.....	.....	.....	.....
Reporting Grand Total.	.....	1,074,485.14	18.81	20,205,993.28	0.04364806	881,952.44	.....	9,646,748.12	3,183,426.88	12,830,175.00	.....	289,431.00	673,397.44	.....

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, 2002 to promote 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. A Privacy Impact Assessment was completed by the FNS program office and privacy and information security teams concurrent with systems Authorization to Operate collaboration.

List of Subjects

7 CFR Part 272

Civil rights, Grant programs-social programs, Reporting and recordkeeping requirements, Supplemental Nutrition Assistance Program.

7 CFR Part 273

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Supplemental Nutrition Assistance Program.

For the reasons set out in the preamble, 7 CFR parts 272 and 273 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 1. The authority citation for 7 CFR part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 272.1, add paragraph (c)(4) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) * * *

(4) Disclosure of information obtained from the National Accuracy Clearinghouse (NAC), as described in § 272.18, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act of 2008, as amended, or SNAP regulations in this subchapter. Information obtained from the NAC may only be used for the purpose of preventing multiple issuances of SNAP benefits to an individual by more than one State agency in a given month. Recipients of information from the NAC must adequately protect the information against disclosure to unauthorized persons and use for purposes not specified in this paragraph (c)(4).

* * * * *

■ 3. Add § 272.18 to read as follows:

§ 272.18 National Accuracy Clearinghouse.

(a) *General.* (1) FNS shall establish an interstate data system, known as the National Accuracy Clearinghouse (NAC) to prevent individuals from receiving SNAP benefits in more than one State in a given month and shall institute processes and procedures for interacting with the system to prevent duplicate participation and assist households with disenrollment.

(2) Each State agency that administers SNAP shall participate in the NAC data matching system. State agencies shall take action on matches from the NAC to ensure participants are only receiving benefits in the State in which they reside and are otherwise eligible to receive them. State agencies are encouraged to integrate and automate NAC processes into SNAP eligibility systems and existing workflows to the fullest extent possible.

(3) Each participating State agency shall enter into a written computer matching agreement with FNS consistent with the requirements for matching programs in the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protection Amendments of 1990 (5 U.S.C. 552a(o)), prior to participating in the NAC.

(b) *States' reporting requirements.* (1) State agencies shall provide information for each active SNAP participant to the NAC according to procedures and formats established by FNS. For the purposes of the NAC, an active SNAP participant is defined as an individual who is approved to receive benefits for the benefit month in which the State agency is uploading the data. State agencies shall establish procedures to ensure the information provided is accurate and only includes active participants.

(2) Information provided to the NAC will be used for matching by other State agencies also matching with the NAC. Each State agency shall provide, once per working day in accordance with FNS procedures, the NAC data matching elements and other information as noted in paragraphs (b)(3) and (4) of this section for each active SNAP household member.

(3) For each individual, State agencies must report the following identifying information, referred to as NAC data matching elements, to the NAC: name, Social Security number, and date of birth. State agencies must transmit the NAC data matching elements to the system per the process specified by FNS. The NAC data matching elements are used by the NAC to determine the existence of positive matches.

(4) State agencies shall also report the following information: participant ID and, when applicable, a vulnerable individual flag. All information shall be reported in accordance with procedures provided by FNS. State agencies must comply with 7 CFR 273.6 in instances where a Social Security number is not available.

(i) A vulnerable individual flag is used to identify when precautions must be taken to protect the individual's information in the event of a match. A vulnerable individual can self-identify during the application or recertification process. State agencies also have the discretion to determine whether an individual meets the vulnerable individual definition in paragraph (a)(9) of this section if the individual does not self-identify.

(ii) A participant ID is the State agency's unique identifier for a participant or applicant.

(5) State agencies shall maintain the security, privacy, and accuracy of information submitted to the NAC, including ensuring that information provided to the NAC follows the standards and procedures provided by FNS and only includes active SNAP participants.

(c) *Use of match data.* (1) NAC queries are conducted by the State agency by submitting the NAC data matching elements described in paragraph (b)(3) of this section for an individual, per the process specified by FNS. The system will compare the query against the daily upload of active SNAP participants provided to the NAC by the State agencies to determine if an individual is currently receiving SNAP benefits in another State. The NAC will indicate a positive match when the NAC data matching elements submitted for comparison are the same as those in one or more records in the NAC.

(2) Prior to conducting a NAC query at application, recertification, or the addition of a household member, the State agency shall follow verification procedures described in 7 CFR 273.2(f)(1)(v) for Social Security numbers, (f)(1)(vi) for residency, and (f)(1)(vii) for identity. After following these verification procedures, State agencies shall conduct a NAC query on the individual applying, recertifying, or being added to a household.

(3) When a State agency receives a positive match from a NAC query at application, recertification, or when adding a household member:

(i) The State agency shall have 10 days from the date the match is received to initiate action to resolve the match as described in paragraph (c)(3)(ii) of this section and notify the other State agency of the initiated action.

(ii) The State agency must resolve the match to determine the appropriate

actions to take on the case. To resolve a match, State agencies may use information known to the State agency, must verify any questionable information in accordance with 7 CFR 273.2(f)(2), and must notify the individual of the match. States may not take any action to deny, terminate, suspend, or reduce SNAP benefits based on information received from the NAC until the information has been verified by the State agency and the individual has been provided notice of the match and an opportunity to respond to the notice, in accordance with § 272.12(c)(1).

(iii) Any communication or notice resulting from a NAC match must not include the location of the individual(s) identified in the match to protect vulnerable individuals.

(A) If the State agency needs more information to resolve the match or if the information it has could lead to a denial of benefits or other adverse action on the case, the State agency shall provide a written notice of match results that clearly explains what information is needed from the household and the consequences of failing to respond within the timeline provided in the notice. The notice must comply with this paragraph (c)(3)(iii) and § 272.4(b) bilingual requirements and must afford at least 10 days from the date the notice is mailed for a response.

(B) If the State agency is able to resolve the match and there is no potential for adverse action, a written notice of match results is not required. However, the State agency must provide a verbal notification of a match, which must be documented in the case file.

(iv) After the State agency has determined the appropriate disposition of the case, it shall promptly share the resolution information with the other State agency.

(v) The State agency must follow timeliness standards set forth in 7 CFR 273.2(g) and 273.14(d) for normal processing, and 7 CFR 273.2(i) for expedited service, as applicable. A lack of timely action or communication required by paragraph (c)(3)(i) of this section between the State agencies must not delay the determination of benefits for an individual.

(4) The NAC shall automatically conduct bulk matches on a monthly basis (''monthly bulk matches'') of the NAC data matching elements provided by all participating State agencies from the daily upload of active SNAP participants to discover existing duplicate participation and shall provide notifications to State agencies when matches are found for participants in their State.

(5) If a State agency receives information related to a NAC data match during the certification period for an individual currently participating in SNAP in the State, it must pursue clarification and verification by following the unclear information procedures provided in 7 CFR 273.12(c)(3)(iv) to provide notice and an opportunity to contest the information received before taking any adverse action. Information related to a NAC data match that may be received during the certification period includes:

(i) Notification of data matches directly from the NAC indicating that an active SNAP participant is receiving benefits in another State; and

(ii) Communication from another State agency based on a NAC data match indicating that an active SNAP participant is part of an applicant household or was added to an active household in another State.

(6) State agencies shall report and document instances in the household's case file where there is a match and the actions taken to resolve it per existing State operations.

(7) State agencies shall provide for the establishment and collection of claims as appropriate. The State agency that fails to meet the requirements in paragraph (c)(3) of this section or requirements at 7 CFR 273.12(c)(3)(iv) will be considered responsible for any duplicate participation that occurs. That State agency shall be responsible for the establishment and collection of the claim in accordance with regulations at 7 CFR 273.18.

(8) Information obtained from the NAC is subject to the disclosure provisions in § 272.1(c)(4). State agencies shall not use information obtained from the NAC for any purpose other than to prevent duplicate participation.

(9) State agencies shall establish a process to prevent the disclosure of any location information received from the NAC about any SNAP applicant or participant who is considered a vulnerable individual. A vulnerable individual, for the purpose of the NAC, includes but is not limited to, those who would be endangered by the dissemination of their information, regardless of their age or gender, such as a resident of a shelter for battered women and children as described in 7 CFR 271.2, a resident of a domestic violence shelter, or a person who self-identifies as fleeing domestic violence at any point during application, recertification, certification, or addition of a new household member. State agencies shall take steps to ensure that any information resulting from a NAC match, including identity and location, is protected during verification or resolution when a vulnerable individual is indicated in a positive match. The change in the household composition resulting from the move of the vulnerable individual must be communicated to the former household via a notice of adverse action per 7 CFR 273.11(g).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 4. The authority citation for 7 CFR part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 5. In § 273.12:

■ a. Revise the last sentence of paragraph (c)(3)(i) introductory text.

■ b. Add a sentence before the last sentence of paragraph (c)(3)(iii) introductory text.

■ c. Add paragraph (c)(3)(iv).

The revision and additions read as follows:

§ 273.12 Reporting requirements.

* * * * *

(c) * * *

(3) * * *

(i) * * * The procedures for unclear information regarding matches described in § 272.18 of this chapter are found in paragraph (c)(3)(iv) of this section.

* * * * *

(iii) * * * If a State receives information from a match described in § 272.18 of this chapter, the State shall follow up with a combined notice of match results and adverse action as described in paragraph (a)(2) of this section. * * *

(iv) If a State agency receives unclear information during the certification period from a match described in § 272.18 of this chapter, the State agency shall initiate action to resolve the match and communicate with the other State agency within 10 days of receipt of the match notification, in accordance with paragraphs (c)(3)(iv)(A) and (B) of this section.

(A) The State agency that receives a NAC data match shall provide to the household a notice of match results and notice of adverse action as described at § 273.13. The notice must clearly explain what information is needed from the household and the consequences of not responding in a timely manner as described at paragraphs (c)(3)(iii)(A) and (B) of this section. Any communication with the household, including a written notice, must not include the location of the

individual(s) identified in a match and must follow bilingual requirements at § 272.4(b) of this chapter. State agencies must also follow regulations at § 272.18(c)(9) of this chapter for those who are considered vulnerable individual. Consistent with verification standards in § 273.2(f), the State agency must give the household at least 10 days to provide required verification.

(B) The State agency shall communicate with the other State agency to inform them they have initiated action to resolve the match. After the State agency has determined the appropriate disposition of the case, they shall promptly share the resolution information with the other State agency.

* * * * *

■ 6. In § 273.13, add a sentence to the end of paragraph (a)(2) to read as follows:

§ 273.13 Notice of adverse action.

(a) * * *

(2) * * * A notice of adverse action that combines a notice of match results received through a National Accuracy Clearinghouse (NAC) computer match shall meet the requirements in § 273.12(c)(3)(iv) and § 272.18(c)(5) of this chapter.

* * * * *

Cynthia Long,

Administrator, Food and Nutrition Service.

Note: The following appendix will not appear in the Code of Regulations.

Appendix A—Supplemental Nutrition Assistance Program: Requirement for Interstate Data Matching To Prevent Multiple Issuances

I. Summary of Impacts

The Department estimates the net reduction in Federal Supplemental Nutrition Assistance Program (SNAP) spending associated with the interim final rule establishing a nationwide National Accuracy Clearinghouse (NAC) to be approximately $463 million over the five years 2022–2026. This reduction in spending represents a decrease in Federal transfers (SNAP benefit payments) of approximately $498 million over five years due to prevention of duplicate participation, partially offset by increases in Federal systems costs related to implementing, operating, and maintaining the system ($18.3 million) and in the Federal share of State administrative costs (nearly $16 million). In addition, the Department estimates an increase in the State share of administrative costs (nearly $16 million over five years) for start-up costs and costs associated with submitting data and following up on matches. This rule will also increase administrative burden on SNAP households by $1.2 million over five years. Households identified as potential duplicate participants through NAC matches will need to provide verification and respond to notices and requests for information from State agencies.

The impacts of the interim final rule are summarized in Table 1, below; SNAP benefit payments are categorized as transfers in the accounting statement that follows.

TABLE 1—SUMMARY OF IMPACTS

[In millions of dollars]

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total *
Transfers—SNAP benefit spending:						
Reduction in SNAP benefit payments **	$0.00	$43.35	$106.60	$161.43	$186.12	$497.50
Discounted Transfer Stream:						
7 percent	0.00	37.86	87.02	123.15	132.70	380.74
3 percent	0.00	40.86	97.55	143.43	160.55	442.39
Costs—Federal and State Administrative Costs and Household Burden:						
State Administrative Costs—Implementation	1.68	2.24	2.24	1.26	0.00	7.42
State Administrative Costs—Ongoing	0.00	1.60	4.80	8.00	10.15	24.55
Federal Systems Costs	4.36	3.46	3.46	3.56	3.46	18.31
Household Burden	0.00	0.14	0.27	0.38	0.41	1.20
Total	6.04	7.44	10.77	13.20	14.02	51.48
Discounted Cost Stream:.						
7 percent	5.64	6.50	8.79	10.07	10.00	41.01
3 percent	5.86	7.01	9.86	11.73	12.10	46.56

* Sums may not total due to rounding.

** Reduction in SNAP benefit payments are prorated for States during their first year of implementation to reflect anticipated staggered implementation throughout each fiscal year.

As required by OMB Circular A–4, in Table 2 below, the Department has prepared an accounting statement showing the annualized estimates of benefits, costs, and transfers associated with the provisions of this interim final rule.

TABLE 2—ACCOUNTING STATEMENT

	Primary estimate ($)	Year dollar	Discount rate (%)	Period covered
Benefits:				
Annualized	N/A	2022	7	FY 2022–2026
Monetized ($millions/year)	N/A	2022	3	
Qualitative—This rule will result in the identification and prevention of actual and potential duplicate participation in SNAP nationally, thereby improving program integrity.				
Costs:				
Annualized	10.00	2022	7	FY 2022–2026.
Monetized ($millions/year).				

TABLE 2—ACCOUNTING STATEMENT—Continued

	Primary estimate ($)	Year dollar	Discount rate (%)	Period covered
10.17	2022	3		
Federal costs of implementing and maintaining NAC; State administrative expense for implementing NAC matches, staff training on new procedures, notices, and verification of circumstances for identified potential matches; household administrative burden.				
Transfers:				
Annualized	−92.86	2022	7	FY2022–2026.
Monetized ($millions/year)	−$96.60	2022	3	
Reduced SNAP benefit payments due to the prevention of duplicate participation.				

II. Section-by-Section Analysis

Background

SNAP is a key component of the social safety net in the United States. Ensuring that SNAP participants do not receive benefits in more than one State in the same month is essential to safeguarding program integrity. Under existing SNAP rules, an individual may not receive SNAP benefits from more than one State agency for the same benefit month (except certain victims of domestic violence). Regulations require that a household live in the State where it files a SNAP application and stipulate that no individual may participate as a member of more than one household or in more than one project area (*e.g.,* a State) in any month. Program regulations also require State agencies verify applicants' residency before approving their applications.

Current SNAP rules also require State agencies to match new applicants against the existing SNAP caseload within the State at the time of certification to prevent dual participation, but do not require State agencies to check for dual participation across State lines. This rule requires State SNAP agencies to expand the check for dual participation to all States' SNAP caseloads.

The NAC Pilot

Beginning in 2013, the State of Mississippi established the NAC pilot that was funded by the Office of Management and Budget's (OMB) Partnership Fund for Program Integrity Innovation.[1] The pilot was designed to test the feasibility of improving upon existing processes by establishing a real-time interstate data matching system to prevent duplicate participation. NAC pilot data matching operations began in June 2014 and consisted of five participating States: Alabama, Florida, Georgia, Louisiana, and Mississippi. The NAC pilot is still in operation at the time of this interim final rule under administrative waivers. However, there are only four States still operating the NAC pilot under administrative waivers: Alabama, Florida, Georgia, and Mississippi.

As part of the pilot, each participating State submits a daily file of its entire SNAP participant caseload, which is integrated into a list of all SNAP participants receiving benefits in the participating pilot States. State agencies query the system when they receive SNAP applications or add new members to an existing household during recertification. The NAC pilot checks these individuals against the list of active SNAP participants in the other pilot States. When a State identifies that an applicant is receiving benefits in another State, the State agency staff responsible for administering SNAP in the applicant State contacts the State where the applicant is already receiving benefits to close the individual's case or remove the individual from the household. Once the applicant's out-of-State case is closed or the individual is removed from the household, the State receiving the application can move forward with the certification process. If the applicant is checked against the NAC pilot's list of active SNAP participants in other pilot States and the applicant is not identified as receiving SNAP benefits elsewhere, then the State proceeds with the certification process as usual.

The NAC pilot allowed for estimation of the prevalence of interstate duplicate participation in the participating States. Analysis of data from before the NAC pilot began operations suggested that between 0.09 percent and 0.17 percent of the individual SNAP participants active in each pilot State's caseload in May 2014 were also receiving benefits in another one of the pilot States in May 2014. The Department notes, however, that these data only represent instances of interstate duplicate participation where both States issuing benefits were participating in the pilot. Accordingly, the NAC pilot could not discover any potential matches between a State participating in the NAC pilot and a State that was not participating in the NAC pilot. This limit in ability to detect matches suggests that the nationwide NAC will only increase positive match frequency when new States are added to the system. The positive match frequency is also expected to decrease gradually as States adopt the nationwide NAC and NAC business processes implemented by this rule.

Independent Evaluation of the NAC Pilot[2]

Pursuant to Section 4032(c) of the Agricultural Act of 2014, an independent evaluation assessed the NAC pilot's detection and prevention of duplicate participation between May 2013 and August 2015 and reported on variations in implementation between the five States. As the NAC pilot focused exclusively on interstate duplicate participation, intrastate duplicate participation was not assessed as a part of the NAC pilot evaluation. Overall, the evaluation found a relatively low occurrence of dual participation—ranging from less than one-tenth of one percent of Louisiana's eligible individuals in May 2014 to just below two-tenths of one percent of Georgia's.[3] The evaluation report indicated that a significant percentage of duplicate participation occurs when a new member is being added to an existing household with an existing case. In Table 19 of the evaluation report, an average of almost half, 47 percent, of duplicate participation found was from individuals residing in households where all members are not duplicate participants. The Department interprets these occurrences of duplicate participation as instances where administrative processes need to be improved and better customer service provided, particularly for individuals or households that move between States. It is likely that these individuals either failed to report their move or were not promptly disenrolled by the State agency. Table 21 further emphasizes the need for greater customer service by evaluating claims data on cases including dual participants identified at initial matching of the NAC pilot. Out of the claims data reported as initial match agency error, inadvertent client error, and intentional Program violation, nearly 28 percent of claims were due to something other than intentional Program violation. Based on this information, the Department determines that there is a greater need for enhanced customer service for applicants and participants who move between States or households, as well as better training for eligibility workers to identify these individuals and prevent inadvertent household errors and agency errors that may result in the establishment of a claim and added burden.

Although the evaluation found that the rate of duplication participation is infrequent, the report found a 46 percent reduction in the number of SNAP participants receiving benefits in more than one pilot State after one year of NAC pilot operation. Each of the five States experienced a reduction in duplicate participation, but the scale of the reductions varied. Two of the five States had 81 percent fewer instances of SNAP participants

[1] *https://obamawhitehouse./archives.gov/sites/default/files/omb/memoranda/2011/m11-01.pdf.*

[2] *https://risk.lexisnexis.com/-/media/files/government/report//b7de1d11976a4bdd82a039a8f272265busdareportonnac2016117614%20pdf.pdf.*

[3] *https://risk.lexisnexis.com/-/media/files/government/report//b7de1d11976a4bdd82a039a8f272265busdareportonnac2016117614%20pdf.pdf,* page 10.

receiving benefits in another State compared to pre-NAC pilot levels (for example, from a monthly average of 882 instances down to 166 in Mississippi), while another two saw reductions of less than 30 percent (for example, from a monthly average of 3,383 to 2,446 instances in Florida). The Department believes that improving administrative processes will further diminish households' inadvertent duplicate participation.

The NAC pilot evaluation also measured each State's effectiveness in using the NAC pilot to prevent duplicate participation, comparing positive matches generated by queries regarding SNAP applicants or new household members to subsequent positive indications of active duplicate participation. Matches on SNAP applicants or new household members that subsequently became active duplicate participants indicate that the information from the NAC pilot failed to prevent an individual from receiving benefits from more than one State agency simultaneously due to participant States not taking appropriate actions when notified of a match and/or a lack of communication between State agencies. Again, there was significant variation in how effectively the five pilot States used the NAC pilot to prevent duplicate participation. In two of the five States, less than 10 percent of instances of individuals in NAC pilot matches resulted in duplicate participation. Other pilot States were not as effective. The least effective State consistently saw about 40 percent of instances of individuals identified in matches resulting in duplicate participation.

NAC Pilot Lessons Learned

The overall findings from the evaluation indicate that the rate of duplicate participation is low; that when it does occur, it is more commonly the result of administrative reasons, such as data entry errors or a State failing to promptly disenroll an individual that had moved between States and/or households, and not fraud; and that NAC can effectively reduce duplicate participation if State agencies apply lessons learned from the pilot as they implement the nationwide NAC data match. The pilot States with larger reductions in duplicate participation were the same States with better statistics when it came to preventing duplicate participation. The NAC pilot evaluation found that these States were more successful largely due to the extent that they automated NAC processes. They used web services to link their State systems with the NAC pilot. This enabled real-time querying of the NAC pilot database in a manner similar to a manual portal query, with the added advantage of limiting caseworker intervention to only those instances in which a match is generated. For example, if a State agency eligibility caseworker needs to process an application on the same day the application is received, the web services approach allows for sending and receiving information from the NAC that same day. NAC pilot States that were less effective in terms of preventing and reducing duplicate participation used a batch process model where information is not returned until the following day. This sometimes led to the certification of an application before the caseworker became aware that there was a positive match from the NAC pilot indicating an active case in another State.

The more successful States in the NAC pilot also integrated the NAC with their SNAP eligibility systems and into existing workflows. State agency eligibility caseworkers received flags to take additional steps only in the event of a positive match, rather than having to check the NAC pilot portal for every application they processed and every person they added to a case.

The differences in business processes and systems integration not only provide at least a partial explanation for the varied outcomes achieved by States, but also support a set of practices that may be adopted to improve upon and maximize the effectiveness of the NAC pilot. Additionally, the evaluation report also recommended that State agencies conduct comprehensive front-line training. This includes dedicating resources to delivering hands-on training for eligibility workers using real-world examples for the approach the state will use to operationalize the tool and communicate with other states. These best practices from the NAC pilot combined with feedback from State agencies inform the design and implementation of the nationwide NAC solution implemented by this rule.

NAC Pilot Final Results

The NAC pilot evaluation estimated the total benefit overpayments averted by the NAC pilot and the potential benefit overpayments that could be saved if the NAC were implemented nationwide. The evaluation compared the decay rate of dual participation over the course of five months starting from both before the NAC pilot began in December of 2013 and during the course of the pilot in December of 2014. The difference represents the effectiveness of using the NAC pilot to prevent and timely resolve duplicate participation. In each State, the entries of duplicate participation fell from December 2013 to December 2014. However, anywhere from 25.8 percent to 41.45 percent of instances of dual participation identified in December 2013 continued five months later into May 2014. Once the NAC pilot was implemented, the total number of duplicate participant entries fell for each State and the percentage of individuals remaining as duplicate participants after five months fell from 21 percent to 0 percent in Alabama, 51.4 percent to 17.8 percent in Florida, 49.6 percent to 17.1 percent in Georgia, 41.4 percent to 6.5 percent in Louisiana, and 34.9 percent to 3.2 percent in Mississippi. In each case, the NAC pilot was effective as reducing the rate of duplicate participation.

The NAC evaluation also calculated actual savings by estimating the savings per month per instance of duplicate participation prevention in each of the pilot States and multiplying those savings by the median months of duplicate participation avoided. To establish the median length of duplicate participation for an individual, the NAC evaluation identified the eligibility date in each State, selected the latest of the two dates to establish when overlapping eligibility began, identified the next recertification date for the individual's case in each State, and selected the soonest of the two recertification months. The number of months between the start of overlapping eligibility and the next recertification month establishes the median expected length of dual participation per State, which ranged from 6 to 11 months. The evaluation avoided double counting the prevention of duplicate participation in both States by assuming the individual was eligible to participate in one of the States. The estimated State agency costs of NAC participation were then subtracted from these savings to yield a total estimated net impact for the NAC pilot of more than $5.6 million per year in the five NAC pilot States.

The evaluation estimated the potential impact of a nationwide NAC from the results of the NAC Pilot, including the potential cost savings associated with its implementation. These estimated savings for the pilot States were converted to percentages of total fiscal year (FY) 2014 SNAP benefit issuance in each pilot State, then averaged and applied to the program-wide total FY 2014 benefit issuance. The evaluation estimated that nationwide implementation of the NAC would have saved more than $114 million in FY 2014, or 0.16 percent of total SNAP issuance. As a result of this successful pilot, as evidenced by the evaluation report findings, Congress passed legislation to expand the NAC nationwide and mandated State participation.

Establishment of the Nationwide NAC

The nationwide NAC will help States enforce existing SNAP residency requirements by conducting data matches on SNAP caseloads across States and notifying State agencies when there is evidence of an applicant participating in another State for the same benefit month. The mechanics of the NAC are simple—States contribute daily files of their active SNAP participants in a common format to a centralized database. States also submit information requests to the database on new program applicants, at recertification, and when a new household member is added to an existing SNAP case. Then, the NAC looks for overlapping information on a range of data points, including Social Security number, name, and date of birth (DOB), to determine if the household or individual is already a SNAP participant in another state.

The interim final rule requires every State SNAP agency to participate in the NAC within five years. On at least a daily basis, States must provide, at a minimum: full name, Social Security number (SSN), and date of birth for each active SNAP household member. When available, State agencies must also provide additional data elements that are intended to increase accuracy of matches, including: a flag to identify vulnerable individuals,[4] participant ID, case number, participant closing date, and recent benefit

[4] The interim final rule establishes a definition for vulnerable individuals specific to the NAC at § 272.18(c)(9). This definition includes, but is not limited to, those who would be endangered by the dissemination of their information, such as residents of shelters for battered women and children as defined in 7 CFR 272.1, or a person fleeing domestic violence.

issuance dates. The NAC will compare required data elements (name, SSN, and date of birth) for active SNAP recipients, SNAP applicants, and newly added household members among States. The NAC will also conduct monthly bulk matches of the NAC data elements provided by all participating State agencies to discover existing duplicate participation.

Prior to certification or to the addition of a new household member, States will be required to submit information about each member of a SNAP applicant household and each new household member for comparison with information about active SNAP recipients in other States. Upon receiving a data match from the NAC indicating that a member of the applicant household or a newly added household member is already an active SNAP recipient, the State agency shall follow a 10-day timeframe established at 7 CFR 272.18(c)(3) to resolve the match and report that action to the other State agency. States are prohibited from contacting any third parties or otherwise disclosing any information regarding a positive NAC data match involving an individual who the State agency determines would be endangered by dissemination of their identity or location, because they are a resident of a shelter for battered women and children or they are fleeing domestic violence. Therefore, the interim final regulation allows for a vulnerable individual flag to be used to identify when precautions must be taken to protect the individual's information in the event of a match.

When a NAC match is received at application, recertification or for a newly added household member, States are required to follow existing SNAP procedures governing the receipt of unclear information about a household and to clarify whether the individual is, in fact, participating in another State by sending the household a Notice of Match Results (NMR) that clearly explains what information is needed from the household and the consequences of failing to respond to the notice.

The interim final rule establishes procedures to be followed for NAC matches containing unclear information during the certification period at 7 CFR 272.18(c)(5). If the household is currently certified in the State that received the NAC match, the State agency will combine the NMR with a Notice of Adverse Action (NOAA). The Department is adding this combined notice for action on NAC matches only to expedite the notice process for State agencies, reduce the likelihood of duplicate participation and thus establishment of a claim against a household, while providing the household with an opportunity to contest.

Effect on State Agencies

State agencies will upload data that is de-identified to the NAC. State agencies will upload this data at least once each working day. State agencies must act on the matches by contacting the individual, sending a notice, contacting the other State agency indicated in the match, or through other methods of further verifying the match before taking adverse action. Specific actions will depend on when the match takes place, whether it be for a new applicant, newly added household member, recertifying participant, or during certification. State agencies will also be required to complete and sign a Computer Matching Agreement (CMA) which will outline requirements for State agencies to join the NAC. However, there is the potential for States to have to follow up on a large number of cases at initial implementation of their and other States' participation in NAC.

Estimates of the administrative costs to implement and participate in the NAC are based on the NAC pilot evaluation, discussed in detail above. The evaluation found that the total monthly administrative cost to operate the NAC for the five pilot states was about $82,000 and ranged from $5,499–$21,763 for the five pilot States. The total annual cost was nearly $1 million ($984,000 per year), or an average of about $200,000 per State, per year. Based on this annual average, the Department projects that the annual operating cost of participating in the NAC would be approximately $10.6 million if the NAC were implemented nationwide. The pilot evaluation also found that States spent on average about $140,000 on planning, programming, and staff training when implementing NAC.

The Department expects 12 States will implement the NAC in FY 2023, an additional 16 States will conduct the match in FY 2024 (28 States, total, including the 12 States that implement in FY 2023), 16 more States will implement in FY 2025 (44 States, total), and in FY 2026 the remaining 9 States will implement (53 States, total). These estimates are based on States' expressed interest in participating in the NAC and the Department's ability to provide infrastructure and technical assistance to the States. The costs in the following table reflect this phase-in rate. As indicated in Table 3, implementation costs are not expected to continue beyond FY 2025, while ongoing annual operating costs will continue into future years.

TABLE 3—CALCULATION OF STATE ADMINISTRATIVE EXPENSE FOR IMPLEMENTATION NAC DATA MATCHING

Dollars in millions	2022	2023	2024	2025	2026
Per State Implementation Cost $0.14					
Per State Annual Cost $0.20					
States Conducting NAC Matching	0	12	28	44	53
Implementation Costs *	$1.68	$2.24	$2.24	$1.26	$0.00
Annual Operating Costs **	$0.00	$1.60	$4.80	$8.00	$10.15
Total State Administrative Costs (Federal + State)	$1.68	$3.84	$7.04	$9.26	$10.15

* States face implementation costs in the year prior to implementation only.
** Annual operating costs are prorated for States during their first year of implementation to reflect staggered implementation throughout the fiscal year.

State Administrative Expense (SAE) is split evenly between Federal and State governments. Thus, the State share of increased SAE is expected to be $0.84 million in FY 2022 and $15.98 million over five years. These costs will only accrue to those States that have implemented NAC data sharing. Costs may be somewhat higher at implementation due to detection of existing duplicate participation.

Effect on Federal Spending

As SAE is shared between Federal and State governments, Federal spending for SAE is expected to increase by $0.84 million in FY 2022 and $15.98 million over five years. In addition, the Federal Government will face costs associated with developing and maintaining the NAC. The Department estimates that it will cost $4.4 million to develop, implement, maintain, and provide support services for the nationwide NAC in FY 2022, and $18.3 million over five years. This estimate is based on contractual costs for system design, development, and operations and for Help Desk support. Thus, the Federal costs for administering the NAC are expected to be $5.2 million in FY 2022 and $34.3 million over five years (Table 4). The Department also expects to provide technical assistance and other support to States as they join the NAC.

TABLE 4—CALCULATION OF FEDERAL COSTS OF IMPLEMENTING AND OPERATING NAC DATA MATCHING

[Dollars in millions]

	2022	2023	2024	2025	2026
Federal Share of State Administrative Expense *	$0.84	$1.92	$3.52	$4.63	$5.08
System Development, Operation, & Maintenance	2.7	3.0	3.0	3.0	3.0
System Design	1.1	0.0	0.0	0.0	0.0
System Help Desk	0.5	0.5	0.5	0.6	0.5
Total Federal Costs	5.2	5.4	7.0	8.2	8.5

* Annual administrative expenses are prorated for States during their first year of implementation to reflect staggered implementation throughout the fiscal year. The Department received an additional $5 million in appropriations in FYs 2020 and 2021 for NAC development.

Federal administrative costs would be more than offset by reduced SNAP benefit spending (transfers) due to prevention of duplicate participation at application. The NAC pilot evaluation estimated the potential reduction in SNAP benefit spending and concluded that if the NAC were used by all State SNAP agencies, benefit spending net of administrative costs would be reduced by:

- 0.191 percent by preventing duplicate participation (avoidance); and
- 0.069 percent as States identify and act upon existing (active) cases of duplicate participation across state lines at the initial implementation of the NAC.

These estimates were calculated as follow:

- The total number of duplicate cases that could be prevented was estimated by comparing the percentage of cases that were duplicate participants prior to NAC pilot implementation to the percentage of cases that were duplicate participants 4 months after implementation. By using percentages rather than raw numbers, this methodology accounts for changes in the overall SNAP caseload over the course of the pilot.
- The estimated number of duplicate cases was adjusted to avoid double-counting matches. Households were assumed to remain eligible in one State (their actual State of residence), so they discontinue participation in only one State (rather than two). After adjustment, the number of duplicate cases prevented per month ranged from 41 cases to 248 cases across the 5 pilot States. The median number of months of duplicate participation avoided during the NAC pilot varied by State from 6 months to 11 months.
- Monthly benefit savings per case varied from $123 to $135. Based on analysis of pilot redemption data, total savings per State were reduced by 12 percent to account for the fact that some duplicate participants only redeemed benefits from one State. This resulted in total monthly savings that ranged by State from $40,438 to $176,433.
- The NAC pilot only detected duplicate participation that occurred with other NAC pilot States. However, as the NAC is expanded nationwide, more duplicate participants are likely be found. Data on Public Assistance Reporting Information System (PARIS) matches was used to estimate the additional expected number of matches if the NAC were nationwide.[5] Among the NAC pilot States. the percentage of PARIS matches with other NAC pilot States varied from 18.9 percent to 52.5 percent of all matches; the remainder of matches were with cases in other States. This proportion was used to estimate the additional potential savings for each pilot State if NAC matches were conducted with all States.
- Potential savings per State were then calculated as a proportion of total SNAP benefit payments in the State. Expected benefit savings varied by State from a low of 0.12 percent to a high of 0.30 percent of benefit payments.
- The 0.191 percent estimate is a weighted average of all pilot State results (Table 5).

TABLE 5—CALCULATION OF POTENTIAL BENEFIT SAVINGS FROM PREVENTION OF DUPLICATE PARTICIPATION

	AL	FL	GA	LA	MS
Monthly Savings per State:					
Cases prevented monthly [1]	263	361	378	114	149
Percentage "owned" by State	54.8%	68.8%	32.6%	36.0%	46.7%
Adjusted cases (A)	144	248	123	41	70
Median spell length (B)	6	6	11	9	10
Average monthly benefit (C)	$123	$135	$134	$124	$127
Savings per duplicate case (B × C)	$739	$807	$1,475	$1,120	$1,271
Monthly savings (A × B × C)	$106,562	$200,493	$181,730	$45,952	$88,426
Share of duplicate benefits ever redeemed	88%	88%	88%	88%	88%
Adjusted monthly savings (D)	$93,775	$176,433	$159,923	$40,438	$77,815
Adjustment for Nationwide Expansion:					
Share of PARIS matches with other NAC States (E)	52.5%	18.9%	38.5%	31.1%	34.6%
Total monthly savings if NAC were nationwide (D/E)	$178,619	$933,510	$415,383	$130,026	$224,899
Monthly Savings as a Percentage of Monthly Issuance:					
Average monthly issuance, FY 2014	$109,844,464	$456,069,500	$235,654,490	$107,359,689	$76,082,125
Share of benefits to duplicate participants	0.16%	0.21%	0.18%	0.12%	0.30%
Average for NAC pilot States	0.191%				

[1] Based on Top 5 matches.
Sums may not total due to rounding.

[5] PARIS is a data matching service used to check whether recipients of public assistance receive duplicate benefits in two or more States.

Using data from the NAC pilot evaluation, the Department also estimated the potential benefit savings due to earlier detection of ongoing cases of duplicate participation. The benefit savings were estimated as follows:

- As described in the preceding discussion, to estimate the number of duplicate cases that could be prevented after implementation, the evaluation compared the percentage of duplicate cases prior to implementation to the percentage four months after implementation. The latter figure represented the potential prevention of new duplicate participants. The remainder represents the percentage of cases that would be identified as on-going duplicate participants at the time of implementation.
- The same assumptions were made regarding the average monthly benefit, share of duplicate benefits that would not be redeemed, overlap between NAC States, and impacts of nationwide expansion.
- Rather than using the 6–11 month median spell length, we assumed that on average cases would be closed 2 months earlier than in the absence of the NAC. This assumption reflects that the duplicate cases would be detected 1–3 months earlier than they would through quarterly PARIS matches.
- As with the prevention estimate, potential savings were calculated as a weighted average of savings in all States, for an average of 0.069 percent of benefits per State (Table 6). Because these savings are the result of earlier detection of ongoing duplicate participation, the savings only occur in the first year of operation.

TABLE 6—CALCULATION OF POTENTIAL BENEFIT SAVINGS FROM EARLIER IDENTIFICATION OF ONGOING DUPLICATE PARTICIPATION

	AL	FL	GA	LA	MS
Monthly Savings per State:					
Cases prevented monthly [1]	1014	187	160	255	629
Percentage "owned" by State	54.8%	68.8%	32.6%	36.0%	46.7%
Adjusted cases (A)	555	129	52	92	294
Median spell length (B)	2	2	2	2	2
Average monthly benefit (C)	$123	$135	$134	$124	$127
Savings per duplicate case (B × C)	$246	$269	$268	$249	$254
Monthly savings (A × B × C)	$136,893	$34,589	$13,949	$22,812	$74,640
Share of duplicate benefits ever redeemed	88%	88%	88%	88%	88%
Adjusted monthly savings (D)	$120,466	$30,438	$12,275	$20,074	$65,683
Adjustment for Nationwide Expansion:					
Share of PARIS matches with other NAC States (E)	52.5%	18.9%	38.5%	31.1%	34.6%
Total monthly savings if NAC were nationwide (D/E)	$229,459	$161,048	$31,883	$64,547	$189,836
Monthly Savings as a Percentage of Monthly Issuance:					
Average monthly issuance, FY 2014	$109,844,464	$456,069,500	$235,654,490	$107,359,689	$76,082,125
Share of benefits to duplicate participants	0.209%	0.035%	0.014%	0.060%	0.250%
Average for NAC pilot States	0.069%				

[1] Based on Top 5 matches.
Sums may not total due to rounding.

Once the NAC is successfully implemented nationwide, the Department expects that active cases of duplicate participation across State lines will largely be eliminated. To reflect this, savings from identification of active duplicate cases are phased out after all States have implemented. The Department acknowledges a small number of active duplicate participation cases may still occur because of imperfect use of the NAC, but anticipates that it would be a small number of cases.

Because the Department expects NAC participation to be phased in over time, and because it cannot predict which States will begin participating in each year after implementation begins, our estimated reduction in benefits assumes that NAC coverage of the SNAP caseload phases in at the same rate as State participation. In other words, if 25 percent of States participate in a given fiscal year, then 25 percent of the potential benefit reduction will occur, prorated to reflect expected staggered implementation throughout the fiscal year. The estimated savings are for prevention and identification of duplicate participation (Table 7).

TABLE 7—CALCULATION OF REDUCTION IN SNAP BENEFIT SPENDING DUE TO EARLIER DETECTION OF ONGOING AND PREVENTION OF NEW DUPLICATE PARTICIPATION

[Dollars in millions]

	2022	2023	2024	2025	2026
Projected SNAP benefit spending *		$97,694	$99,364	$97,850	$95,613
Estimated from avoidance (0.191%) **	$0.0	−$28.15	−$85.99	−$141.13	−$174.97
Estimated savings from identifying active duplicate participation (0.069%)	$0.0	−$15.20	−$20.61	−$20.30	−$11.16
Percentage of States participating	0.0	22.6	52.8	83.0	100.0
Total reduction in SNAP benefit spending	$0.0	−$43.35	−$106.60	−$161.43	−$186.12

* Source: Internal USDA Estimates.
** Savings from avoidance for newly implementing States are prorated to reflect expected staggered implementation throughout the fiscal year as States join the NAC.

Effect on SNAP Participants

This rule will not affect the monthly benefit allotments of SNAP participants, except for those who are participating in more than one State in the same month or who attempt to do so. The interim final rule includes provisions to protect participants from being incorrectly removed from the program due to an inaccurate match, to protect participants' privacy, and to reduce participants' burden in responding to a match. The NAC can also protect households/individuals from claims as a result of inadvertently participating in more than one State simultaneously. Under the current process, State agencies rely primarily on manual processes to track and act upon data matches, which can be error-prone and time-consuming. For example, a household could report to State A that they moved to State B and begin receiving SNAP in State B, but State A failed to close the case in a timely fashion. By preventing duplicate participation, the NAC can reduce the need to establish claims against households/individuals who complied with program rules.

Households/individuals that are identified as potential duplicate participants will face additional administrative burden. For households/individuals identified by a match during the certification or recertification process, or when adding a new household member, this burden includes providing additional verification of residency when needed (309 hours per State, on average) and responding to a Notice of Match Results (NMR) (646 hours per State, on average). This would be an ongoing burden in every year after initial implementation. The NMR will provide households/individuals incorrectly identified as potential duplicate participants an opportunity to dispute the match and prevent people from incorrectly being removed from SNAP as a result of an inaccurate NAC match. For households/individuals identified as a possible active duplicate participant during the certification period, burden includes reading/responding to a combined NMR and Notice of Adverse Action (NOAA), and providing additional verification when needed. This combined burden (646 hours per State, on average) would primarily take place as States newly implement the NAC, when active duplicate participants are expected to be identified. Because the Department expects active cases of duplicate participation to decline as the NAC is implemented nationwide, household burden related active duplicate participation is phased out as the NAC is phased in. Altogether, this administrative burden is expected to cost households $1.2 million over five years (Table 8).

TABLE 8—CALCULATION OF HOUSEHOLD ADMINISTRATIVE BURDEN

[Dollars in millions]

	2022	2023	2024	2025	2026
Total States participating in NAC	0	12	28	44	53
States newly implementing NAC	0	12	16	16	9
Household burden hours * for:					
Verification (309 hours per State on average) *	0	3,708	8,651	13,595	16,376
Responding to NMR (646 hours per State) *	0	7,746	18,074	28,401	34,211
Responding to combined NMR and NOAA (646 hours per State) *	0	7,746	10,328	10,328	5,809
Total Hours	0	19,199	37,053	52,324	56,396
Total Cost	$0.00	$0.14	$0.27	$0.38	$0.41

* Household burden expressed as an average per State. Verification hours assume an average of 4,612 households per State spend 4 minutes each (on average) on verification. NMR hours per State assume an average of 7,730 households per State spend 5 minutes each reviewing a NMR. Combined NMR and NOAA hours assume an average of 7,730 households per State spend 5 minutes each.

Some households/individuals identified as potential duplicate participants may be false positive matches and may face additional administrative burden associated with verifying their circumstances. However, as matching against name, Social Security number, and date of birth will be required, the Department expects to minimize such false positive matches.[6] Additionally, States are expected to ensure they have reliably valid information about the identity of all members of an applicant household and their intent to receive SNAP benefits prior to submitting information to the NAC to minimize the risk of false positive matches.

To minimize risks to the privacy of SNAP participants, the Department will ensure that the NAC maintains strict security standards to prevent the unauthorized disclosure or modification of information. The NAC system will not store or retain any personal identifiable information (PII) and the interim final rule requires that the NAC use only de-identified personal information for enhanced security of SNAP participants. Additionally, NAC data cannot be used for any purpose other than detecting duplicate participation.

III. Uncertainties

There are several uncertainties regarding the estimated impacts of the NAC rule.

- First, while the Department intends to vigorously push States to implement this rule, experience indicates that States face a variety of challenges when required to implement program changes that rely heavily on changes to their automated systems. These challenges can delay full implementation for years when, for example, a State is in the process of building and implementing a new system to replace a legacy system. This results in a high level of uncertainty regarding how quickly States will begin implementing the NAC. The estimates in this analysis rely on the Department's conversations with States to gauge their interest and readiness to implement the NAC. Table 9 below illustrates how those estimates might vary if implementation were slower than expected.

TABLE 9—IMPACT OF ALTERNATIVE PHASE-IN ASSUMPTIONS

[Dollars in millions]

	2022	2023	2024	2025	2026	5-year	10-year
Expected Phase In (by 2026):							
States Implementing	0	12	28	44	53		
Reduction in SNAP benefit payments	$0.0	−$43	−$107	−$161	−$186	−$497	−$1,493

[6] The NAC pilot evaluation found that, with virtually no exceptions, matches on all three of these data elements were valid.

TABLE 9—IMPACT OF ALTERNATIVE PHASE-IN ASSUMPTIONS—Continued

[Dollars in millions]

	2022	2023	2024	2025	2026	5-year	10-year
Federal/State Administrative Costs (total)	$6.0	$7.3	$10.5	$12.8	$13.6	$50.3	$121.1
Household Burden	$0.0	$0.14	$0.27	$0.38	$0.41	$1.2	$3.0
Assume Slower Phase In (by 2029)							
States Implementing	0	8	16	24	32	.....	.....
Reduction in SNAP benefit payments	$0.00	−$29	−$60	−$88	−$113	−$290	−$1,216
Federal/State Administrative Costs (total)	$5.5	$5.6	$7.4	$9.1	$10.6	$38.2	$105.4
Household Burden	$0.00	$0.09	$0.15	$0.20	$0.26	$0.70	$2.54

• Second, the costs and savings described in this analysis are based on the five-state NAC pilot, and it is uncertain whether the pilot results will be replicated nationwide. For example, the NAC evaluation found that the extent of automation might affect States' ability to follow up on match results. The NAC evaluation also found that savings per match and monthly savings due to prevention of duplicate participation varied widely across the pilot States. As a percentage of total SNAP allotments in the pilot States, the reduction in benefit payments due to avoidance of duplicate participation ranged from 0.12 percent to 0.30 percent (see Table 5). The reduction in benefit payments due to identification of active duplicate participants ranged from 0.014 percent to 0.250 percent (see Table 6). In addition, the NAC Pilot evaluation used data from PARIS matches to extrapolate how NAC savings might increase were the system to expand to additional States. The estimates presented in this analysis are based on a weighted average of the pilot State results (0.191 percent in avoidance savings and 0.069 percent in savings from identifying active duplicate participants). Table 10 below illustrates how the total reduction in SNAP benefits might change if the reduction in benefit payments were lower or higher.

TABLE 10—IMPACT OF ALTERNATIVE BENEFIT REDUCTION ASSUMPTIONS

[Dollars in millions]

	2022	2023	2024	2025	2026	5-year	10-year
Reduction in SNAP benefit payments:							
Reduction = weighted average.							
0.191% avoidance savings and 0.069% active duplicate participation savings	$0.0	−$43	−$107	−$161	−$186	−$497	−$1,493
Reduction = lower bound:.							
0.121% avoidance savings and 0.014% active duplicate participation savings	0.0	−21	−59	−93	−113	−286	−917
Reduction = upper bound:.							
0.296% avoidance savings and 0.250% active duplicate participation savings	0.0	−99	−208	−292	−312	−911	−2,452

• Third, these estimates assume cases that are prevented from becoming duplicate participants would otherwise have participated for 6–11 months. Because States regularly conduct matches through PARIS, it is possible that the actual spell length could be shorter than the spell length in the pilot States. Table 11 illustrates how the reduction in SNAP benefit payments would vary based on spell length.

TABLE 11—IMPACT OF ALTERNATIVE SPELL LENGTH ASSUMPTIONS

[Dollars in millions]

	2022	2023	2024	2025	2026	5-year	10-year
Reduction in SNAP benefit payments if:							
Spell Length = 6–11 months	$0.0	−$43	−$107	−$161	−$186	−$497	−$1,493
Spell Length = 3 months	0.0	−33	−62	−85	−87	−266	−679

• Fourth, the per-State administrative costs for NAC pilot States varied considerably. Estimates in this analysis are based on an average across all pilot States. Administrative costs included both the costs of initial implementation, ongoing costs associated with conducting matches, and the costs of working matched cases. Costs varied based on the number of matches found, inquiries received from other States, staffing costs, and the extent of automation within the State. Thus, actual administrative costs may be higher or lower than predicted.

• Finally, the Department notes that the estimates related to earlier detection of ongoing duplicate participants do not include any savings related to establishment of claims for prior overpayments. Savings in a given year will depend upon States' efforts to establish claims and the timing of when different States implement NAC.

IV. Alternatives Considered

The language in Section 4011 of the Agriculture Improvement Act of 2018 is very specific; however, the option to modify an existing system to fulfill the purpose of the

NAC was considered. Existing systems, including The Department of Health and Human Services' Public Assistance Reporting Information System (PARIS) and USDA's Store Tracking and Redemption System (STARS) were considered. These alternatives were ruled out because the Agriculture Improvement Act of 2018 required that the NAC could only be used for preventing duplicate participation. Therefore, existing systems with additional purposes could not be used. Additionally, the cost and difficulty to re-design PARIS for the purposes of preventing duplicate participation was deemed too significant. In this RIA, we considered a longer implementation period as an alternative to the five-year period. The uncertainties section above discusses how alternative assumptions regarding the rate of implementation among States would affect the estimates presented in this analysis. A longer implementation period results in a lower reduction in SNAP benefits payments over both the five- and ten-year marks (−$290 versus −$497 at five years and −$1,216 versus −$1,493 at 10 years).

[FR Doc. 2022–21011 Filed 9–30–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0292; Project Identifier AD–2021–01297–E; Amendment 39–22184; AD 2022–19–15]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, LLC Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain International Aero Engines, LLC (IAE LLC) PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines. This AD was prompted by an analysis of an event involving an International Aero Engines AG (IAE AG) V2533–A5 model turbofan engine, which experienced an uncontained failure of a high-pressure turbine (HPT) 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. This AD requires performing an ultrasonic inspection (USI) of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 7, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 7, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0292; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Pratt & Whitney service information identified in this final rule, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 690–9667; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–0292.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; email: *Mark.Taylor@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain IAE LLC PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines. The NPRM published in the **Federal Register** on March 24, 2022 (87 FR 16659). The NPRM was prompted by an analysis of an event on March 18, 2020, in which an Airbus Model A321–231 airplane, powered by IAE AG V2533–A5 model turbofan engines, experienced an uncontained HPT 1st-stage disk failure that resulted in high-energy debris penetrating the engine cowling. Based on a preliminary analysis of this event, on March 21, 2020, the FAA issued Emergency AD 2020–07–51 (followed by publication in the **Federal Register** on April 13, 2020, as a Final Rule, Request for Comments (85 FR 20402)), which requires the removal from service of certain HPT 1st-stage disks installed on IAE AG V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines.

Based on the root cause analysis performed since that March 2020 event, Pratt & Whitney (PW) identified a different population of HPT 1st-stage disks and HPT 2nd-stage disks that are subject to the same unsafe condition identified in AD 2020–07–51. In response, the FAA issued AD 2021–19–10 on September 10, 2021 (86 FR 50610), which requires the removal from service of certain HPT 1st-stage disks and HPT 2nd-stage disks installed on IAE LLC PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines.

Since the FAA issued AD 2021–19–10, PW identified another subpopulation of HPT 1st-stage disks and HPT 2nd-stage disks that require inspection and possible removal from service. Included in this additional subpopulation of HPT 1st-stage disks and HPT 2nd-stage disks are those installed on the model turbofan engines affected by this AD. In the NPRM, the FAA proposed to require the performance of a USI of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from four commenters. The commenters were Air Line Pilots Association, International (ALPA), All Nippon Airways Co., Ltd. (ANA), Delta Air Lines, Inc. (DAL), and Lufthansa Technik AG (Lufthansa). The following presents the comments received on the NPRM and the FAA's response to each comment.

Revision to the Service Information References

Since the FAA issued the NPRM, PW notified the FAA that a new revision to

the service information was available. PW published PW Service Bulletin (SB) PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, which changes the applicability section of the SB from a range of engine serial numbers (ESNs) to a list of HPT 1st-stage disk and HPT 2nd-stage disk part numbers (P/Ns).

The FAA has updated this AD to reference PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022. The FAA has also added paragraph (i), Credit for Previous Actions, to this AD to allow credit for performing the USI before the effective date of this AD using PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021. This change places no additional burden on operators.

Request To Include Previously Issued and Future Revisions of Service Information Not Incorporated by Reference

ANA and Lufthansa requested that the FAA add ''or earlier'' to paragraph (g)(1) of this AD to allow for the use of previously issued revisions of PW SB PW1000G–C–72–00–0112–00A–930A–D, Issue No: 005, dated July 22, 2021 (PW SB PW1000G–C–72–00–0112–00A–930A–D). ANA reasoned that PW SB PW1000G–C–72–00–0112–00A–930A–D is not incorporated by reference, nor does the NPRM reference PW SB PW1000G–C–72–00–0112–00A–930A–D, Issue No: 002 through 004.

Lufthansa reasoned that narrowing the required modification to Issue No: 005 of PW SB PW1000G–C–72–00–0112–00A–930A–D assumes that engines modified using earlier versions of the SB do not satisfy the requirements of paragraph (g)(1) of this AD. Further, Lufthansa stated that there are engines that have been modified using earlier versions of PW SB PW1000G–C–72–00–0112–00A–930A–D. In addition, Lufthansa noted that other paragraphs in the required actions do not refer to Issue No: 005 of PW SB PW1000G–C–72–00–0112–00A–930A–D, which could confuse operators when interpreting the requirements of paragraph (g)(1) of this AD.

DAL requested that the FAA revise paragraph (g)(1) of this AD to add ''or later'' to PW SB PW1000G–C–72–00–0112–00A–930A–D. DAL reasoned that any subsequent revision of PW SB PW1000G–C–72–00–0112–00A–930A–D would apply to this AD.

The FAA agrees that clarification is necessary and has revised paragraph (g)(1) of this AD to remove the issue number and date for PW SB PW1000G–C–72–00–0112–00A–930A–D.

Request To Revise the Applicability

DAL requested that the FAA update paragraph (c) of this AD to remove reference to ESNs. DAL commented that the NPRM includes only a range of ESNs in the applicability, which is derived from PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021. DAL reasoned that by limiting the applicability to the range of ESNs, this AD would not account for the possibility of installing an affected HPT 1st-stage disk or HPT 2nd-stage disk onto any engine outside the ESN range that had an earlier than planned shop visit.

In response to this comment, the FAA has revised paragraph (c) of this AD, to remove ''with engine serial numbers P770101 through P772647'' and added, ''with an installed: (1) High-pressure turbine (HPT) 1st-stage disk, part numbers (P/Ns) 30G4201, 30G6201, or 30G7301; and (2) HPT 2nd-stage disk, P/Ns 30G3902, 30G5502, or 30G6602.''

Request To Allow Future Revisions of Required Service Information

DAL requested that the FAA revise paragraph (g) of this AD to add ''or later'' to PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, to allow for the use of future approved revisions of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022. DAL reasoned that any subsequent revision would still apply to this AD. In addition, DAL stated that this change would include additional serial-numbered disks added to Table 2 of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, in the effectivity of this AD.

The FAA disagrees with the request to revise this AD to allow for the use of future approved revisions of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022. Future revisions of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, have not yet been published by the manufacturer or reviewed by the FAA. Any operator may request an alternative method of compliance to the requirements of paragraph (g) of this AD if future revisions of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, are published. Additionally, if future revisions of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, are published by the manufacturer and approved by the FAA, the FAA may consider further rulemaking at that time. The FAA did not change this AD as a result of this comment.

Request To Clarify Inspections for Affected HPT 1st-Stage and HPT 2nd-Stage Disks Removed from Service

DAL requested that the FAA revise paragraph (g) of this AD to clarify that affected HPT 1st-stage disks and HPT 2nd-stage disks identified as scrap during the engine shop visit do not require the USI. DAL commented that the actions proposed would require the performance of a USI on affected disks even if those disks are scrapped during an engine shop visit.

The FAA disagrees that operators are required to perform a USI on an HPT 1st-stage disk or HPT 2nd-stage disk that has been removed from service. In accordance with 14 CFR 39.7, anyone who operates a product that does not meet the requirements of an applicable AD is in violation of this section. As such, the actions of this AD are only required if a part is returned to service. The FAA did not change this AD as a result of this comment.

Request Clarification of Certificate of Conformance from PW's Non-Destructive Test (NDT) Suppliers

DAL requested that the FAA revise this AD to allow credit for the accomplishment of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, if accomplished by PW or PW-approved NDT suppliers (original equipment manufacturer (OEM) or aftermarket). DAL commented that PW and PW-approved NDT suppliers provide Certificates of Conformance referring to USI Codes 1 and 45S per OEM requirements rather than the Non-Destructive Inspection Procedures (NDIPs) (NDIP–1230, NDIP–1232, NDIP–1231, or NDIP–1233) referenced in the Accomplishment Instructions, paragraphs 9.A. through 9.D, of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022. DAL reasoned that PW or PW-approved NDT suppliers may provide an airworthiness tag instead of a Certificate of Conformance. Further, DAL noted that the new airworthiness tag and other documentation provided with the HPT 1st-stage disk or HPT 2nd-stage disk may not reference PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022, and disks may not have the part markings required by PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022. DAL stated that this limited documentation has and is currently being provided for the HPT 1st-stage disks and HPT 2nd-stage disks affected by PW SB PW1000G–C–72–00–

0188–00A–930A–D, Issue No: 002, dated July 8, 2022. Some of these affected HPT 1st-stage disks and HPT 2nd-stage disks are currently installed on engines that are in service or being installed during engine shop visits.

The FAA agrees that clarification is necessary and has added paragraph (h)(1)(v) to this AD, which adds the following definition of a part eligible for installation: ''Any HPT 1st-stage disk or HPT 2nd-stage disk with a certificate of conformance that shows ''PW1000G–C–72–00–0188–00A–930A–D,'' ''1 CODE 45S,'' or identified by part marking ''21CC332'' or ''SB 72–0188.''

Request To Expand the Use of a Part Eligible for Installation

DAL requested that the FAA expand the use of a part eligible for installation by adding the following required action as paragraph (g)(5) of this AD: ''Replacement of HPT 1st-stage and HPT 2nd-stage disks: For International Aero Engines, LLC PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines, after the effective date of this AD, if the HPT 1st-stage and/or the HPT 2nd-stage disks require replacement, replace with a part eligible for installation.'' DAL reasoned that the NPRM requires the current definition to be used when the HPT 1st-stage and HPT 2nd-stage disks fail the USI required by paragraph (g)(4) of this AD and does not ensure future de-modification is avoided. Further, DAL stated that the part eligible for installation definition should also address any scenario when the HPT 1st-stage and HPT 2nd-stage disks are replaced for any other reason.

In response to this comment, the FAA has added paragraph (i), Installation Prohibition, to this final rule.

Request To Revise the Definition of a Part Eligible for Installation

DAL requested that the FAA revise the definition of a part eligible for installation. DAL pointed out that if an affected HPT 1st-stage disk or HPT 2nd-stage disk fails the USI, the NPRM, as proposed, would not allow installation of an HPT 1st-stage or HPT 2nd-stage disk that was upgraded using PW SB PW1000G–C–72–00–0112–00A–930A–D (HPT Block D upgrade), which does not require an inspection as specified in paragraphs (g)(2) or (3) of this AD. DAL also mentioned that the upgraded HPT 1st-stage disk or HPT 2nd-stage disk should still be allowed for installation. DAL requested that the FAA add the following additional definitions to paragraph (h)(1) of this AD:

''(iii) Any HPT 1st-stage disk that has incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D and does not require an inspection per paragraph (g)(2) of this AD.

(iv) Any HPT 2nd-stage disk that has incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D and does not require an inspection per paragraph (g)(3) of this AD.''

The FAA agrees with the request and has added paragraphs (h)(1)(iii) and (iv) to this AD.

Request To Correct the Definition of a Part Eligible for Installation

DAL requested that the FAA correct paragraphs (h)(1)(i) and (ii) of this AD by changing the language from: ''the USI required by paragraphs (g)(1)(i) and (g)(2) of this AD'' to ''the USI required by paragraphs (g)(1)(i) or (g)(2) of this AD'' and ''the USI required by paragraphs (g)(1)(ii) and (g)(3) of this AD'' to ''the USI required by paragraphs (g)(1)(ii) or (g)(3) of this AD.'' DAL reasoned the affected disks could not concurrently comply with both scenarios (SB incorporated and not incorporated).

The FAA agrees for the reasons provided and has revised paragraphs (h)(1)(i) and (ii) of this AD accordingly.

Support for the AD

ALPA expressed support for the AD.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pratt & Whitney SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022. This service information specifies procedures for performing a USI of the HPT 1st-stage disk and the HPT 2nd-stage disk, identified by P/N and serial number, installed on IAE LLC PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM model turbofan engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed PW SB PW1000G–C–72–00–0112–00A–930A–D, Issue No: 005, dated July 22, 2021. This service information describes procedures for replacing the HPT 1st-stage disk, HPT 2nd-stage disk, and rotating hardware. This service information also increases the life limit of the HPT hardware by introducing a new configuration of rotating hardware.

Costs of Compliance

The FAA estimates that this AD affects 189 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
USI the HPT 1st-stage disk and HPT 2nd-stage disk (also includes estimated costs for disassembly of the engine and removal of the HPT 1st-stage disk and HPT 2nd-stage disk).	204 work-hours × $85 per hour = $17,340.	$0	$17,340	$3,277,260

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the HPT 1st-stage disk or HPT 2nd-stage disk.	1 work-hour × $85 per hour = $85	$171,430	$171,515

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–19–15 International Aero Engines, LLC: Amendment 39–22184; Docket No. FAA–2022–0292; Project Identifier AD–2021–01297–E.

(a) Effective Date

This airworthiness directive (AD) is effective November 7, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines, LLC PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines with an installed:

(1) High-pressure turbine (HPT) 1st-stage disk, part numbers (P/Ns) 30G4201, 30G6201, or 30G7301; and

(2) HPT 2nd-stage disk, P/Ns 30G3902, 30G5502, or 30G6602.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an analysis of an event involving an International Aero Engines AG V2533–A5 model turbofan engine, which experienced an uncontained failure of a HPT 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. The FAA is issuing this AD to prevent failure of the HPT 1st-stage disk and HPT 2nd-stage disk. The unsafe condition, if not addressed, could result in uncontained HPT disk failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For affected engines that have not incorporated Pratt & Whitney (PW) Service Bulletin (SB) PW1000G–C–72–00–0112–00A–930A–D, at the next engine shop visit after the effective date of this AD, perform the following:

(i) Ultrasonic inspection (USI) of the HPT 1st-stage disk using the Accomplishment Instructions, paragraph 9.A. or B., as applicable, of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022 (PW SB PW1000G–C–72–00–0188–00A–930A–D); and

(ii) USI of the HPT 2nd-stage disk using the Accomplishment Instructions, paragraph 9.C. or D., as applicable, of PW SB PW1000G–C–72–00–0188–00A–930A–D.

(2) For affected engines that have incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D, with an installed HPT 1st-stage disk having a serial number (S/N) identified in the Accomplishment Instructions, Table 2., of PW SB PW1000G–C–72–00–0188–00A–930A–D, at the next engine shop visit after the effective date of this AD, perform a USI of the HPT 1st-stage disk using the Accomplishment Instructions, paragraph 9.A. or B., as applicable, of PW SB PW1000G–C–72–00–0188–00A–930A–D.

(3) For affected engines that have incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D, with an installed HPT 2nd-stage disk having an S/N identified in the Accomplishment Instructions, Table 3., of PW SB PW1000G–C–72–00–0188–00A–930A–D, at the next engine shop visit after the effective date of this AD, perform a USI of the HPT 2nd-stage disk using the Accomplishment Instructions, paragraph 9.C. or D., of PW SB PW1000G–C–72–00–0188–00A–930A–D.

(4) Based on the results of the USIs required by paragraphs (g)(1) through (3) of this AD, if any HPT 1st-stage disk or HPT 2nd-stage disk does not pass the USI, as specified in the Accomplishment Instructions, paragraphs 9.A. through D., of PW SB PW1000G–C–72–00–0188–00A–930A–D, as applicable, before further flight, remove the HPT 1st-stage disk or HPT 2nd-stage disk from service and replace with a part eligible for installation.

(5) For affected engines that have incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D and do not require an inspection per paragraph (g)(2) or (3) of this AD, no further action is required.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is:

(i) Any HPT 1st-stage disk that has passed the USI required by paragraphs (g)(1)(i) or (g)(2) of this AD.

(ii) Any HPT 2nd-stage disk that has passed the USI required by paragraphs (g)(1)(ii) or (g)(3) of this AD.

(iii) Any HPT 1st-stage disk that has incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D and does not require an inspection per paragraph (g)(2) of this AD.

(iv) Any HPT 2nd-stage disk that has incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D and does not require an inspection per paragraph (g)(3) of this AD.

(v) Any HPT 1st-stage disk or HPT 2nd-stage disk with a certificate of conformance that shows ''PW1000G–C–72–00–0188–00A–930A–D,'' ''1 CODE 45S,'' or identified by part marking ''21CC332'' or ''SB 72–0188.''

(2) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of the ''M'' flange. Separation of the ''M'' flange solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(i) Credit for Previous Actions

You may take credit for the USIs required by paragraphs (g)(1) through (3) of this AD if you performed the USIs before the effective date of this AD using PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021.

(j) Installation Prohibition

After the effective date of this AD, do not install onto any engine an HPT 1st-stage disk or HPT 2nd-stage disk that does not meet the definition of a part eligible for installation in paragraph (h)(1) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

(1) For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; email: *Mark.Taylor@faa.gov.*

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

(m) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Service Bulletin PW1000G–C–72–00–0188–00A–930A–D, Issue No: 002, dated July 8, 2022.

(ii) [Reserved]

(3) For Pratt & Whitney service information identified in this AD, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 690–9667; email: *help24@pw.utc.com;* website: *connect.prattwhitney.com.*

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on September 12, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–21308 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0569; Airspace Docket No. 21–ANM–65]

RIN 2120–AA66

Modification of Class D and Class E Airspace; Idaho Falls Regional Airport, ID

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

ACTION: Final rule.

SUMMARY: This action modifies the Class D and E surface areas, the Class E airspace area designated as an extension to a Class D or Class E surface area, the Class E airspace extending upward from 700 feet above the surface, and the Class E airspace extending upward from 1,200 feet above the surface at Idaho Falls Regional Airport, ID. Additionally, this action makes administrative changes to update the airport's legal descriptions. These actions ensure the safety and management of instrument flight rule (IFR) and visual flight rule (VFR) operations at the airport.

DATES: Effective 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Gerald DeVore II, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2022–0569 (87 FR 38307; June 28, 2022) to modify the Class D and E surface areas, the Class E airspace area designated as an extension to a Class D or Class E surface area, the Class E airspace extending upward from 700 feet above the surface, and the Class E airspace extending upward from 1,200 feet above the surface at Idaho Falls Regional Airport, ID. Additionally, the NPRM proposed administrative changes to update the airport's legal descriptions. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D, Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6002, 6004, and

6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by modifying Class D and E surface areas, the Class E airspace area designated as an extension to a Class D or Class E surface area, the Class E airspace extending upward from 700 feet above the surface, and the Class E airspace extending upward from 1,200 feet above the surface at Idaho Falls Regional Airport, ID.

Class D airspace is intended to contain the point at which an aircraft executing an instrument approach procedure (IAP) can be expected to descend to less than 1,000 feet above the surface. The 1,000-foot point of the VOR RWY 3 IAP is currently outside of the lateral boundary of the airport's Class D surface area. The Class D airspace is extended to the southwest to contain this point. Additionally, the exclusionary language for the nearby Eastern Idaho Regional Medical Center Heliport is modified to simplify the Idaho Falls Regional Airport's Class D legal description.

The Class E surface airspace is amended to be coincident with the Class D airspace legal description.

The Class E airspace area designated as an extension to a Class D or Class E surface area is removed southwest of the airport. The RWY 3 VOR 1,000 foot point is contained within the Class D surface area, and the airspace is no longer needed. The Class E airspace area designated as an extension to a Class D or Class E surface area northeast of the airport is reduced. The extension is used to contain the VOR RWY 21 1,000-foot point, and only a 4.8-mile width is needed.

The Class E airspace extending upward from 700 feet above the surface is removed southwest of the airport. The existing Class E airspace extending upward from 1,200 feet above the surface contains all procedure turns for the VOR RWY 3 and LOC BC RWY 3 approaches, and at least 1,500 feet exists between the highest terrain and the procedure turn altitudes. The Class E airspace area extending upward from 700 feet above the is expanded to contain procedure turns for the ILS/LOC RWY 21 IAP, as terrain exists within 1,500 feet of the procedure turn altitude. The Class E airspace area extending upward from 700 feet above the surface immediately encircling the airport is increased from a 7.5-mile radius to an 8-mile radius around the airport to more appropriately contain departures and circling approaches. The existing Class E airspace extending upward from 1,200 feet above the surface over the airport consistently overlapped with adjacent airspace, creating the potential for future airspace ''traps.'' The FAA has re-defined the boundaries of this area to more appropriately align it with other airspace and simplify its legal description.

Finally, the FAA is modifying several administrative portions of the Idaho Falls Airport's legal descriptions. The airport's geographic coordinates are updated to match the FAA's database. Additionally, the current Class D and Class E2 surface area legal descriptions are modified to replace the use of the phrases ''Notice to Airmen'' and ''Airport/Facility Directive.'' These phrases should read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, in both legal descriptions. Lastly, all navigational aids (NAVAID) are removed from the Class E4 and E5 legal description text headers, as they're not required to describe the airspace areas, and the removal of the NAVAIDs simplifies the legal descriptions.

Class D, Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM ID D Idaho Falls, ID [Amended]

Idaho Falls Regional Airport, ID
(Lat. 43°30′49″ N, long. 112°04′15″ W)

That airspace extending upward from the surface to and including 7,200 feet MSL within a 5.4 mile radius of the airport, and within 2.4 miles each side of the 223° bearing

from the airport extending from the 5.4 mile radius to 6.6 miles southwest of the airport, excluding that airspace below 5,300 feet MSL within 1 mile each side of the 126° bearing from the airport beginning 3.4 miles southeast of the airport extending to the 5.4 mile radius of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM ID E2 Idaho Falls, ID [Amended]

Idaho Falls Regional Airport, ID
(Lat. 43°30′49″ N, long. 112°04′15″ W)

That airspace extending upward from the surface within a 5.4 mile radius of the airport, and within 2.4 miles each side of the 223° bearing from the airport extending from the 5.4 mile radius to 6.6 miles southwest of the airport, excluding that airspace below 5,300 feet MSL within 1 mile each side of the 126° bearing from the airport beginning 3.4 miles southeast of the airport extending to the 5.4 mile radius of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area

* * * * *

ANM ID E4 Idaho Falls, ID [Amended]

Idaho Falls Regional Airport, ID
(Lat. 43°30′49″ N, long. 112°04′15″ W)

That airspace extending upward from the surface within 2.4 miles each side of the 028° bearing from the airport extending from the Class D and Class E surface area 5.4 mile radius to 7.5 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM ID E5 Idaho Falls, ID [Amended]

Idaho Falls Regional Airport, ID
(Lat. 43°30′49″ N, long. 112°04′15″ W)

That airspace extending upward from 700 feet above the surface within 8 miles of the Idaho Falls Regional Airport, and that airspace 8 miles east and 9 miles west of the 032° bearing from the airport, extending from the 8 mile radius to 28 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 43°34′55″ N, long. 112°29′22″ W, to lat. 44°19′00″ N, long. 112°04′36″ W, to lat. 44°12′35.47″ N, long. 110°48′27.66″ W to lat. 43°26′00″ N long. 110°57′56″ W, to lat. 42°34′53″ N, long. 111°59′59″ W, to lat. 42°11′3.52″ N, long. 112°00′00″ W to lat. 42°27′00″ N long 113°22′00″ W, to lat. 42°57′33″ N long 113°32′27″ W, thence to the point of beginning.

Issued in Des Moines, Washington, on September 27, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–21360 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0572; Airspace Docket No. 21–ANM–66]

RIN 2120–AA66

Establishment of Class E Airspace; McCarley Field, ID

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

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at McCarley Field, ID. This action contains all instrument flight rule (IFR) arrival and departure operations at the airport.

DATES: Effective 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Gerald DeVore II, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2022–0572 (87 FR 38306; June 28, 2022) that proposed to establish Class E airspace extending upward from 700 feet above the surface at McCarley Field, ID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11F, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface at McCarley Field, ID. This airspace is designed to accommodate arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022,

which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022 and effective September 15, 2022, is amended as follows:

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

* * * * *

ANM ID E5 Blackfoot, ID [New]

McCarley Field, ID
(Lat. 43°12′33″ N, long. 112°20′59″ W)

That airspace extending upward from 700 feet above the surface within a 4.2 mile radius of the McCarley Field, and within 2 miles each side of the 030° bearing extending from the 4.2 mile radius to 7 miles northeast of the airport, and within 2.3 miles each side of the 213° bearing extending from the 4.2 mile radius to 6.4 miles southwest of the airport, and within 1.6 miles each side of the 213° bearing extending from the 4.2 mile radius to 13.6 miles southwest of the airport.

Issued in Des Moines, Washington, on September 27, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–21359 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0567; Airspace Docket No. 21–ANM–67]

RIN 2120–AA66

Amendment of Class E Airspace; Rexburg-Madison County Airport, ID

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

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 700 feet above the surface at Rexburg-Madison County Airport, ID. Additionally, this action makes an administrative change to update the airport's geographic location in the legal description. These actions support the safety and management of instrument flight rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Gerald DeVore II, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2022–0567 (87 FR 38305; June 28, 2022) that proposed to modify the Class E airspace extending upward from 700 feet above the surface at Rexburg-Madison County Airport, ID. Additionally, the NPRM proposed an administrative change to update the airport's geographic location in the legal description. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface at Rexburg-Madison County Airport, ID. North and south extensions to the existing Class E airspace are needed to ensure containment of arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface at the airport.

Additionally, the FAA is making an administrative change to the airport's legal description. The airport's geographic coordinates are updated to match the FAA's database.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022 and effective September 15, 2022, is amended as follows:

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

* * * * *

ANM ID E5 Rexburg, ID [Amended]

Rexburg-Madison County Airport, ID
(Lat. 43°50′02″ N, long. 111°48′18″ W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Rexburg-Madison County Airport, and within 2.7 miles each side of the 202° bearing extending from the 4-mile radius to 6.3 miles south of the airport, and within 2.3 miles each side of the 354° bearing extending from the 4-mile radius to 6.3 miles north of the airport.

Issued in Des Moines, Washington, on September 27, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–21365 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0793; Airspace Docket No. 21–AWP–59]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Grand Canyon National Park Airport, AZ

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

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace designated as an extension to a Class D or Class E surface area. It also modifies the Class E airspace extending upward from 700 feet above the surface, and removes the Class E airspace extending upward from 1,200 feet above the surface at Grand Canyon National Park Airport, AZ. Additionally, this action makes administrative changes to the existing Class D and Class E legal descriptions. These actions will ensure the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Effective 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, and subsequent amendments can be viewed online at*www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would modify the Class D and Class E airspace at Grand Canyon National Park Airport, Grand Canyon, AZ, to support VFR and IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2021–0793 (87 FR 39022; June 30, 2022) to modify the Class E airspace designated as an extension to a Class D or Class E surface area, modify the Class E airspace extending upward from 700 feet above the surface, and remove the Class E airspace extending upward from 1,200 feet above the surface at Grand Canyon National Park Airport, AZ. Additionally, the NPRM proposed administrative changes to the existing Class D and Class E legal descriptions. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 to modify the Class E airspace designated as an extension to a Class D or Class E surface area, modify the Class E airspace extending upward from 700 feet above the surface, and remove the Class E airspace extending upward from 1,200 feet above the surface at Grand Canyon National Park Airport, AZ. Additionally, the FAA is making administrative changes to the Class D and Class E airspace legal descriptions.

The Class E airspace designated as an extension to a Class D or Class E surface area is reduced. The VOR RWY 3 approach requires a containment width of 4.8 miles, and additional airspace is not needed.

The Class E airspace extending upward from 700 feet above the surface is increased a half-mile in size to ensure proper depiction on a VFR sectional chart.

The Class E airspace extending upward from 1,200 feet above the surface is removed. This area is contained within the Los Angeles Class E airspace designated as a domestic en route airspace area, and duplication is not necessary.

Lastly, the FAA is making several administrative modifications to the airport's legal descriptions. The airport's geographic coordinates are updated to match the FAA's database. The Class D and Class E4 legal descriptions are updated to replace the outdated use of the phrases ''Notice to Airmen'' and ''Airport/Facility Directory.'' These phrases are amended to read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, to align with current FAA publication nomenclature. Lastly, all navigational aids (NAVAID) are removed from the Class E4 and E5 legal description text headers, as they are not required to describe the airspace areas, and removal of the NAVAIDs simplifies the legal descriptions.

Class D, E4, and E5 airspace designations are published in paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP AZ D Grand Canyon, AZ [Amended]

Grand Canyon National Park Airport, AZ
(Lat. 35°57′09″N, long. 112°08′49″W)

That airspace extending upward from the surface to and including 9,100 feet MSL within a 4.3-mile radius of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP AZ E4 Grand Canyon, AZ [Amended]

Grand Canyon National Park Airport, AZ
(Lat. 35°57′09″N, long. 112°08′49″W)

That airspace extending upward from the surface within 2.4 miles each side of the 213° bearing from the airport, extending from the airport's 4.3-mile radius to 6.6 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP AZ E5 Grand Canyon, AZ [Amended]

Grand Canyon National Park Airport, AZ
(Lat. 35°57′09″N, long. 112°08′49″W)

That airspace extending upward from 700 feet above the surface within a 4.8-mile radius of the airport and within 2.9 miles each side of the 213° bearing from the airport extending from the 4.8-mile radius to 7.1 miles southwest of the airport.

Issued in Des Moines, Washington, on September 21, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–21345 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0578; Airspace Docket No. 21–AWP–60]

RIN 2120–AA66

Modification & Removal of Class E Airspace; Valle Airport, AZ

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

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 700 feet above the surface, and removes the Class E airspace extending upward from 1,200 feet above the surface at Valle Airport, Grand Canyon, AZ. Additionally, this action makes administrative changes to the existing Class E legal description. These actions will ensure the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Gerald DeVore II, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2021–0578 (87 FR 39023; June 30, 2022) that proposed to modify the Class E airspace extending upward from 700 feet above the surface, and remove the Class E airspace extending upward from 1,200 feet above the surface at Valle Airport, Grand Canyon, AZ. Additionally, the NPRM proposed to make administrative changes to the existing Class E legal description. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Valle Airport, Grand Canyon, AZ. This airspace modification removes the extensions north and south of the airport, as the extensions are no longer needed. Furthermore, to properly contain departing IFR aircraft flying toward or over rising terrain to 1,200 feet above the surface, the eastern portion of the airspace radius is increased from 6.4 miles to 6.8 miles.

Additionally, the FAA is removing the Class E airspace extending upward from 1,200 feet above the surface. This area is contained within the Los Angeles Class E airspace designated as a domestic en route airspace area, and duplication is not necessary.

Finally, the FAA is making several administrative modifications to the legal description. The city, name, and geographic coordinates at Valle Airport, Grand Canyon, AZ are updated to match the FAA's database.

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and

unlikely to result in adverse or negative comments. It therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AWP AZ E5 Grand Canyon, AZ [Amended]

Valle Airport, AZ

(Lat. 35°39′02″ N, long. 112°08′53″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the airport beginning at the 020° bearing from the airport clockwise to the 190° bearing from the airport, and within a 6.4-mile radius of the airport beginning at the 190° bearing from the airport clockwise to the 020° bearing from the airport.

Issued in Des Moines, Washington, on September 27, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–21346 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 998

[Docket No. 220927–0201]

RIN 0648–BL23

Protected Communications; Prohibition of Retaliatory Personnel Actions

AGENCY: Office of Marine and Aviation Operations (OMAO), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: On December 23, 2020, the President signed into law the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020, which applies the Military Whistleblower Protection Act to officers of the National Oceanic and Atmospheric Administration Commissioned Officer Corps (NOAA Corps). This final rule provides regulations pursuant to Section 207 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020 and applies the Military Whistleblower Protection Act to the NOAA Corps to align Department of Commerce policy and procedure with this law.

DATES: This rule is effective November 2, 2022.

FOR FURTHER INFORMATION CONTACT: LCDR Zachary Cress, NOAA Corps, OMAO Strategic Management Division, (301) 713–1045.

SUPPLEMENTARY INFORMATION:

Background

As members of a uniformed service, NOAA Corps officers are not covered under the Whistleblower Protection Act (5 U.S.C. 2302). Furthermore, prior to the enactment of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2020 (Pub. L. 116–259, ''the NCAA''), NOAA Corps officers were also not covered by the Military Whistleblower Protection Act (10 U.S.C. 1034), leaving them without statutory protection for whistleblowing activities.

Protected Communications; Prohibition of Retaliatory Personnel Actions

Section 207 of the NCAA applies the Military Whistleblower Protection Act to the NOAA Corps and authorizes the Secretary of Commerce to prescribe regulations to carry out the application of that law, including by prescribing such administrative procedures for investigation and appeal within the NOAA Corps as the Secretary considers appropriate. The Military Whistleblower Protection Act prohibits taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, in reprisal against a member of the Armed Forces for protected communications. Protected communications are lawful communications to a Member of Congress, an Inspector General, any person or organization in the member's chain of command, and any other person or organization authorized to receive such protected communications. By contrast, a communication is unlawful, and is therefore not a protected communication, where it is prohibited by statute or regulation, including information that is classified, a trade secret, or commercial in nature, or information concerning a personal privacy interest. The Military Whistleblower Protection Act also permits the correction of military records when a prohibited personnel action is taken.

NOAA Corps officers generally have a duty to report information evidencing a violation of law or regulation (including sexual harassment or discrimination), gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety. This final rule protects lawful disclosures of such information, and implements the Military Whistleblower Protection Act for the NOAA Corps pursuant to Section 207 of the NCAA, prohibiting any NOAA Corps officer or employee of the Department of Commerce from taking or threatening to take a personnel action, or withholding or threatening to withhold a personnel action against a NOAA Corps officer for making or preparing or being perceived as making or preparing a protected communication.

This final rule prescribes responsibilities of the Inspector General of the Department of Commerce to investigate claims of reprisal against NOAA Corps officers and to report those findings to the Secretary, the Administrator, the NOAA Deputy Under Secretary for Operations, the Director, and to the NOAA Corps officer or former NOAA Corps officer making the allegation. Based on the Inspector General's report, the Director or Deputy Under Secretary for Operations, as appropriate, are required to take appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as reprisal.

This final rule prescribes procedures by which a NOAA Corps officer or former NOAA Corps officer who has filed a complaint investigated by the Inspector General alleging reprisal may request that the Director convene a Records Examination Board to determine whether information contained in a NOAA Corps officer's personnel files should be corrected and to make recommendations to the Director concerning corrections, deletions, or additions to the NOAA Corps officer or former NOAA Corps officer's personnel records. Under these procedures, the Director must then issue a decision concerning the correction of the NOAA Corps officer's or former NOAA Corps officer's records within 60 days and notify the Inspector General of their decision. If the NOAA Corps officer or former NOAA Corps officer disagrees with the Director's decision on a Records Examination Board's recommendations, the officer may request an additional level of review by the Deputy Under Secretary for Operations, whose decision constitutes the final agency action.

Classification

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the Administrative Procedure Act (APA) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this final rule because this rule falls within the agency management and personnel exception as it strictly regulates NOAA Corps personnel, addresses internal agency management, and affects only persons outside the agency through protecting certain communications to specified members of the public.

This rule has been determined to be not significant for purposes of Executive Order 12866.

Because this regulation is exempt from the notice and comment provisions of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, no Regulatory Flexibility Analysis is required and none has been prepared.

This rule does not have any collection of information requirements under the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 998

Administrative practice and procedure, Government employees, Military personnel, Whistleblowing.

Dated: September 27, 2022.

Richard W. Spinrad,

Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator.

For the reasons set out in the preamble, 15 CFR part 998 is amended as follows:

PART 998—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS

■ 1. Add an authority citation for part 998 to read as follows:

Authority: 33 U.S.C. 3001 *et seq.*

■ 2. Add subpart D to read as follows:

Subpart D—National Oceanic and Atmospheric Administration Commissioned Officer Corps Whistleblower Protections

Sec.

Subpart D—National Oceanic and Atmospheric Administration Commissioned Officer Corps Whistleblower Protections

Authority: 33 U.S.C. 3071(a)(8), (a)(13), (b), and (c); 10 U.S.C. 1034 and 1090a.

§ 998.40 Purpose.

This subpart—

(a) Establishes policy and implements 33 U.S.C. 3071(a)(8), (a)(13), (b), and (c) to provide protection against reprisal to NOAA Corps officers for making or preparing or being perceived as making or preparing a protected communication.

(b) Assigns responsibilities and delegates authority for such protection against reprisal and prescribes procedures.

§ 998.41 Applicability.

This subpart applies to NOAA Corps officers, personnel boards convened by the Director of Office of Marine and Aviation Operations (OMAO) and the NOAA Corps (Director), and the Inspector General of the Department of Commerce.

§ 998.42 Definitions.

As used in this subpart, the following terms shall have the meaning stated:

Corrective action means any action deemed necessary to make the complainant whole, changes in agency regulations or practices, administrative or disciplinary action against offending personnel, and/or referral to the United States Attorney General of any evidence of criminal violation.

Inspector General means the Inspector General in the Office of Inspector General of the Department of Commerce or any other Inspector General, as appointed under the Inspector General Act of 1978, as amended.

Investigation report means a report issued by the Inspector General of the Department of Commerce that includes a thorough review of the facts and circumstances relevant to an allegation of reprisal against a NOAA Corps officer, the relevant documents acquired during the investigation, and summaries of interviews conducted.

Personnel action means an action taken, or the failure to take an action, that affects or has the potential to affect a NOAA Corps officer's position and/or career. Personnel actions include disciplinary or corrective actions; a transfer or reassignment; significant changes in the duties or responsibilities of a NOAA Corps officer not commensurate with their grade; an inaccurate assessment of an officer's performance, skills, qualities, aptitudes, potential, or value to the NOAA Corps in the NOAA Corps officer's annual or semiannual officer evaluation reports; a decision concerning promotion, pay, benefits, awards, or training; separation; discharge; referral for mental health evaluations in accordance with 10 U.S.C. 1090a; the failure of a superior to respond to a retaliatory or harassment action against a NOAA Corps officer by one or more subordinate when the superior had knowledge of the retaliatory or harassment action; and conducting a retaliatory investigation against a NOAA Corps officer.

Protected communication means any lawful communication to a Member of Congress or an Inspector General; or a communication in which a NOAA Corps officer complains of, or discloses information that they reasonably believe evidences a violation of law or regulation (including sexual harassment or discrimination), gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when

such communication is made to any of the following: a Member of Congress; an Inspector General; a member of a Department of Commerce audit, inspection, investigation, or law enforcement organization; any person or organization in the chain of command; and any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.

Records Examination Board means a NOAA Corps personnel board convened by the Director to determine whether information contained in a NOAA Corps officer's personnel files should be corrected.

Reprisal means taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action against a NOAA Corps officer for making or preparing or being perceived as making or preparing a protected communication.

Retaliatory investigation means an investigation requested, directed, initiated, or conducted for the purpose of punishing, harassing, or ostracizing a NOAA Corps officer for making a protected communication.

§ 998.43 Requirements.

(a) No person within the Department of Commerce may restrict a NOAA Corps officer from making a lawful communication to a Member of Congress or an Inspector General.

(b) A NOAA Corps officer shall be free from reprisal for making or preparing or being perceived as making or preparing a protected communication.

(c) Any NOAA Corps officer or employee of the Department of Commerce who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take or threaten to take a personnel action, or withhold or threaten to withhold a personnel action, as reprisal against any NOAA Corps officer for making or preparing or being perceived as making or preparing a protected communication.

§ 998.44 Responsibilities.

(a) The Inspector General of the Department of Commerce:

(1) Shall expeditiously determine whether there is sufficient evidence to warrant an investigation of an allegation that a personnel action has been taken, withheld, or threatened as reprisal for making or preparing or being perceived as making or preparing a protected communication. No investigation is required when such allegation is submitted more than 1 year after the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action that is the subject of the allegation. However, the Inspector General of the Department of Commerce may consider a complaint of reprisal received more than 1 year later based on compelling reasons or circumstances. These circumstances may include situations in which the NOAA Corps officer or former NOAA Corps officer:

(i) Was actively misled regarding their rights; or

(ii) Was prevented from exercising their rights.

(2) Shall, if an investigation described in paragraph (a)(1) of this section is warranted, initiate a separate investigation of the underlying allegations contained in the protected communication if a prior investigation has not already been initiated, or if the Inspector General of the Department of Commerce determines that the prior investigation was biased or inadequate.

(3) Shall, except as provided in paragraph (a)(5) of this section, complete the investigation of the allegation of reprisal and issue a report not later than 180 days after receipt of the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The report may also include a recommendation as to the disposition of the complaint.

(4) Shall submit a copy of the investigation report to the Secretary, the Administrator, the NOAA Deputy Under Secretary for Operations, the Director, and to the NOAA Corps officer or former NOAA Corps officer making the allegation. In the copy of the investigation report transmitted to the NOAA Corps officer or former NOAA Corps officer, the Inspector General of the Department of Commerce shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under the Freedom of Information Act (5 U.S.C. 552 *et seq.*). The Inspector General of the Department of Commerce may withhold the summaries of interviews conducted and documents acquired during the course of the investigation in the copy of the investigation report transmitted to the NOAA Corps officer or former NOAA Corps officer. If requested under this paragraph (a)(4), the summaries of interviews conducted and documents acquired during the course of the investigation shall be transmitted to the NOAA Corps officer or former NOAA Corps officer, with the exception of information that is not required to be disclosed under the Freedom of Information Act. This disclosure is separate from a disclosure resulting from a request submitted pursuant to the Freedom of Information Act or the Privacy Act (5 U.S.C. 552a *et seq.*). All other releases of information not made in accordance with this paragraph (a)(4) shall be processed pursuant to the respective disclosure statute that governs the request seeking those records. The items may be transmitted with the copy of the investigation report or within a reasonable time after the transmittal of the copy of the investigation report to the NOAA Corps officer or former NOAA Corps officer, regardless of whether the request for those items is made before or after the copy of the investigation report is transmitted to the NOAA Corps officer or former NOAA Corps officer.

(5) Shall, if a determination is made that the investigation report cannot be issued within 180 days of receipt of the allegation, notify the Secretary and the NOAA Corps officer or former NOAA Corps officer making the allegation of the current progress of the investigation, the reasons why the investigation report will not be submitted within that time, and estimate the time remaining until completion and transmittal. Every 180 days thereafter until the transmission of the investigation report, the Inspector General of the Department of Commerce shall notify the Secretary and NOAA Corps officer or former NOAA Corps officer making the allegation of the current progress of the investigation and estimated time remaining until completion and transmittal of the investigation report.

(6) At the request of the Records Examination Board, shall submit a copy of the investigation report to the Records Examination Board. If the Records Examination Board requests further evidence and a further report as provided in paragraph (b)(3) of this section, the Inspector General of the Department of Commerce shall respond within 30 days, and not later than every 30 days thereafter, until the transmission of the further report.

(b) The Records Examination Board, under directions prescribed by the Director:

(1) Shall consider an application for the correction of records made by a NOAA Corps officer or former NOAA Corps officer who has filed a complaint investigated by the Inspector General of the Department of Commerce alleging that a personnel action was taken, withheld, or threatened in reprisal for making or preparing or being perceived

as making or preparing a protected communication.

(2) Shall review the investigation report issued by the Inspector General of the Department of Commerce.

(3) May ask the Inspector General to gather further evidence and issue a further report to the Records Examination Board.

(4) Shall provide a summary of the record of its proceedings, along with its recommendations, to the NOAA Corps officer or former NOAA Corps officer who has filed a complaint not later than 90 days after the NOAA Corps officer or former NOAA Corps officer made a request to convene such a Records Examination Board.

(5) Shall issue an appropriate recommendation to the Director concerning corrections, deletions, or additions to the NOAA Corps officer or former NOAA Corps officer's records not later than 90 days after the NOAA Corps officer or former NOAA Corps officer made a request to the Director to convene such a Records Examination Board. If the Records Examination Board requests a further report as provided under paragraph (b)(3) of this section and determines that it cannot issue recommendations within 90 days, the Records Examination Board shall notify the officer or former officer and the Director and provide an estimate of time remaining until completion.

(c) If the Records Examination Board determines that a personnel action was taken, withheld, or threatened in reprisal for a NOAA Corps officer making or preparing or being perceived as making or preparing a protected communication, the Records Examination Board shall forward its recommendation to the Director for appropriate correction of the NOAA Corps officer's or former NOAA Corps officer's records.

(d) When reprisal is found, the Director:

(1) Shall issue a decision concerning the correction of the NOAA Corps officer's or former NOAA Corps officer's records within 60 days of receiving the Records Examination Board's decision, but no sooner than 20 days after receiving the Records Examination Board decision to allow sufficient time for the NOAA Corps officer or former NOAA Corps officer to submit any written disagreement with the Records Examination Board's recommendations under paragraph (c) of this section, and ensure that appropriate corrective action is taken;

(2) Shall notify the Inspector General of his or her decision concerning an application for the correction of personnel records of a NOAA Corps officer or former NOAA Corps officer who alleged reprisal for making or preparing or being perceived as making or preparing a protected communication at the time the Director issues a decision under paragraph (d)(1) of this section; and

(3) Shall take appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as reprisal if those individuals are under the Director's chain of command. If those individuals are not under the Director's chain of command, refer those individuals to the Deputy Under Secretary for Operations for appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action in reprisal.

(e) The Deputy Under Secretary for Operations:

(1) Shall provide an additional level of review concerning an application for the correction of personnel records of a NOAA Corps officer or former NOAA Corps officer within 90 days of the Director's decision if requested by the officer. If the Deputy Under Secretary for Operations fails to issue such a decision within that time, the NOAA Corps officer or former NOAA Corps officer shall be deemed to have exhausted their administrative remedies and the Director's decision constitutes the final agency action.

(2) Shall take appropriate administrative disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as reprisal if referred by the Director under paragraph (d) of this section.

§ 998.45 Procedures.

(a) Any NOAA Corps officer or former NOAA Corps officer who reasonably believes a personnel action was taken, withheld, or threatened in reprisal for making or preparing or being perceived as making or preparing a protected communication may file a complaint with the Department of Commerce Office of Inspector General Hotline online at *https://www.oig.doc.gov/Pages/Hotline.aspx* by phone at (800) 424–5197, or by mail addressed to: United States Department of Commerce, Office of Inspector General, 1401 Constitution Avenue NW, Washington, DC 20230.

(b) The complaint should include relevant and specific details, including the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, withheld, or threatened that is alleged to be motivated by reprisal; the name(s) of the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; the date when the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action; and any information that suggests or evidences a connection between the protected communication and reprisal. The complaint should also include a description of the protected communication, including a copy of any written communication and a brief summary of any oral communication showing the date of communication, the subject matter, and the name of the person or official to whom the communication was made. Where the complaint is submitted more than 1 year after the date when the NOAA Corps officer or former NOAA Corps officer became aware of the personnel action, the complainant should include an explanation of any circumstances which caused the complaint to be submitted more than 1 year after the complainant became aware of the personnel action. These circumstances may include descriptions of how the NOAA Corps officer or former NOAA Corps officer was actively misled regarding their rights, or was prevented from exercising their rights.

(c) A NOAA Corps officer or former NOAA Corps officer who alleges reprisal for making or preparing or being perceived as making or preparing a protected communication may, within 20 days of receiving an investigation report, request in writing that the Director convene a Records Examination Board to consider an application for the correction of records.

(d) A NOAA Corps officer or former NOAA Corps officer who disagrees with the recommendations of a Records Examination Board may submit in writing the reasons for disagreement to the Director within 20 days of receiving the Records Examination Board's recommendations.

(e) A NOAA Corps officer or former NOAA Corps officer who disagrees with the Director's decision on a Records Examination Board's recommendations may request in writing a second level of review by the Deputy Under Secretary for Operations within 20 days of the Director's decision.

[FR Doc. 2022–21341 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 570

Libyan Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Libyan Sanctions Regulations and reissuing them in their entirety to further implement a February 25, 2011 Libya-related Executive order and to implement an April 19, 2016 Libya-related Executive order. This final rule replaces the regulations that were published in abbreviated form on July 1, 2011, and includes additional interpretive guidance and definitions, general licenses, and other regulatory provisions that will provide further guidance to the public. Due to the number of regulatory sections being updated or added, OFAC is reissuing the Libyan Sanctions Regulations in their entirety.

DATES: This rule is effective October 3, 2022.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treasury.gov/ofac.*

Background

On July 1, 2011, OFAC issued the Libyan Sanctions Regulations, 31 CFR part 570 (76 FR 38562, July 1, 2011) (the ''Regulations''), to implement Executive Order (E.O.) 13566 of February 25, 2011, ''Blocking Property and Prohibiting Certain Transactions Related to Libya'' (76 FR 11315, March 2, 2011), pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13566. The Regulations were initially issued in abbreviated form for the purpose of providing immediate guidance to the public. OFAC is revising the Regulations to further implement E.O. 13566 and to implement E.O. 13726 of April 19, 2016, ''Blocking Property and Suspending Entry Into the United States of Persons Contributing to the Situation in Libya'' (81 FR 23559, April 21, 2016). OFAC is amending and reissuing the Regulations as a more comprehensive set of regulations that includes additional interpretive guidance and definitions, general licenses, and other regulatory provisions that will provide further guidance to the public. Due to the number of regulatory sections being updated or added, OFAC is reissuing the Regulations in their entirety.

E.O. 13566

On February 25, 2011, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued E.O. 13566, effective at 8:00 p.m. eastern standard time on February 25, 2011. In E.O. 13566, the President found that Colonel Muammar Qadhafi, his government, and close associates have taken extreme measures against the people of Libya, including by using weapons of war, mercenaries, and wanton violence against unarmed civilians. The President further found that there is a serious risk that Libyan state assets would be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets are not protected. The President found that these circumstances, the prolonged attacks, and the increased numbers of Libyans seeking refuge in other countries from the attacks, had caused a deterioration in the security of Libya and posed a serious risk to its stability, thereby constituting an unusual and extraordinary threat to the national security and foreign policy of the United States and declared a national emergency to deal with that threat.

Section 1 of E.O. 13566 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of: (a) the persons listed in the Annex to E.O. 13566; and (b) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (i) to be a senior official of the Government of Libya; (ii) to be a child of Colonel Muammar Qadhafi; (iii) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses related to political repression in Libya; (iv) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of the activities described in section 1(b)(iii) of E.O. 13566 or any person whose property and interests in property are blocked pursuant to E.O. 13566; (v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked pursuant to E.O. 13566; or (vi) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to E.O. 13566. The property and interests in property of the persons described above may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 2 of E.O. 13566 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person, of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya.

In section 4 of E.O. 13566, the President determined that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13566 would seriously impair the President's ability to deal with the national emergency declared in E.O. 13566. The President therefore prohibited the donation of such items except to the extent provided by statutes, or in regulations, orders, directives or licenses that may be issued pursuant to E.O. 13566.

Section 5 of E.O. 13566 provides that the prohibition on any transaction or dealing in blocked property or interests in property includes the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13566, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 7 of E.O. 13566 prohibits any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in E.O. 13566, as well as any conspiracy formed to violate such prohibitions.

Section 10 of E.O. 13566 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of E.O. 13566. Section 10 also provides that the

Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the U.S. Government.

E.O. 13726

On April 19, 2016, the President, invoking the authority of, *inter alia,* IEEPA and the United Nations Participation Act (22 U.S.C. 287c) (UNPA), issued E.O. 13726. In E.O. 13726, the President expanded the scope of the national emergency declared in E.O. 13566, finding that the ongoing violence in Libya, human rights abuses, violations of the arms embargo imposed by United Nations Security Council Resolution 1970 (2011), and misappropriation of Libya's natural resources threatened the peace, security, stability, sovereignty, democratic transition, and territorial integrity of Libya, and thereby constituted an unusual and extraordinary threat to the national security and foreign policy of the United States.

Section 1(a) of E.O. 13726 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (i) to be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following: (A) actions or policies that threaten the peace, security, or stability of Libya, including through the supply of arms or related materiel; (B) actions or policies that obstruct, undermine, delay, or impede, or pose a significant risk of obstructing, undermining, delaying, or impeding, the adoption of or political transition to a Government of National Accord or a successor government; (C) actions that may lead to or result in the misappropriation of state assets of Libya; or (D) threatening or coercing Libyan state financial institutions or the Libyan National Oil Company; (ii) to be planning, directing, or committing, or to have planned, directed, or committed, attacks against any Libyan state facility or installation (including oil facilities), against any air, land, or sea port in Libya, or against any foreign mission in Libya; (iii) to be involved in, or to have been involved in, the targeting of civilians through the commission of acts of violence, abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law; (iv) to be involved in, or to have been involved in, the illicit exploitation of crude oil or any other natural resources in Libya, including the illicit production, refining, brokering, sale, purchase, or export of Libyan oil; (v) to be a leader of an entity that has, or whose members have, engaged in any activity described in section 1(a)(i), (a)(ii), (a)(iii), or (a)(iv) of E.O. 13726; (vi) to have materially assisted, sponsored, or provided financial, material, logistical, or technological support for, or goods or services in support of: (A) any of the activities described in section1(a)(i), (a)(ii), (a)(iii), or (a)(iv) of E.O. 13726; or (B) any person whose property and interests in property are blocked pursuant to E.O. 13726; or (vii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked pursuant to E.O. 13726.

In section 3 of E.O. 13726, the President determined that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13726 would seriously impair the President's ability to deal with the national emergency declared in E.O. 13726. The President therefore prohibited the donation of such items except to the extent provided by statutes, or in regulations, orders, directives or licenses that may be issued pursuant to E.O. 13726.

Section 4 of E.O. 13726 provides that the prohibition on any transaction or dealing in blocked property or interests in property includes the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to E.O. 13726, and the receipt of any contribution or provision of funds, goods or services from any such person.

Section 5 of E.O. 13726 prohibits any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in E.O. 13726, as well as any conspiracy formed to violate such prohibitions.

Section 8 of E.O. 13726 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA, as may be necessary to carry out the purposes of E.O. 13726. Section 8 also provides that the Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the U.S. Government.

Current Regulatory Action

In furtherance of the purposes of E.O. 13566 and E.O. 13726, OFAC is reissuing the Regulations. The Regulations implement targeted sanctions that are directed at persons determined to meet the criteria set forth in § 570.201 of the Regulations, as well as sanctions that may be set forth in any future Executive orders issued pursuant to the national emergency declared in E.O. 13566. The sanctions in E.O. 13566 and E.O. 13726 do not generally prohibit trade or the provision of banking or other financial services to the country of Libya. Instead, the sanctions in E.O. 13566 and E.O. 13726 apply where the transaction or service in question involves property or interests in property that are blocked pursuant to these Executive orders.

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations. Subpart B of the Regulations implements the prohibitions contained in sections 1, 2, and 7 of E.O. 13566 and sections 1 and 5 of E.O. 13726, as well as the prohibitions contained in any further Executive orders issued pursuant to the national emergency declared in E.O. 13566. *See, e.g.,* §§ 570.201 and 570.205. Persons identified in the Annex to E.O. 13566, designated by or under the authority of the Secretary of the Treasury pursuant to E.O. 13566 or E.O. 13726, or otherwise blocked pursuant to E.O. 13566 or E.O. 13726, as well as persons who are blocked pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13566, are referred to throughout the Regulations as ''persons whose property and interests in property are blocked pursuant to § 570.201.'' Section 570.201(d) provides that the prohibitions in § 570.201(a) apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date. As such, the term ''persons whose property and interests in property are blocked pursuant to § 570.201'' in the Regulations does not include the Government of Libya, with the exception of funds of the Libyan Investment Authority (LIA) blocked as of September 19, 2011, because, with the noted exception, OFAC unblocked the Government of Libya by general license as of December 16, 2011. The

names of persons designated or identified as blocked pursuant to E.O. 13566 or E.O. 13726, or any further Executive orders issued pursuant to the national emergency declared therein, are published on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List), which is accessible via OFAC's website. Those names also are published in the **Federal Register** as they are added to the SDN List.

Sections 570.202 and 570.203 of subpart B detail the effect of transfers of blocked property in violation of the Regulations and set forth the requirement to hold blocked funds, such as currency, bank deposits, or liquidated financial obligations, in interest-bearing blocked accounts. Section 570.204 of subpart B provides that all expenses incident to the maintenance of blocked tangible property shall be the responsibility of the owners and operators of such property, and that such expenses shall not be met from blocked funds, unless otherwise authorized. The section further provides that blocked property may, in OFAC's discretion, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

Section 570.205 of subpart B prohibits any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in § 570.201 of the Regulations, and any conspiracy formed to violate such prohibitions.

Section 570.206 of subpart B states certain transactions that are exempt from the prohibitions of the Regulations pursuant to section 203(b) of IEEPA (50 U.S.C. 1702(b)). As further set forth in this section, these exemptions do not apply to transactions involving persons whose property and interests in property are blocked under the authority of the UNPA. In subpart C of the Regulations, new definitions are being added to other key terms used throughout the Regulations. Because these new definitions were inserted in alphabetical order, the definitions that were in the prior abbreviated set of regulations have been renumbered. The definition of *Government of Libya,* previously in § 560.304, has been redesignated as § 570.305 and modified, including to list types of entities that are directly or indirectly owned or controlled by the Government of Libya. Similarly, in subpart D, which contains interpretive sections regarding the Regulations, certain provisions have been renumbered and others added to those in the prior abbreviated set of regulations. Section 570.411 of subpart D explains that the property and interests in property of an entity are blocked if the entity is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked, whether or not the entity itself is incorporated into OFAC's SDN List.

Transactions otherwise prohibited by the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part 501. OFAC is redesignating, with modifications, the authorizations for the provision of certain legal services previously in § 570.506 as § 570.507 and the authorization for the provision of emergency services previously in § 570.507 as § 570.509. Because OFAC unblocked all property and interests in property of the Government of Libya by general license as of December 16, 2011, with the exception of funds of the LIA blocked as of September 19, 2011, the authorization for Libyan diplomatic missions previously in § 570.508 has been removed from the Regulations. OFAC is adding §§ 570.506, 570.508, 570.510, and 570.511, which authorize, respectively, certain transactions relating to the following: investment and reinvestment of blocked funds by U.S. financial institutions, certain payments for legal services, the official business of the United States Government, and official activities of certain international organizations and other international entities in Libya.

OFAC is also incorporating five general licenses into the Regulations that were previously only available on OFAC's website, with modifications, including updates to the email address for certain reporting requirements. Section 570.512 incorporates General License 11, unblocking the property and interests in property of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya, but not any funds of the LIA nor any entities owned or controlled by the LIA blocked as of September 19, 2011. General License 11 was issued on OFAC's website on December 16, 2011, and will be removed from the website upon publication of this rule. Section 570.513 incorporates General License 4, authorizing U.S. persons, subject to certain conditions, to continue the normal operations of an investment fund in the United States in which certain persons whose property and interests in property are blocked have both a non-controlling and a minority interest. This authorization has been modified in the Regulations to revise the condition that authorized funds transfers must be made into a blocked account to include transfers to all persons blocked pursuant to § 570.201, and to no longer require monthly reporting. General License 4 was issued on OFAC's website on April 8, 2011, and will be removed from the website upon publication of this rule. Section 570.514 incorporates General License 7A, authorizing certain transactions involving the Libyan National Oil Corporation (NOC) or entities owned or controlled by the NOC, and unblocking property and interests in property of the NOC and entities owned or controlled by the NOC. This authorization has been modified in the Regulations to omit the entities named in General License 7A as being owned or controlled by the NOC, which were exemplary. General License 7A, which superseded General License 7, was issued on OFAC's website on September 19, 2011, and will be removed from the website upon publication of this rule. Section 570.515 incorporates General License 9, unblocking the funds of the General National Maritime Transport Company. General License 9 was published on OFAC's website on November 18, 2011, and will be removed from the website upon publication of this rule. Section 570.516 incorporates General License 10, unblocking the property and interests in property of Arab Turkish Bank and North African International Bank. General License 10 was issued on OFAC's website on December 1, 2011, and will be removed from the website upon publication of this rule. General licenses and statements of licensing policy relating to this part also may be available through the Libya sanctions page on OFAC's website: *www.treas.gov/ofac.*

Subpart F of the Regulations refers to subpart C of part 501 for recordkeeping and reporting requirements. Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty or issuance of a Finding of Violation. Subpart G also refers to appendix A of part 501 for a more complete description of these procedures.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of certain authorities of the Secretary of the Treasury. Subpart I of the

Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 570

Administrative practice and procedure, Banks, banking, Blocking of assets, Credit, Foreign Trade, Libya, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Services.

■ For the reasons set forth in the preamble, OFAC revises 31 CFR part 570 to read as follows:

PART 570—LIBYAN SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

Subpart B—Prohibitions

Subpart C—General Definitions

Subpart D—Interpretations

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

Subpart F—Reports

Subpart G—Penalties and Findings of Violation

Subpart H—Procedures

Subpart I—Paperwork Reduction Act

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13566, 76 FR 11315, 3 CFR, 2011 Comp., p. 222; E.O. 13726, 81 FR 23559, 3 CFR, 2016 Comp., p. 454.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 570.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 570.201 Prohibited transactions.

(a) All property and interests in property that are in the United States, that come within the United States, or

that are or come within the possession or control of any U.S. person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(1) *Government of Libya.* The Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya;

(2) *E.O. 13566 Annex.* The persons listed in the Annex to E.O. 13566 of February 25, 2011;

(3) *E.O. 13566.* Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be a senior official of the Government of Libya;

(ii) To be a child of Colonel Muammar Qadhafi;

(iii) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses related to political repression in Libya;

(iv) To have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of the activities described in paragraph (a)(3)(iii) of this section or any person whose property and interests in property are blocked pursuant to paragraph (a)(1) or (2) of this section, or this paragraph (a)(3);

(v) To be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked pursuant to paragraph (a)(1) or (2) of this section, or this paragraph (a)(3); or

(vi) To be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to paragraph (a)(1) or (2) of this section, or this paragraph (a)(3);

(4) *E.O. 13726.* Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To be responsible for or complicit in, or to have engaged in, directly or indirectly, any of the following:

(A) Actions or policies that threaten the peace, security, or stability of Libya, including through the supply of arms or related materiel;

(B) Actions or policies that obstruct, undermine, delay, or impede, or pose a significant risk of obstructing, undermining, delaying, or impeding, the adoption of or political transition to a Government of National Accord or a successor government;

(C) Actions that may lead to or result in the misappropriation of state assets of Libya; or

(D) Threatening or coercing Libyan state financial institutions or the Libyan National Oil Company;

(ii) To be planning, directing, or committing, or to have planned, directed, or committed, attacks against any Libyan state facility or installation (including oil facilities), against any air, land, or sea port in Libya, or against any foreign mission in Libya;

(iii) To be involved in, or to have been involved in, the targeting of civilians through the commission of acts of violence, abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law;

(iv) To be involved in, or to have been involved in, the illicit exploitation of crude oil or any other natural resources in Libya, including the illicit production, refining, brokering, sale, purchase, or export of Libyan oil;

(v) To be a leader of an entity that has, or whose members have, engaged in any activity described in paragraphs (a)(4)(i) through (iv) of this section;

(vi) To have materially assisted, sponsored, or provided financial, material, logistical, or technological support for, or goods or services in support of any of the activities described in paragraphs (a)(4)(i) through (iv) of this section or any person whose property and interests in property are blocked pursuant to this paragraph (a)(4); or

(vii) To be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked pursuant to this paragraph (a)(4).

(b) The prohibitions in paragraph (a) of this section include prohibitions on the following transactions:

(1) The making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to paragraph (a) of this section; and

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this part, any dealing in securities (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, any person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any securities on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such securities may have or might appear to have assigned, transferred, or otherwise disposed of the securities.

(d) The prohibitions in paragraph (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this part, and notwithstanding any contract entered into or any license or permit granted prior to the effective date.

(e) All transactions prohibited pursuant to any Executive order issued after April 19, 2016 pursuant to the national emergency declared in E.O. 13566 of February 25, 2011 are prohibited pursuant to this part.

Note 1 to § 570.201. The names of persons designated or identified as blocked pursuant to E.O. 13566, E.O. 13726, or any further Executive orders issued pursuant to the national emergency declared therein, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the identifier for E.O. 13566: ''[LIBYA2]''; for E.O. 13726: ''[LIBYA3]''; and for any further Executive orders issued pursuant to the national emergency declared in E.O. 13566: using the identifier formulation ''[LIBYA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]].'' The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in appendix A to this chapter. See § 570.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section. The property and interests in property of persons who meet the definition of the term Government of Libya and are blocked pursuant to paragraph (a) of this section are blocked regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

Note 2 to § 570.201. The International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), in section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of

persons whose property and interests in property are blocked pending investigation pursuant to this section may also be published in the **Federal Register** and incorporated into the SDN List using the following identifiers: for E.O. 13566: ''[BPI–LIBYA2]''; for E.O. 13726: ''[BPI–LIBYA3]''; and for any further Executive orders issued pursuant to the national emergency declared in E.O. 13566: ''[BPI–LIBYA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked pending investigation]].''

Note 3 to § 570.201. Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

§ 570.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 570.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 570.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

(e) The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(f) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 570.201.

§ 570.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 570.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For the purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For the purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For the purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 570.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 570.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds blocked pursuant to § 570.201 not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 570.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 570.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement

or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 570.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 570.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 570.205 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

(b) Any conspiracy formed to violate the prohibitions set forth in this part is prohibited.

§ 570.206 Exempt transactions.

(a) *United Nations Participation Act.* The exemptions cited in this section do not apply to transactions involving property or interests in property of persons whose property and interests in property are blocked pursuant to the authority of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA).

Note 1 to paragraph (a). Persons whose property and interests in property are blocked pursuant to the authority of the UNPA include those listed on *both* OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and the Consolidated United Nations Security Council Sanctions List (UN List) (*see https://www.un.org*), as well as persons listed on the SDN List for being owned or controlled by, or acting for or on behalf of, persons listed on *both* the SDN List and the UN List.

(b) *International Emergency Economic Powers Act.* The prohibitions contained in this part do not apply to any transactions that are exempt pursuant to section 203(b) of the International Emergency Economic Powers Act, (50 U.S.C. 1702(b)).

Subpart C—General Definitions

§ 570.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 570.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* mean any account or property subject to the prohibitions in § 570.201 held in the name of a person whose property and interests in property are blocked pursuant to § 570.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 570.301. *See* § 570.411 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 570.201.

§ 570.302 Effective date.

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(1) With respect to the Government of Libya or any person whose property and interests in property are blocked pursuant to § 570.201(a)(1) or (2), 8:00 p.m. eastern standard time, February 25, 2011; and

(2) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 570.201, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

(b) For the purposes of this section, c*onstructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

§ 570.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 570.304 Financial, material, logistical, or technical support; financial, material, logistical, or technological support.

The terms financial, material, logistical, or technical support, and financial, material, logistical, or technological support, as used, respectively, in § 570.201(a)(3)(iv) and § 570.201(a)(4)(vi), mean any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods.

''Technologies'' as used in this section means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 570.305 Government of Libya.

The term *Government of Libya* includes:

(a) The state and the Government of the Libya, as well as any political subdivision, agency, or instrumentality thereof, and the Central Bank of Libya;

(b) Any entity directly or indirectly owned or controlled by the foregoing, including any corporation, partnership, association, or other entity in which the Government of Libya owns a 50 percent or greater interest or a controlling interest, and any entity which is otherwise controlled by that government;

(c) Any person that is, or has been, since the effective date, acting or purporting to act, directly or indirectly, for or on behalf of any of the foregoing; and

(d) Any other person determined by OFAC to be included within paragraphs (a) through (c) of this section.

Note 1 to § 570.305. The names of persons that OFAC has determined fall within this definition are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) with the identifier ''[LIBYA2].'' The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn.* However, the property and interests in property of persons who meet the definition of the term *Government of Libya* and are blocked pursuant to § 570.201 are blocked regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

Note 2 to § 570.305. Section 501.807 of this chapter describes the procedures to be followed by persons seeking administrative reconsideration of OFAC's determination that they fall within the definition of the term *Government of Libya.*

§ 570.306 Government of National Accord or a successor government.

The term *Government of National Accord or a successor government* means:

(a) A Government of National Accord formed pursuant to the terms of the Libyan Political Agreement signed in Skhirat, Morocco, on December 17, 2015, or any amendments thereto;

(b) A governmental authority formed under the Libyan Constitution pursuant

to the terms of the Libyan Political Agreement signed in Skhirat, Morocco, on December 17, 2015, or any amendments thereto;

(c) Any subdivision, agency, or instrumentality of the foregoing, and any partnership, association, corporation, or other organization owned or controlled, directly or indirectly, by, or acting for or on behalf of, the foregoing; or

(d) Any other person determined by the Secretary of the Treasury to be included within paragraphs (a) through (c) of this section.

§ 570.307 [Reserved]

§ 570.308 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 570.309 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's website: *www.treas.gov/ofac.*

Note 1 to § 570.309. *See* § 501.801 of this chapter on licensing procedures.

§ 570.310 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 570.311 Person.

The term *person* means an individual or entity.

§ 570.312 Property; property interest.

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 570.313 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 570.314 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 570.315 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 570.316 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, money services businesses, operators of credit card systems, trust companies, insurance companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 570.401 Reference to amended sections.

(a) Reference to any section in this part is a reference to the same as currently amended, unless the reference includes a specific date. *See* 44 U.S.C. 1510.

(b) Reference to any ruling, order, instruction, direction, or license issued pursuant to this part is a reference to the same as currently amended unless otherwise so specified.

§ 570.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 570.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from any person whose property and interests in property are blocked pursuant to § 570.201, such property shall no longer be deemed to be property blocked pursuant to § 570.201, unless there exists in the property another interest that is blocked pursuant to § 570.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 570.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

§ 570.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with any person whose property and interests in property are blocked pursuant to § 570.201; or

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(b) For example, a license authorizing a person to complete a securities sale involving Company A, whose property and interests in property are blocked pursuant to § 570.201, also authorizes other persons to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other persons are not themselves persons whose property and interests in property are blocked pursuant to § 570.201.

§ 570.405 Provision and receipt of services.

(a) The prohibitions contained in § 570.201 apply to services performed in the United States or by U.S. persons, wherever located:

(1) On behalf of or for the benefit of any person whose property and interests in property are blocked pursuant to § 570.201; or

(2) With respect to property interests of any person whose property and interests in property are blocked pursuant to § 570.201.

(b) The prohibitions on transactions contained in § 570.201 apply to services received in the United States or by U.S. persons, wherever located, where the service is performed by, or at the direction of any person whose property and interests in property are blocked pursuant to § 590.201.

(c) For example, U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to any person whose property and interests in property are blocked pursuant to § 570.201, or negotiate with or enter into contracts signed by a person whose property and interests in property are blocked pursuant to § 570.201.

Note 1 to § 570.405. *See* §§ 570.507 and 570.509 for general licenses authorizing the provision of certain legal and emergency medical services.

§ 570.406 Offshore transactions involving blocked property.

The prohibitions in § 570.201 on transactions or dealings involving blocked property, as defined in § 570.301, apply to transactions by any U.S. person in a location outside the United States.

§ 570.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 570.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

Note 1 to § 570.407. *See also* § 570.502(e), which provides that no license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

§ 570.408 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from any person whose property and interests in property are blocked pursuant to § 570.201. For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, any person whose property and interests in property are blocked pursuant to § 570.201 if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

§ 570.409 Credit extended and cards issued by financial institutions to a person whose property and interests in property are blocked.

The prohibition in § 570.201 on dealing in property subject to that section prohibits U.S. financial institutions from performing under any existing credit agreements, including charge cards, debit cards, or other credit facilities issued by a financial institution to a person whose property and interests in property are blocked pursuant to § 570.201.

§ 570.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. financial institution or other U.S. person, is a prohibited transfer under § 570.201 if effected after the effective date.

§ 570.411 Entities owned by one or more persons whose property and interests in property are blocked.

(a) Persons whose property and interests in property are blocked pursuant to § 570.201 have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 570.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

(b) This section, which deals with the consequences of ownership of entities, in no way limits the definition of the Government of Libya in § 570.305, which includes within its definition other persons whose property and interests in property are blocked but who are not on the SDN List.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 570.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Libya sanctions page on OFAC's website: *www.treas.gov/ofac.*

§ 570.502 Effect of license or other authorization.

(a) No license or other authorization contained in this part, or otherwise issued by OFAC, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by OFAC and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property that would not otherwise exist under ordinary principles of law.

(d) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data that are not prohibited by this part or that do not require a license by OFAC nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State, or other agencies of the U.S. government.

(e) No license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

(f) Any payment relating to a transaction authorized in or pursuant to this part that is routed through the U.S. financial system should reference the relevant OFAC general or specific license authorizing the payment to avoid the blocking or rejection of the transfer.

§ 570.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 570.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which any person whose property and interests in property are blocked pursuant to § 570.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note 1 to § 570.504. *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 570.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 570.505 Entries in certain accounts for normal service charges.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 570.506 Investment and reinvestment of certain funds.

Subject to the requirements of § 570.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 570.201, subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.,* through pledging or other use) to a person whose property and interests in property are blocked pursuant to § 570.201.

§ 570.507 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of any person whose property and interests in property are blocked pursuant to § 570.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 570.508, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of any person whose property and interests in property are blocked pursuant to § 570.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by paragraph (a) of this section. Additionally, U.S. persons who provide services authorized by paragraph (a) of this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. *See* § 570.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 570.201 is prohibited unless licensed pursuant to this part.

Note 1 to § 570.507. Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

§ 570.508 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 570.507(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 570.201, is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 570.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in this paragraph (a) authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 570.201, any other part of this chapter, or any Executive order or statute has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) Email (preferred method): *OFACreport@treasury.gov;* or

(ii) U.S. mail: OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

§ 570.509 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are prohibited by this part are authorized.

§ 570.510 Official business of the United States Government.

All transactions prohibited by this part that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

§ 570.511 Official business of certain international organizations and entities.

All transactions prohibited by this part that are for the conduct of the official business of the following entities by employees, grantees, or contractors thereof are authorized:

(a) The United Nations, including its Programmes, Funds, and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations;

(b) The International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA);

(c) The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group (IDB Group), including any fund entity administered or established by any of the foregoing;

(d) The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies; and

(e) The Global Fund to Fight AIDS, Tuberculosis, and Malaria and the Global Alliance for Vaccines and Immunizations.

§ 570.512 Property of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya.

(a) Except as provided in paragraph (b) of this section, as of December 16, 2011, all property and interests in property of the Government of Libya, its agencies, instrumentalities, and controlled entities, and the Central Bank of Libya blocked pursuant to § 570.201(a)(1) are unblocked.

(b) All funds, including cash, securities, bank accounts, and investment accounts, and precious metals of the Libyan Investment Authority (LIA) and entities owned or controlled by the LIA blocked pursuant to § 570.201(a)(1), as of September 19, 2011, remain blocked.

§ 570.513 Normal operations of investment funds in which there is a blocked non-controlling, minority interest of the Government of Libya.

(a) Except as provided in paragraph (b) of this section, U.S. persons are authorized to continue the normal operations of an investment fund that is organized, located, managed, or

administered in the United States in which any person whose property and interests in property are blocked pursuant to § 570.201(a)(1), (2), or (3) has both a non-controlling and a minority interest, provided that the investment fund is not blocked pursuant to any other paragraph of § 570.201.

(b) The authorization in paragraph (a) of this section is subject to the following conditions:

(1) Any payment or transfer of funds, securities, or other assets in the possession or control of a U.S. person to any person whose property and interests in property are blocked pursuant to § 570.201 may only be directed or made into a blocked account at a financial institution in the United States in the name of the blocked person.

(2) Transfers of funds, securities, or other assets by a U.S. person between blocked accounts created or funded pursuant to paragraph (b)(1) of this section in its branches or offices are authorized provided that:

(i) No transfer is made from an account within the United States to an account held outside the United States; and

(ii) A transfer from a blocked account may only be made to another blocked account held in the same name.

(3) No immediate financial or economic benefit is accessible or made available to any person whose property and interests in property are blocked pursuant to § 570.201.

(4) U.S. persons shall not:

(i) Make any loans to, or on behalf of, any person whose property and interests in property are blocked pursuant to § 570.201; or

(ii) Debit a blocked account for repayment of a loan or as setoff for a debt owed by any person whose property and interests in property are blocked pursuant to § 570.201.

Note 1 to § 570.513. Normal operations include: investment management functions; the purchase and disposition of portfolio investments; the custody of portfolio investments; the making of payments owed by the investment fund to its managers, other service providers, directors, government regulators, tax authorities, or investors whose property and interests in property are not blocked; or the receipt of funds, securities, or other assets.

§ 570.514 Transactions with, and property and interests in property of, the Libyan National Oil Corporation and its subsidiaries.

(a) As of September 19, 2011, all transactions involving the Libyan National Oil Corporation (NOC) or entities owned or controlled by the NOC are authorized, provided that such transactions do not involve any other persons whose property and interests in property are blocked.

(b) As of September 19, 2011, all property and interests in property of the NOC and entities owned or controlled by the NOC are unblocked.

(c) Within 10 business days of the release of any blocked funds, including cash and securities, pursuant to paragraph (b) of this section, a report must be filed with the Sanctions Compliance and Evaluation Division of the Office of Foreign Assets Control via email to *OFACreport@treasury.gov.* For each amount released, the report must include a copy of the related initial blocking report and indicate the date that the funds were released and the amount released.

§ 570.515 Funds of the General National Maritime Transport Company unblocked.

(a) As of November 18, 2011, all funds, including cash, securities, bank accounts, and investment accounts, and precious metals of the General National Maritime Transport Company blocked pursuant to § 570.201(a)(1) or (3) are unblocked.

(b) Within 10 business days of the release of any blocked funds or precious metals pursuant to paragraph (a) of this section, a report must be filed with the Sanctions Compliance and Evaluation Division of the Office of Foreign Assets Control via email to *OFACreport@treasury.gov.* For each amount released, the report must include a copy of the related initial blocking report and indicate the date that the funds were released and the amount released.

§ 570.516 Property and interests in property of Arab Turkish Bank and North African International Bank unblocked.

(a) As of December 1, 2011, all property and interests in property of Arab Turkish Bank and North African International Bank blocked pursuant to § 570.201(a)(1) or (3) are unblocked.

(b) Within 10 business days of the release of any blocked funds, including cash, securities, bank accounts, and investment accounts, pursuant to paragraph (a) of this section, a report must be filed with the Sanctions Compliance and Evaluation Division of the Office of Foreign Assets Control via email to *OFACreport@treasury.gov.* For each amount released, the report must include a copy of the related initial blocking report and indicate the date that the funds were released and the amount released.

Subpart F—Reports

§ 570.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties and Findings of Violation

§ 570.701 Penalties.

(a) Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA) is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

(2) IEEPA provides for a maximum civil penalty not to exceed the greater of $330,947 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(3) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b)(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the

same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

(d) Section 5(b) of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA), provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to section 5(a) of the UNPA shall, upon conviction, be fined not more than $1,000,000 and, if a natural person, may also be imprisoned for not more than 20 years.

(e) Violations involving transactions described at section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (d) of this section.

(f) Violations of this part may also be subject to other applicable laws.

§ 570.702 Pre-Penalty Notice; settlement.

(a) *When required.* If OFAC has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and determines that a civil monetary penalty is warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed or date the Pre-Penalty Notice was emailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof (electronic signature is acceptable), contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and include the OFAC identification number listed on the Pre-Penalty Notice. The response must be sent to OFAC's Office of Compliance and Enforcement by mail or courier or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by OFAC are contained in appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 570.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 570.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to OFAC, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

§ 570.705 Findings of Violation.

(a) *When issued.* (1) OFAC may issue an initial Finding of Violation that identifies a violation if OFAC:

(i) Determines that there has occurred a violation of any provision of this part, or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706);

(ii) Considers it important to document the occurrence of a violation; and

(iii) Based on the Guidelines contained in appendix A to part 501 of this chapter, concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial Finding of Violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter. For additional details concerning issuance of a Finding of Violation, see appendix A to part 501 of this chapter.

(b) *Response*—(1) *Right to respond.* An alleged violator has the right to contest an initial Finding of Violation by providing a written response to OFAC.

(2) *Deadline for response; default determination.* A response to an initial Finding of Violation must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond, and the initial Finding of Violation will become final and will constitute final agency action. The violator has the right to seek

judicial review of that final agency action in federal district court.

(i) *Computation of time for response.* A response to an initial Finding of Violation must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark date on the envelope in which the initial Finding of Violation was served or date the Finding of Violation was sent by email. If the initial Finding of Violation was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to an initial Finding of Violation need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof (electronic signature is acceptable), contain information sufficient to indicate that it is in response to the initial Finding of Violation, and include the OFAC identification number listed on the initial Finding of Violation. The response must be sent to OFAC's Office of Compliance and Enforcement by mail or courier or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(4) *Information that should be included in response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations did not occur and/or why a Finding of Violation is otherwise unwarranted under the circumstances, with reference to the General Factors Affecting Administrative Action set forth in the Guidelines contained in appendix A to part 501 of this chapter. The response should include all documentary or other evidence available to the alleged violator that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted in the response.

(c) *Determination*—(1) *Determination that a Finding of Violation is warranted.* If, after considering the response, OFAC determines that a final Finding of Violation should be issued, OFAC will issue a final Finding of Violation that will inform the violator of its decision. A final Finding of Violation shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

(2) *Determination that a Finding of Violation is not warranted.* If, after considering the response, OFAC determines a Finding of Violation is not warranted, then OFAC will inform the alleged violator of its decision not to issue a final Finding of Violation.

Note 1 to paragraph (c)(2). A determination by OFAC that a final Finding of Violation is not warranted does not preclude OFAC from pursuing other enforcement actions consistent with the Guidelines contained in appendix A to part 501 of this chapter.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific alleged violations contained in the initial Finding of Violation must be preceded by a written letter of representation, unless the initial Finding of Violation was served upon the alleged violator in care of the representative.

Subpart H—Procedures

§ 570.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 570.802 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to E.O. 13566 of February 25, 2011, E.O. 13726 of April 19, 2016, and any further Executive orders relating to the national emergency declared therein, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 570.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–20984 Filed 9–30–22; 8:45 am]

BILLING CODE 4810–AL–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0535; FRL–9690–02–R9]

Withdrawal and Partial Approval/Partial Disapproval of Clean Air Plans; San Joaquin Valley, California; Contingency Measures for 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to withdraw the portion of a March 25, 2019 final action conditionally approving state implementation plan (SIP) submissions from the State of California under the Clean Air Act (CAA or ''Act'') to address contingency measure requirements for the 2008 ozone national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley, California ozone nonattainment area. The SIP submissions include the portions of the ''2016 Ozone Plan for 2008 8-Hour Ozone Standard'' and the ''2018 Updates to the California State Implementation Plan'' that address the contingency measure requirement for San Joaquin Valley. Simultaneously, the EPA is taking final action to partially approve and partially disapprove these SIP submissions. These actions are in response to a decision issued by the U.S. Court of Appeals for the Ninth Circuit (*Association of Irritated Residents* v. *EPA,* Ninth Circuit, No. 19–71223, opinion filed August 26, 2021) remanding the EPA's conditional approval of the contingency measure SIP submissions back to the Agency for further proceedings consistent with the decision.

DATES: This final rule is effective on November 2, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0535. 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 disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972–3407, *lawrence.laura@epa.gov.*

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

Table of Contents

I. Summary of the Proposed Action

On May 24, 2022, the EPA proposed to withdraw the portion of a March 25, 2019 final action conditionally approving SIP submissions from the State of California under the CAA to address contingency measure requirements for the 2008 ozone NAAQS in the San Joaquin Valley, California ozone nonattainment area.[1] The SIP submissions include the portions of the 2016 Ozone Plan for 2008 8-Hour Ozone Standard (''2016 Ozone Plan'') and the 2018 Updates to the California State Implementation Plan (''2018 SIP Update'') that address the contingency measure requirement for San Joaquin Valley. In the same rule, the EPA also proposed to partially approve and partially disapprove these SIP submissions. Specifically, consistent with a 2021 decision by the Ninth Circuit remanding the EPA's previous conditional approval of the contingency measure element, the EPA proposed to disapprove the submissions for failure to meet the contingency measure SIP requirements under CAA sections 172(c)(9) and 182(c)(9), except for a state measure referred to as the ''Enhanced Enforcement Activities Program'' measure for which the EPA proposed approval based on SIP-strengthening grounds.

In our proposed rule, we provided background information on ozone and its precursor emissions (*i.e.,* volatile organic compounds and oxides of nitrogen), common sources of ozone precursor emissions, and health effects associated with elevated ozone levels. We also provided background information on the EPA's establishment of the ozone NAAQS, including the ozone NAAQS that we established in 2008 (''2008 ozone NAAQS''), the SIP submissions that are required under the CAA for areas designated as nonattainment for the 2008 ozone NAAQS, and the roles and responsibilities of the California Air Resources Board (CARB) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'').

We also discussed the specific SIP submission requirements under CAA sections 172(c)(9) and 182(c)(9) for contingency measures. In short, contingency measures are additional controls or measures to be implemented in the event the area fails to make reasonable further progress (RFP) or to attain the NAAQS by the attainment date. Among other requirements, contingency measures must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose and should provide for emissions reductions approximately equivalent to one year's worth of RFP.

In our proposed rule, we described the State of California's SIP submissions for the San Joaquin Valley ''Extreme'' nonattainment area for the 2008 ozone NAAQS, including the District's 2016 Ozone Plan and the San Joaquin Valley portion of the 2018 SIP Update. We noted that, in 2019, the EPA approved the 2016 Ozone Plan and the relevant portion of the 2018 SIP Update as meeting all the applicable statutory and regulatory requirements for the San Joaquin Valley Extreme nonattainment area for the 2008 ozone NAAQS, with the exception of the contingency measure requirement.[2]

As described further in the proposed rule, the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, includes the Enhanced Enforcement Activities Program and an evaluation of the surplus emissions reductions from already-implemented measures.[3] In addition, the District and CARB made commitments to adopt and submit a contingency provision[4] as part of the District's architectural coatings rule within a year of the final conditional approval. Once adopted, submitted, and approved, the contingency provision in the architectural coatings rule would become a third part of the contingency measure element. The EPA estimated that the contingency measure, *i.e.,* the contingency provision in the architectural coatings rule, would achieve emissions reductions equivalent to approximately 9 percent of one year's worth of RFP.

As discussed in our proposed rule, we conditionally approved the contingency measure element in our March 25, 2019 final rule based on the District's and CARB's commitments and found that the one contingency measure (*i.e.,* once adopted, submitted, and approved by the EPA) would be sufficient for the State and District to meet the contingency measure requirement for San Joaquin Valley for the 2008 ozone NAAQS, notwithstanding expected emissions reductions from the measure equivalent to only a fraction of one year's worth of RFP.[5] In our March 25, 2019 final rule, we found the reductions from the one contingency measure to be sufficient when considered together with the substantial surplus emissions reductions we anticipated to occur in the future from already-implemented measures and from other approved measures in the plan.[6] In our March 25, 2019 final rule, we approved CARB's Enhanced Enforcement Activities Program measure as a SIP-strengthening measure rather than as a contingency measure.[7]

In our May 24, 2022 proposed rule, we noted that our final conditional approval of the contingency measure element was the subject of a legal challenge and that, in a 2021 Ninth

[1] 87 FR 31510. The San Joaquin Valley nonattainment area for the 2008 8-hour ozone NAAQS consists of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the western portion of Kern County.

[2] 84 FR 3302 (February 12, 2019), corrected at 84 FR 19680 (May 3, 2019); and 84 FR 11198 (March 25, 2019).

[3] 83 FR 61346, at 61356 (November 29, 2018). In this context, ''surplus'' emissions reductions refer to emissions reductions that are not needed to meet other SIP requirements, such as the RFP and attainment demonstrations.

[4] The specific contingency provision that the District committed to adopt is the removal of the exemption for architectural coatings that are sold in containers with a volume of one liter (1.057 quarts) or less, *i.e.,* if triggered by an EPA determination of failure to meet an RFP milestone or failure to attain the 2008 ozone NAAQS by the applicable attainment date. On April 23, 2020, CARB submitted the District's architectural coatings rule (SJVUAPCD Rule 4601), as amended to include the contingency provision, to the EPA as a SIP revision.

[5] 84 FR 11198, at 11206 (March 25, 2019).

[6] Id.

[7] Id.

Circuit decision in the *Association of Irritated Residents* v. *EPA* case, the Court remanded the conditional approval action back to the Agency.[8] In so doing, the Court found that, by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to meet the applicable requirement, the EPA was circumventing the court's 2016 holding in *Bahr* v. *EPA*.[9] The court rejected the EPA's arguments that the Agency's approach was grounded in its long-standing guidance and was consistent with the court's 2016 *Bahr* v. *EPA* decision. With respect to CARB's Enhanced Enforcement Activities Program measure, the court upheld the EPA's approval of it as SIP-strengthening and held that the measure was enforceable according to its terms.

In our May 24, 2022 proposed rule, we found that, if we do not take into account surplus emissions reductions, then the one contingency measure (the contingency provision in the District's architectural coatings rule) must shoulder the entire burden of achieving roughly one year's worth of RFP (if triggered) but would only provide approximately 9 percent of one year's worth of progress. Because the contingency measure would not provide reductions roughly equivalent to one year's worth of RFP, we found that the conditional approval could no longer be supported, and we proposed to withdraw our previous conditional approval of the contingency measure element on that basis. For the same reasons that justify the proposed withdrawal of the conditional approval, we proposed to disapprove the contingency measure element except for the Enhanced Enforcement Activities Program measure.

With respect to the Enhanced Enforcement Activities Program measure, in our May 24, 2022 proposed rule, we proposed approval for the same reasons that we provided in the March 25, 2019 final rule and that were upheld by the Ninth Circuit. Namely, while we find that the Enhanced Enforcement Activities Program measure fails to meet the requirements for a stand-alone contingency measure, we also find that it strengthens the SIP by triggering certain actions, upon a failure to meet RFP or a failure to attain by the applicable attainment date, that may lead to emissions reductions that would not otherwise be achieved, thereby contributing in part to any remedy for an RFP shortfall or failure to attain.

For more background information and a more extensive discussion of the rationale for our proposed action, please see our May 24, 2022 proposed rule.

II. Public Comments and EPA Responses

Our proposed rule provided for a 30-day comment period during which we received one response, which is a letter supporting our proposed action.[10]

III. Final Action

For the reasons summarized above and presented in more detail in the proposed rule, we are taking final action to withdraw our March 25, 2019 conditional approval of the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, for the San Joaquin Valley for the 2008 ozone NAAQS. We are also taking final action to partially approve and partially disapprove the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, with respect to the contingency measure requirements under CAA sections 172(c)(9) and 182(c)(9). Specifically, we are disapproving the contingency measure element except for the Enhanced Enforcement Activities Program measure. We are approving the Enhanced Enforcement Activities Program measure because, while we find that the Enhanced Enforcement Activities Program measure fails to meet the requirements for a stand-alone contingency measure, we also find that it strengthens the SIP by triggering certain actions, upon a failure to meet RFP or failure to attain by the applicable attainment date, that may lead to emissions reductions that would not otherwise be achieved, thereby contributing in part to any remedy for an RFP shortfall or failure to attain.

Through this final action, we are revising the section of the CFR where the California SIP is identified by removing the contingency measure element of the 2016 Ozone Plan, as modified by the 2018 SIP Update, that we previously approved (conditionally), except for the Enhanced Enforcement Activities Program measure.[11] Lastly, we are making a protective finding under the transportation conformity rule because, notwithstanding the partial disapproval of the contingency measure element, the 2016 Ozone Plan, as modified by the 2018 SIP Update, reflects adopted control measures and contains enforceable commitments that fully satisfy the emission reduction requirements for RFP and attainment for the 2008 ozone NAAQS.[12]

As a consequence of the partial disapproval of the contingency measure element, within 24 months of the effective date of this action, the EPA must promulgate a federal implementation plan under section 110(c) unless we approve subsequent SIP submissions that correct the plan deficiencies. In addition, under 40 CFR 52.35, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) will be imposed six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

[8] *Association of Irritated Residents* v. *EPA,* 10 F.4th 937 (9th Cir. 2021).

[9] *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016). Under the *Bahr* holding, contingency measures under CAA sections 172(c)(9) and 182(c)(9) must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.

[10] Comment letter dated June 22, 2022, from the Association of Irritated Residents and the Central California Environmental Justice Network, including two exhibits: the American Lung Association's report titled ''State of the Air 2022'' and the SJVUAPCD Executive Director's report to the SJVUAPCD Governing Board for the June 16, 2022 Board meeting titled ''Item Number 13: Receive Update on Attainment Planning Efforts for Federal Particulate and Ozone Standards.''

[11] We are also revising 40 CFR 52.220(c)(514)(ii)(A)(*2*) to clarify that the applicability of CARB's Enhanced Enforcement Activities Program measure is limited to San Joaquin Valley and limited to the 2008 ozone NAAQS.

[12] 40 CFR 93.120(a)(3). Without a protective finding, the final disapproval would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined. Under a protective finding, the final disapproval of the contingency measures element does not result in a transportation conformity freeze in the San Joaquin Valley ozone nonattainment area and the metropolitan planning organizations may continue to make transportation conformity determinations.

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because the partial SIP disapproval action under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves portions of certain state plans submitted for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. The partial SIP disapproval action under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves portions of certain state plans submitted for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (*e.g.,* higher offset requirements) may or will result from disapproval actions does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The EPA has determined that the partial disapproval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This action disapproves portions of certain pre-existing plans under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This action does not have federalism implications. 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, as specified in Executive Order 13132, because it merely disapproves portions of certain state plans for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP that the EPA is partially approving and partially disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This partial SIP disapproval action under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves portions of certain state plans submitted for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable

voluntary consensus standards. The EPA believes that this action is not subject to requirements of section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Submission to Congress and the Comptroller General

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

L. Petitions for Judicial Review

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 December 2, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: September 16, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by:
■ a. Adding paragraph (c)(496)(ii)(B)(*5*);
■ b. Revising paragraph (c)(514)(ii)(A)(*2*); and
■ c. Adding paragraph (c)(514)(ii)(A)(*11*).

The additions and revision read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(496) * * *

(ii) * * *

(B) * * *

(*5*) Previously approved on March 25, 2019, in paragraph (c)(496)(ii)(B)(*4*) of this section and now deleted without replacement, subchapter 6.4 (''Contingency for Attainment'') of the ''2016 Ozone Plan for 2008 8-Hour Ozone Standard,'' adopted June 16, 2016.

* * * * *

(514) * * *

(ii) * * *

(A) * * *

(*2*) 2018 Updates to the California State Implementation Plan, adopted on October 25, 2018, chapter VIII (''SIP Elements for the San Joaquin Valley''), chapter X (''Contingency Measures'') for implementation in San Joaquin Valley for the 2008 ozone standard, and Appendix A (''Nonattainment Area Inventories''), pages A–1, A–2 and A–27 through A–30, only.

* * * * *

(*11*) Previously approved on March 25, 2019 in paragraph (c)(514)(ii)(A)(*2*) of this section and now deleted without replacement, subchapter VIII.D (''Contingency Measures'') of chapter VIII (''SIP Elements for the San Joaquin Valley'') of the ''2018 Updates to the California State Implementation Plan,'' adopted on October 25, 2018.

* * * * *

■ 3. Section 52.237 is amended by adding paragraph (a)(13) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(13) The contingency measures element of the ''2016 Ozone Plan for 2008 8-Hour Ozone Standard,'' adopted June 16, 2016, as modified by the ''2018 Updates to the California State Implementation Plan,'' adopted October 25, 2018, for San Joaquin Valley with respect to the 2008 ozone NAAQS, with the exception of CARB's Enhanced Enforcement Activities Program measure.

* * * * *

§ 52.248 [Amended]

■ 4. Section 52.248 is amended by removing and reserving paragraph (g).

[FR Doc. 2022–20583 Filed 9–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2022–0121; FRL–9823–02–R3]

Air Plan Approval; Pennsylvania; 2015 Ozone National Ambient Air Quality Standards Nonattainment New Source Review Certification SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision will fulfill Pennsylvania's nonattainment new source review (NNSR) SIP element requirement for the 2015 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on November 2, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0121. All documents in the docket are listed on the *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 *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Justin Leary, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2189. Mr. Leary can also be reached via electronic mail at *Leary.Justin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 31, 2022 (87 FR 32379), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of Pennsylvania's existing Federally-approved NNSR regulations for the 2015 8-hour ozone NAAQS. The formal SIP revision was submitted by Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Commonwealth of Pennsylvania (Commonwealth or Pennsylvania) on January 8, 2021.

Pennsylvania is certifying that the Commonwealth's federally approved nonattainment new source review regulation in 25 Pennsylvania Code of Regulations (Pa. Code) Chapter 127 applies statewide and covers the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE nonattainment area for the 2015 ozone NAAQS. Pennsylvania asserts that its nonattainment new source review program is at least as stringent as the requirements at 40 Code of Federal Regulations (CFR) 51.165, as amended by the final rule titled ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' (SRR) for ozone and its precursors. See 83 FR 62998 (December 6, 2018).

II. Summary of SIP Revision and EPA Analysis

This rulemaking action is specific to Pennsylvania's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the 2015 8-hour ozone NAAQS are located in 40 CFR 51.160–165.

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are located in 40 CFR 51.165. See 40 CFR 51.1314. Under the 2015 8-hour ozone NAAQS NNSR SIP requirements, the SIP for each ozone nonattainment area must contain NNSR provisions that: (1) set major source thresholds for oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv); (2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); (3) consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); (4) consider certain increases of VOC emissions in extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); (5) set significant emissions rates for VOCs and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E); (6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2); (7) provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); and (8) set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(i)–(iii) (renumbered as (a)(9)(ii)–(iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS).

Pennsylvania's SIP approved NNSR program, established in the Pa. Code Rule 25 Pa. Code Chapter 127—Construction, Modification, Reactivation, and Operation of Sources, applies to the construction and modification of major stationary sources in nonattainment areas. In the October 30, 2017, SIP revision, Pennsylvania certifies that the version of 25 Pa. Code Chapter 127 in the SIP is at least as stringent as the Federal NNSR requirements for the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE nonattainment area. EPA last approved revisions to Pennsylvania's major NNSR SIP on February 22, 2019. In that action, EPA approved Pennsylvania's NNSR program under the 2008 8-hour ozone NAAQS and made PADEP's NNSR program consistent with Federal requirements. See 84 FR 5598 (February 22, 2019). The version of 25 Pa. Code Chapter 127 that is contained in the current SIP and covers the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE nonattainment area and is adequate to meet all applicable NNSR requirements for the 2015 8-hour ozone NAAQS found in 40 CFR 51.165, and the SRR.

Other specific requirements of the SRR and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

III. EPA's Response to Comments Received

EPA received one comment on our proposed approval of Pennsylvania's 2015 Ozone NNSR Certification SIP. A summary of the comment and EPA's response is provided herein. The comment received is included in the docket for this action.

Comment: The commenter asserts that EPA failed to address the fact that Pennsylvania submitted a letter withdrawing specific portions of the January 8, 2021, SIP revision submittal related to inter-precursor trading (IPT) provisions. In doing so, EPA has proposed an approval without excluding the IPT provision that unlawfully allows IPT to satisfy the Clean Air Act's offset requirements for ozone precursors. The commentor asserts that EPA must state explicitly in its final action that it is not approving the IPT provisions of the January 8, 2021, SIP and that it is approving, as a SIP commitment, Pennsylvania's promise not to issue any NNSR permits or plan approvals that rely on IPT. Finally, the commentor asserts that the approval should be conditional on Pennsylvania following through on their commitment to remove ozone related IPT provision from the commonwealth's regulations.

Response: On January 29, 2021, the United States Court of Appeals for the D.C. Circuit concluded that ozone IPT trading is not permissible under the CAA and vacated ozone IPT trading, *i.e.,* the IPT trading provision in the Federal NNSR regulations. *Sierra Club* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021). EPA removed the language allowing IPT trading for ozone from its NNSR regulations. 86 FR 37918 (July 19, 2021). In response to that the July 19, 2021, rule, on August 23, 2021, PADEP sent a letter to EPA that withdrew from EPA's review the specific portions of PADEP's January 8, 2021, SIP revision submittal that related to inter-precursor trading (IPT).

EPA agrees with comment to the extent that EPA should have affirmatively addressed the August 23, 2021, letter and the fact that PADEP had withdrawn from EPA review the (IPT) provisions submitted with the January 8, 2021, SIP revision. Pennsylvania clearly intends to not apply the IPT provisions to ozone as made evident by the August 23, 2021, letter to the EPA.

Furthermore, we acknowledged in this action that the provisions for IPT for ozone had been withdrawn from our consideration, as reflected by our inclusion of the August 23, 2021, letter in the docket for the action. Therefore, EPA's proposed approval of Pennsylvania's 2015 ozone NNSR certification SIP did not at any time include a proposed approval of any provisions relating to IPT for ozone, consistent with the D.C. Circuit's decision. EPA affirms that, in light of the D.C. Circuit's decision (and consistent with Pennsylvania's explicitly stated intent in the withdrawal letter), it would be inappropriate for Pennsylvania to issue NNSR permits which relied on IPT for ozone precursors. Pennsylvania's regulations for the issuance of plan approvals provide for public notice and comment, in accordance with CAA requirements. EPA has the ability to review and comment on any deficiency in a draft plan approval, including an inappropriate use of IPT for ozone.

However, EPA disagrees with the commentor's assertion that the approval must be conditional on Pennsylvania following through on its commitment to remove the IPT provisions in the commonwealth's regulations. This action only addresses the adequacy of Pennsylvania's SIP for purposes of implementing the 2015 ozone NAAQS. Because of the withdrawal reflected in the Commonwealth's August 23, 2021, letter, the IPT language in Pennsylvania's regulations is not before EPA for approval in this action. Since the Pennsylvania provisions included in this SIP submission are adequate for purposes of implementing the 2015 ozone standard, Pennsylvania's 2015 Ozone NNSR Certification SIP is approvable without the condition requested by the commenter.

IV. Final Action

EPA's review of this material indicates that Pennsylvania's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. Therefore, we are finalizing our approval of Pennsylvania's NNSR SIP for 2015 8-hour ozone NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 2, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Pennsylvania's 2015 Ozone NNSR Certification 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons set out in the preamble, 40 part 52 is amended as follows:

PART 52—APPROVAL 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for

''2015 8-Hour Ozone National Ambient Air Quality Standard Nonattainment New Source Review Requirements'' at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	* *	*
2015 8-Hour Ozone NAAQS Nonattainment New Source Review Requirements.	Pennsylvania's portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE area (includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties).	1/8/21; 8/23/21	10/3/22, Insert **Federal Register** citation].	

[FR Doc. 2022–21252 Filed 9–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2021–0483; FRL–9158–02–R2]

Approval of Air Quality Implementation Plans; New York; Revisions to Architectural and Industrial Maintenance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution for volatile organic compounds (VOC). The final SIP revision consists of amendments to regulations outlined within New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for architectural and industrial maintenance coatings. The effect of this action is to approve control strategies which will result in VOC emission reductions that will help attain and maintain the national ambient air quality standards for ozone. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: This final rule is effective on November 2, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2021–0483. 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 electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Longo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, at (212) 637–3565, or by email at *longo.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is the background for this action?

On August 11, 2022 (87 FR 49570), the EPA published a notice of proposed rulemaking that proposed to approve a State Implementation Plan (SIP) revision submitted by the State of New York on October 15, 2020, for purposes of revising title 6 of the NYCRR, part 205, ''Architectural and Industrial Maintenance Coatings.'' The EPA's evaluation recognizes that the SIP revision is consistent with the Ozone Transport Commission Model Rule for AIM coating categories and will help the State attain the National Ambient Air Quality Standards (NAAQS) by improving air quality through reduced VOC emissions and promoting regional AIM coating consistency. The specific details of New York's SIP revision submittal 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 August 11, 2022, proposed rulemaking (87 FR 49570). The attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced material,'' for 6 NYCRR part 205 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

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

The EPA provided a 30-day review and comment period for the August 11, 2022, proposed rule. The comment period ended on September 12, 2022. We received no comments on the EPA's action.

III. What action is the EPA taking?

The EPA is approving New York's revisions to the New York SIP and amendment to 6 NYCRR part 205, ''Architectural and Industrial Maintenance Coatings,'' with a State effective date of January 11, 2022. Specifically, this rulemaking will reduce VOC emissions for 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories without relaxation of the regulation, and narrow the exemption previously provided to coatings sold in one-liter (or quart-size) containers, referred to the as the ''quart exemption.'' The revisions will help the State to comply with Federal requirements pertaining to attainment and maintenance of the ozone NAAQS.

IV. 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 of the 6 NYCRR part 205, ''Architectural and Industrial Maintenance Coatings,'' regulations described in the amendments to 40 CFR part 52 as discussed in section III 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 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 December 2, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, 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 HH—New York

■ 2. In § 52.1670, paragraph (c) is amended in the table by revising the entry for ''Title 6, Part 205'' to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Title 6, Part 205	Architectural and Industrial Maintenance Coatings.	1/11/2022	10/3/2022	• EPA approval finalized at [insert **Federal Register** citation].
*	*	*	*	*

[1] 62 FR 27968 (May 22, 1997).

* * * * *

[FR Doc. 2022–21355 Filed 9–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0343; FRL–10200–01–R6]

Air Plan Approval; Texas; Clean Air Act Requirements for Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of the State Implementation Plan (SIP) revisions submitted to the EPA by the State of Texas (''the State'') for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). The SIP revisions being approved describe how CAA requirements for Nonattainment New Source Review (NNSR) are met in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) serious ozone nonattainment areas.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID EPA–R06–OAR–2020–0343. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–6521, *paige.carrie@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our March 1, 2021, proposal (86 FR 11913). In that document we proposed to approve portions of two revisions to the Texas SIP submitted to the EPA on May 13, 2020, that describe how CAA requirements for enhanced vehicle inspection and maintenance (I/M) and NNSR are met in the DFW and HGB serious ozone nonattainment areas for the 2008 ozone NAAQS.

Our March 2021 proposal provided a detailed description of the revisions and the rationale for the EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for our March 2021 proposal action closed on March 31, 2021. We received comments during the public comment period from two sources: Earthjustice, on behalf of Achieving Community Tasks Successfully, Coalition of Community Organizations, Downwinders at Risk, Sierra Club, Texas Environmental Justice Advocacy Services, and itself, together with Caring for Pasadena Communities; and Air Law for All (ALFA), on behalf of the Center for Biological Diversity and the Center for Environmental Health.[1] The comments received are available for review in the docket for this rulemaking. The EPA is not finalizing the proposed approval of revisions that address the CAA requirements for vehicle I/M at this time. Those revisions will be addressed in a separate rulemaking. Our responses to the comments addressing NNSR follow.

II. Response to Comments

Comment: Commenters assert that the proposed rule relies on the provisions of the Texas Administrative Code which require new or modified major sources of ozone precursors in ozone nonattainment areas to procure emission offsets for their emission increases through the state's Emission Credit Banking and Trading program. According to the Commenters, these provisions authorize inter-precursor trading (IPT) of NOx and VOC emissions which was vacated by the United States Court of Appeals for the District of Columbia Circuit on January 29, 2021. The commenters also argued that EPA's approval of an inter-precursor trade is presumed unless the EPA disapproves the trade during its comment period, according to TCEQ guidance memorandum.

Response: The commenter correctly points out that the D.C. Circuit (the court) vacated the portion of the EPA's NNSR regulation at 40 CFR 51.165 that allows IPT to meet the offset requirements for ozone. Following the court's decision, the EPA notified the TCEQ in a letter dated June 17, 2021, that the EPA would no longer approve any IPT trades under the previously approved Texas SIP rules based on the court decision. In a response to the EPA dated June 25, 2021, the TCEQ confirmed that its NNSR IPT provisions cannot function without the EPA's prior approval of each trade, and that the TCEQ has not approved any IPT request in the past without prior approval from the EPA.[2]

The TCEQ also confirmed that without the IPT provisions, its regulations continue to meet the NNSR program requirements at 40 CFR 51.165. EPA agrees that, without the IPT provisions, the Texas SIP regulations meet the CAA's NNSR requirements. The EPA-approved Texas SIP already includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). Based on EPA's review of Texas SIP regulations for the NNSR program requirements for serious ozone nonattainment areas, we are approving this portion of the SIP revision.

The EPA does not agree with the commenters that the EPA's approval of an IPT can be presumed under the Texas SIP unless the EPA disapproved the trade during the comment period. Texas has not submitted, and the EPA has not approved the State's guidance document, described by the commenters, as part of the Texas SIP. Nothing in the previously approved Texas regulations establishes a presumption of the EPA's approval of an IPT if the EPA does not communicate its disapproval during a relevant public notice and comment period.

In addition, the EPA's commitment that it will not approve IPT for ozone because of the court's decision is sufficient to render the Texas IPT provisions inoperative for ozone. Texas has confirmed that IPT is not permitted under its regulation without prior EPA approval of a trade. Finally, we would work with Texas to get the inoperative IPT provisions removed in future SIP revisions.

As stated in our proposal, NNSR permitting program requirements

[1] Henceforth, we refer to Earthjustice and ALFA as ''commenters.''

[2] The text of each letter is available in the docket to this action.

specific to serious ozone nonattainment areas are reflected in CAA section 182 and further defined in 40 CFR part 51, subpart I (Review of New Sources and Modifications). The EPA and states may rely on previously approved SIP provisions to meet these NNSR requirements. One way that a state may do so is by providing a SIP revision certifying that the existing SIP requirements are sufficient to meet the requirements of the new classification, as Texas has done here. EPA has reviewed this submission and agrees that the existing provisions referenced in the Texas certification are sufficient to meet the NNSR requirements in 40 CFR 51.165.

These comments did not result in changes to the EPA's proposed approval.

III. Final Action

We are approving portions of the State Implementation Plan (SIP) revisions submitted to the EPA by the State of Texas for the 2008 8-hour ozone NAAQS. Specifically, we are approving the portion of the SIP revision that describes how CAA requirements for NNSR are met in the DFW and HGB serious ozone nonattainment areas.

IV. Environmental Justice Considerations

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.'' [3] For this final action, the EPA conducted screening analyses using the EJScreen (Version 2.0) tool. We conducted the analyses for the purpose of providing information to the public, not as a basis of our final action. The EJScreen analysis reports are available in the public docket for this action. The EPA found, based on the EJScreen analyses, that this final action will not have disproportionately high or adverse human health or environmental effects on communities with EJ concerns, as the changes to NNSR will result in an assurance that the applicable Texas NNSR requirements for the various ozone nonattainment classifications meet the CAA requirements.

[3] *https://www.epa.gov//environmentaljustice/learn-about-environmental-justice.*

V. Statutory and Executive Order Reviews

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

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: September 26, 2022.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection

Agency amends 40 CFR part 52 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 SS—Texas

■ 2. In § 52.2270, paragraph (e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry at the end of the table for ''Nonattainment New Source Review for the 2008 Ozone NAAQS'' to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	* *	*	* *	*
Nonattainment New Source Review for the 2008 Ozone NAAQS.	Dallas-Fort Worth and Houston-Galveston-Brazoria nonattainment areas.	May 13, 2020	October 3, 2022 [Insert **Federal Register** citation].	For the Serious classification.

[FR Doc. 2022–21247 Filed 9–30–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2022–0421; FRL–10012–02–R1]

Maine: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Maine has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Maine's application and has determined that these revisions satisfy all requirements needed to qualify for final authorization. Therefore, we are taking direct final action to authorize the State's changes. In the ''Proposed Rules'' section of this issue of the **Federal Register**, the EPA is also publishing a separate document that serves as the proposal to authorize these revisions. Unless the EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Maine's revisions to its hazardous waste program will take effect.

DATES: This final authorization will become effective on December 2, 2022, unless the EPA receives adverse written comments by November 2, 2022. If the EPA receives any such comment, the EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2022–0421, at *https://www.regulations.gov/.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management, UST and Pesticides Section; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; telephone number: (617) 918–1647; email address: *leitch.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in Maine, including the issuance of new permits implementing those requirements, until Maine is granted authorization to do so.

B. What decisions has the EPA made in this rule?

On June 8, 2022, Maine submitted a complete program revision application seeking authorization of revisions to its hazardous waste program. The EPA concludes that Maine's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants final

authorization to Maine to operate its hazardous waste program with the revisions described in its authorization application, and as listed below in Section G of this document.

The Maine Department of Environmental Protection (MDEP) has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of today's authorization decision?

This decision serves to authorize Maine for the revisions to its authorized hazardous waste program described in its authorization application. These changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. Maine will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Maine are already effective under State law and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

Along with this direct final rule, the EPA is publishing a separate document in the ''Proposed Rules'' section of this issue of the **Federal Register** that serves as the proposal to authorize Maine's program revisions. The EPA did not publish a proposal before today's rule because the EPA views this as a routine program change and does not expect comments that oppose this approval. The EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, the EPA will withdraw today's direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of Maine's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. The EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If the EPA receives comments that oppose only the authorization of a particular revision to Maine's hazardous waste program, the EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Maine previously been authorized for?

Maine initially received final authorization effective May 20, 1988 (53 FR 16264) to implement the RCRA hazardous waste management program. The EPA granted authorization for revisions to Maine's regulatory program on the following dates: June 24, 1997, effective August 25, 1997 (62 FR 34007); and November 9, 2004, effective January 10, 2005 (69 FR 64861); and June 26, 2020, effective immediately (85 FR 38330).

G. What revisions is the EPA proposing with this proposed action?

On June 8, 2022, Maine submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Maine seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists Maine's analogous requirements that are being recognized as no less stringent than the analogous Federal requirements.

Maine's regulatory references are to the Hazardous Waste Management Rules, 06–096 of the Code of Maine Rules (CMR), Chapters 850–858, as amended effective October 6, 2021, and to the Rules Concerning the Processing of Applications and Other Administrative Matters, 06–096 CMR, Chapter 2, as amended effective June 9, 2018. Maine's statutory authority to operate its hazardous waste program is found in the Hazardous Waste, Septage, and Solid Waste Management Act, 38 M.R.S. sections 1301 through 1319–Y.

The EPA proposes to determine, subject to public review and comment, that Maine's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA is proposing to authorize Maine for the following program revisions:

TABLE 1—MAINE'S ANALOGS TO THE FEDERAL REQUIREMENTS

Federal requirement	**Federal Register** page and date	Analogous state authority
Checklist (CL) 71: Mining Waste Exclusion II	55 FR 2322; January 23, 1990	06–096 Code of Maine Rules (C.M.R.) Ch. 857.3C and 857.7A(1)(a). More stringent provisions: Ch. 850.3(A)(4)(a)(ix) NOTE.
CL 77: HSWA Codification Rule, Double Liners; Correction.	55 FR 19262; May 9, 1990	06–096 C.M.R. Ch. 854.9(B)
CL 79: Organic Air Emission Standards for Process Vents and Equipment Leaks.	55 FR 25454; June 21, 1990	06–096 C.M.R. Ch. 850.3(A)(2); Ch. 854. 6(C)(3), (C)(5), (C)(10(b), (C)(14), and (C)(20); Ch. 855. 9(A)(3), (A)(5), (A)(10)(b), (A)(14), and (A)(18); Ch. 856.10(B) and 10(B)(21).
CL 82: Wood Preserving Listings	55 FR 50450; December 6, 1990	06–096 C.M.R. Ch. 850.3(C)(2)(a) and Appendix VII and VIII; Ch. 851.13(G); Ch. 854.12(B)(1) and 854.15; Ch. 855.9(D) and 855.9(L); and Ch. 856.10(L).

TABLE 1—MAINE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Federal requirement	Federal Register page and date	Analogous state authority
		More stringent provisions: 06–096 C.M.R. Ch. 854.15(A)(2) and 854.15(B)(1).
CL 87: Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment.	56 FR 19290; April 26, 1991	06–096 C.M.R. Ch. 854.6(C)(20); Ch. 855.9(A)(3), 855.9(A)(10)(b), 855.9(A)(18); and Ch. 856.10(B)(21).
CL 90: Mining Waste Exclusion III	56 FR 27300; June 13, 1991	More stringent provisions: 06–096 C.M.R. Ch. 850.3(A)(4)(a)(ix) NOTE
CL 92: Wood Preserving Listings; Technical Corrections.	56 FR 30192; July 1, 1991	06–096 C.M.R. Ch. 850.3(C)(2)(a); Ch. 851.8(B)(2); 851.8(B)(3); and 851.13(G); Ch. 854.15(B); Ch. 855.9(L); and Ch.856.10(L).
CL 97: Exports of Hazardous Waste; Technical Correction.	56 FR 43704; September 4, 1991	06–096 C.M.R. Ch. 857.7(D).
CL 100: Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units.	57 FR 3462; January 29, 1992	06–096 C.M.R. Ch. 854.3(HH); 854.6(C)(7); 854.8(B); 854.8(C); 854.8(H); 854.9(B); 854.9(C); 854.9(E); 854.9(G); 854.11(B) and (C); 854.12(B) and (C); Ch. 855.9(A)(5); 855.9(A)(7); 855.9(A)(10)(b); 855.9(B), (E), (F), and (H); Ch. 856.10(C) and 856.10(F).
		More stringent provisions: Ch. 854.8(B)(1) and (2); 854.9(B)(1), 854.9(B)(2)(b); 854.9(B)(5); 854.9(C)(2); 854.11(B)(1), (3), (4), (5) and (6); and 854.19.
CL 113, 113.1, 113.2: Consolidated Liability Requirements.	53 FR 33938; September 1, 1988; 56 FR 30200; July 1, 1991; 57 FR 42832; September 16, 1992.	06–096 C.M.R. Ch. 854.6(C)(17); and Ch. 855.9(A)(17).
		More stringent provisions: Ch. 854.6(C)(17)(e)
CL 118: Liquids in Landfills II	57 FR 54452; November 18, 1992	06–096 C.M.R. Ch. 854.6(C)(3) and 854.8(C)(5); Ch. 855.9(A)(3) and 855.9(H).
		More stringent provisions: Ch. 854.8(C)(5)(a).
CL 120: Wood Preserving; Amendments to Listings and Technical Requirements.	57 FR 61492; December 24, 1992	06–096 C.M.R. Ch. 850.3(C)(3); Ch. 854.15.
		More stringent provisions: Ch. 854.15(B)(1) and Ch. 855.9(L).
CL 131: Recordkeeping Instructions; Technical Amendment.	59 FR 13891; March 24, 1994	06–096 C.M.R. Ch. 854.6(C)(10); and Ch. 855.9(A)(10).
CL 140: Carbamate Production Listings	60 FR 7824; February 9, 1995 as amended April 17, 1995 (60 FR 19165) and May 12, 1995 (60 FR 25619).	06–096 C.M.R. Ch. 850.3(C)(3), 850.3(C)(4)(e), 850.3(C)(4)(f); 850, Appendix VII and VIII.
CL 148: RCRA Expanded Public Participation	60 FR 63417; December 11, 1995	06–096 C.M.R. Ch 2.2(A); 2.10(B)(5); 2.13(A); 2.16; Ch. 856.5, 856.10(A)(12), 856.10(A)(15) and (16), 856.10(B)(20), 856.10(D) and 856.16.
CL 152: Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.	61 FR 16290; April 12, 1996	06–096 C.M.R. Ch.851.4(B); Ch. 853.8(C), 853.11(G) and 853.11(I); Ch. 854.6(C)(14) and 854.8(C)(2); Ch. 855.9(A)(2), 855.9(A)(14) and 855.9(N); Ch. 857.7(D), 857.8(C) and 857.9(D); Ch. 858.7(C).
CL 153: Conditionally Exempt Small Quantity Generator (CESQG) Disposal Options under Subtitle D).	61 FR 34252; July 1, 1996	More stringent provision 06–096 C.M.R. Ch 850.3(A)(5).
CL 156: Military Munitions Rule	62 FR 6622; February 12, 1997	06–096 C.M.R. Ch. 851.13(F); Ch. 853.10(C); Ch. 854.6(C)(15), 854.16(B)(2), 854.16(C)(3) and 854.16(D); Ch. 855.3 and 855.9(M); Ch. 856.5(C), 856.18(A)(4) and 856.18(B); Ch. 857.3(K), 857.5 and 857.10.
CL 159: Conformance with the Carbamate Vacatur.	62 FR 32974; June 17, 1997	06–096 C.M.R. Ch. 850.3(C)(3), 850.3(C)(4)(f), App. VII and App. VIII; Ch. 852.13 and 852.14(A).
CL 167E: Bevill Exclusion Revisions and Clarifications.	63 FR 28556; May 26, 1998	06–096 C.M.R. Ch. 850.3(A)(4).
CL 169: Petroleum Refining Process Listings	63 FR 42110; August 6, 1998, as amended October 9, 1998 (63 FR 54356).	06–096 C.M.R. Ch. 850.3(C)(3) and App. VII; Ch. 852.13 and 852.14.
CL 179: Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards.	64 FR 25408; May 11, 1999	06–096 C.M.R. Ch. 851.4(A), 851.8(B)(5), 851.9(G); and Ch. 852.3(D), 852.3(I), 852.10.
CL 182: Hazardous Air Pollutant Standards for Combustors.	64 FR 52828; September 30, 1999, as amended November 19, 1999 (64 FR 63209).	06–096 C.M.R. Ch. 854.13(A)(2), 854.13(B)(5), 854.16(B)(1); Ch. 855.9(A)(16), 855.9(I); Ch. 856.10(D)(1), (2) and (3), and 856.11(A)(6).

TABLE 1—MAINE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Federal requirement	**Federal Register** page and date	Analogous state authority
CL 183: Land Disposal Restrictions Phase IV—Technical Corrections.	64 FR 56469; October 20, 1999	06–096 C.M.R. Ch. 850.3(C)(3); Ch. 851.8(B)(5) and 851.8(G); Ch. 852.10, 852.14(A) and 852.14(D).
CL 187: Petroleum Refining Process Wastes—Clarification.	64 FR 36365; June 8, 2000	06–096 C.M.R. Ch. 850.3(C)(2)(a).
CL 189: Chlorinated Aliphatics Production Listings.	65 FR 67067; November 8, 2000	06–096 C.M.R. Ch. 850.3(C)(3), 850, Appendix VII and VIII; Ch. 852.13 and 852.14(A).
CL 195: Inorganic Chemical Manufacturing Listings.	66 FR 58257; November 20, 2001, as amended April 9, 2002 (67 FR 17119).	06–096 C.M.R. Ch. 850.3(C)(3) and 850, Appendix VII; Ch. 852.13 and 852.14.
CL 198: Hazardous Air Pollutant Standards for Combustors: Corrections.	67 FR 6968; February 14, 2002	06–096 C.M.R. Ch. 854.13 and Ch. 856.10(D).
CL 199: Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste.	67 FR 11251; March 13, 2002	06–096 C.M.R Ch. 850.3(A)(4)(a).
CL 200: Zinc Fertilizer Rule	67 FR 48393 July 24, 2002	06–096 C.M.R. Ch. 850.3(A)(4)(a) and Ch. 852.14(A).
CL 206: Nonwastewaters from Dyes and Pigments.	70 FR 9138; February 24, 2005	06–096 C.M.R. Ch. 850.3(C)(3) and 850, Appendix VII and VIII; Ch. 852.13 and 852.14.
CL 207: Uniform Hazardous Waste Manifest Rule.	70 FR 10776; March 4, 2005	06–096 C.M.R. Ch. 850.3(A)(7)(e); Ch. 851.8(A)(4) and 851.8(A)(5); Ch. 854.6(C)(13); Ch. 855.9(A)(13) & 855.9(A)(15); Ch. 857.3(C), (I) and (J), 857.5(A), 857.7(B), 857.7(D), 857.7(I), 857.8(A)(1), 857.8(C), 857.8(E), 857.8(I), 857.9, 857.9(A)(3), 857.9(A)(7), 857.9(B) and 857.9(D).
CL 222: OECD Requirements; Export Shipments of Spent Lead-Acid Batteries.	75 FR 1236; January 8, 2010	06–096 C.M.R. Ch. 853.8(C); Ch. 854.6(C)(2) and 854.6(C)(15); Ch. 855.9(A)(2); Ch. 857.7(D), 857.8(C) and 857.9(D); Ch. 858.12.
CL 225: Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, and Hazardous Substances.	75 FR 78918; December 17, 2010	06–096 C.M.R. Ch. 850.3(C)(4) and 850, Appendix VIII.
CL 232: Revisions to the Export Provisions of the Cathode Ray Tube Rule.	79 FR 36220; June 26, 2014	06–096 C.M.R. Ch. 857.7(D)(1) and (2); Ch. 858.5(A); 858.7(O)(1) and (2).
CL 235: Disposal of Coal Combustion Residuals from Electric Utilities.	80 FR 21302; April 17, 2015	06–096 C.M.R. Ch. 850.3(A)(4)(a)(x).
CL 236: Imports and Exports of Hazardous Waste.	81 FR 85696; November 28, 2016, as amended August 29, 2017 (82 FR 41015) and August 6, 2018 (83 FR 38263).	06–096 C.M.R. Ch. 850.3(A)(4)(a)(xii) and 850.3(A)(4)(b)(iii); Ch. 851.4(B); Ch. 853.8(C) and 853.11(O); Ch. 854.6(C)(2) and 854.6(C)(15); Ch. 855.9(A)(2) and (15); Ch. 857.7(D), 857.7(D)(1), 857.7(D)(2), 857.8(C), 857.9(D) and (E); Ch. 858.7(C), 858.7(O), 858.8(A), 858.9(A), 858.12 and 858.13.
CL 238: Confidentiality Determinations for Hazardous Waste Export and Import Documents.	83 FR 60894; December 26, 2017	06–096 C.M.R. Ch. 857.7(D), 857.7(D)(2) and 857.7(D)(3); Ch. 858.7(O)(3).
Special Consolidated Checklist for the Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (Checklists: 154, 154.1, 154.2, 154.3, 154.4, 154.5, 154.6, 163, 177).	59 FR 62896; December 6, 1994, as amended May 19, 1995 (60 FR 26828), September 29, 1995 (60 FR 50426), November 13, 1995 (60 FR 56952), February 9, 1996 (61 FR 4903), June 5, 1996 (61 FR 28508), November 25, 1996 (61 FR 59932). 62 FR 64636; December 8, 1997, and 64 FR 3382; January 21, 1999.	06–096 C.M.R. Ch. 851.8(B)(6); Ch. 854.6(C)(3), 854.6(C)(5), 854.6(C)(9)(b), 854.6(C)(13), 854.6(C)(20), 854.9(C)(5), 854.12(B)(1) 854.12(C)(9), and 854.16(B)(1); Ch. 855.9(A)(3), 855.9(A)(5), 855.9(A)(9)(b), 855.9(A)(13), 855.9A (17), 855.9(A)(18), 855.9(C), 855.9(D) and 855.9(E); Ch. 856.10(B)(3), 856.10(C)(1), 856.10(E), 856.10(H) and 856.13(A)(7).
Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules (Checklists 231 and 239).	79 FR 7518; February 7, 2014, and 83 FR 420; January 3, 2018.	06–096 C.M.R. Ch. 854.6(C)(14) and 854.6(C)(20); Ch. 855.9(A)(14) and 855.9(A)(18); Ch. 857.3(D), 857.3(E), 857.3(I), 857.3(L), 857.3(O), 857.5(A), 857.5(B), 857.5(E), 857.5(F), 857.5(G), 857.5(I), 857.5(H), 857.7(A)(1)(e), 857.8(A)(1), 857.8(A)(5), 857.8(C), 857.8(D), 857.8(E), 857.8(F), 857.8(G), 857.8(H), 857.8(I), 857.9(A) and 857.9(C). More stringent provisions: Ch. 857.8(B) and 857.9(A)(3)(d).

TABLE 1—MAINE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Federal requirement	Federal Register page and date	Analogous state authority
Recycled Used Oil Management Standards (40 CFR 261.6(a)(4), the recycled used oil exclusion).	57 FR 41566; September 10, 1992	06–096 C.M.R. Ch. 850.3A(4)(a)(xxv).

EPA is also authorizing Maine for the land disposal restrictions (LDR) in 40 CFR 268.30. In addition, EPA is authorizing Maine for revisions to previously authorized rules, they include: 850.3(A)(4)(a)(xxiv)—clarifying the applicability of the tolling agreement or the need to overcome the rebuttable presumption if there is no tolling agreement in the used cutting oil exclusion; 858.4(N)—clarifying the definition of ''recycling facility'' to mean a destination facility as defined in 40 CFR 273.9 or a facility authorized to perform the universal waste recycling activity; 858.5(A)—clarifying that the intentional breakage of universal waste is considered treatment; and 854.8(A)(3)(a), 854.9(A)(2), 854.10(A)(1)(b), 854.11(A)(2) and 854.16(A)(1)(a)—these revisions, which incorporate drinking water guidelines, support the implementation of other provisions of the Maine hazardous waste program, as they are utilized for the limited purpose of determining whether waste has migrated to surface or groundwaters.

EPA cannot delegate certain federal requirements associated with the federal manifest registry system, the electronic manifest system, and international shipments (*i.e.,* import and export provisions). Maine has adopted these requirements and appropriately preserved the EPA's authority to implement them (see 06–096 C.M.R. Ch. 857, sections 3(D), 3(E), 3(L), 3(O), 5(F)(2), 5(G), 7(D), 8(A)(1)(b), 8(C), 9(A)(6) and 9(D); and Ch. 858 sections 7(O) and 13).

There are several Federal rules that have been vacated, withdrawn, or superseded. As a result, authorization of these rules may be moot. However, for purposes of completeness, these rule checklists are included here with an explanation as to the rule's status in Maine. These checklists include: CL 216: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthetic Gas (73 FR 57, January 2, 2008); CL 221: Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); CL 224: Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010); and CL 234: Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015)—CLs 216, 221, and 224 have been vacated. CL 234 implements the vacatur of these provisions. Maine did not adopt the exclusions contained in CLs 216, 221, or 224; therefore, the adoption of CL 234 in Maine would be inconsequential. Maine's authorized program continues to be equivalent to and no less stringent than the Federal program without having to make any conforming changes pursuant to these rule checklists.

H. Where are the revised State rules different from the Federal rules?

When revised State rules differ from the Federal rules in the RCRA State authorization process, EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

1. Maine Requirements That Are Broader in Scope

Maine's hazardous waste program contains certain provisions that are broader than the scope of the Federal program. These broader in scope provisions are not part of the program the EPA is proposing to authorize. The EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by State law. In 2002, in response to vacaturs ordered by the court, the EPA codified the decision that the Toxicity Characteristic Leaching Procedure (TCLP) may not be used for determining whether manufactured gas plant (MGP) waste is hazardous under RCRA. Maine has not adopted this change; therefore it regulates MGP waste that is determined to be hazardous using the TCLP. State-only wastes make Maine's universe of regulated hazardous waste larger than the EPA's and is therefore broader in scope.

2. Maine's Requirements That Are More Stringent Than the Federal Program

Maine's hazardous waste program contains several provisions that are more stringent than the Federal RCRA program. More stringent provisions are part of a federally-authorized program and are, therefore, federally enforceable. Under this action, the EPA would authorize every provision in Maine's program that is more stringent. The provisions of the proposed program revision that are more stringent are noted in Table 1. They include, but are not limited to, the following:

(a) There are several conditional exclusions from the definition of solid waste that Maine has not adopted. They include the exclusions at: 40 CFR 261.4(a)(9), (12), (18), (19) and (20). In addition, there are also exclusions from the definition of hazardous waste that Maine has not adopted. They include the exclusions at 40 CFR 261.4(b)(4) for the co-disposed wastes associated with coal combustion residuals and 40 CFR 261.4(b)(7) for mining wastes. Maine regulates mining waste in Chapter 200. Therefore, Maine's regulations are more stringent with respect to the exclusions listed here.

(b) Maine regulates Conditionally Exempt Small Quantity Generators (CESQGs) more stringently by not allowing CESQG waste disposal in Subtitle D landfills and requiring the waste to be shipped on a hazardous waste manifest.

(c) There are various permitting provisions that Maine has adopted that include more stringent requirements. They include the following: all hazardous waste landfills, surface impoundments and wastes piles must have double liners; a leachate detection, collection and removal system must be installed between the top synthetic liner and bottom composite liner in addition to one installed immediately above the top synthetic liner for all land disposal units; the demonstration for disposal of non-hazardous liquid waste in landfills is not allowed; all new drip pads must be constructed with a liner, and a leak detection and collection system; the use

of the financial test or corporate guarantee for liability coverage is not allowed; and, Maine did not adopt the provisions in 40 CFR part 266, subpart H, boilers and industrial furnaces are regulated as incinerators in Maine.

(d) Maine's manifest recordkeeping requirements are also more stringent. Records must be kept for the life of the facility if that facility is the ultimate destination for the waste. In addition, for bulk shipments where a manifest has not been received by the designated facility (unmanifested waste), or where a paper manifest or shipping paper is used, the facility must send a copy of the manifest or shipping paper to Maine DEP within 7 days.

(e) Maine did not adopt the 40 CFR part 266, subpart M provisions for military munitions. If munitions are a waste and also a hazardous waste, then they are regulated under Maine's hazardous waste program, except under an emergency response per the provisions in Chapter 856, section 18(A)(4).

(f) The EPA excludes mixtures of non-hazardous waste with certain listed hazardous wastes from the definition of hazardous waste if certain conditions are met. The types of mixtures and associated conditions for exclusion are listed in 40 CFR 261.3(a)(2)(iv) and are generally referred to as the ''headworks exemption.'' Maine does not include these provisions in their regulations but regulates these mixtures as a hazardous waste, see Chapter 850, section 3(A)(3)(b)(ii) and 3(A)(3)(b)(iii).

(g) The EPA conditionally excludes certain wastes generated from the treatment, storage or disposal of listed wastes from hazardous waste regulation in 40 CFR 261.3(c)(2)(ii). In 40 CFR 261.4(b)(15), the EPA conditionally excludes leachate or gas condensate collected in landfills where certain inorganic chemical manufacturing wastes (namely, K169, K170, K171, K172, K174, K175, K176, K 177, K178, and K181) have been disposed. Maine regulates any waste generated from the handling of a hazardous waste as hazardous waste, including any sludge, spill residue, ash, emission control dust, and leachate, see Chapter 850, section 3(A)(3)(c)(ii).

I. Who handles permits after the authorization takes effect?

Maine will continue to issue permits covering all the provisions for which it is authorized and will administer the permits it issues. EPA will implement and issue permits for any HSWA requirements for which Maine is not yet authorized in the future.

J. How would this action affect Indian Country (18 U.S.C. 115) in Maine?

Maine is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the land of the Houlton Band of Maliseet Indians; the Mi'kmaq Nation; the Passamaquoddy Tribe at Pleasant Point and Indian Township; and the Penobscot Nation. In its Attorney General's statement, as amended on July 25, 2022, the State asserted it has jurisdiction in Indian country pursuant to the Act to Implement the Maine Indian Claims Settlement (Maine Implementing Act), 30 M.R.S. sections 6201 to 6214, and the federal Maine Indian Claims Settlement Act, 25 U.S.C. 1721 to 1735 (former codification). Because of the significant time and resources needed to address the State's assertion of authority to regulate activities on Indian country under RCRA, the EPA is not making a determination on such authority as part of the decision. This approach allows EPA to move forward with approval of the State's program elsewhere in the State while it continues to work on the State's assertion in Indian country. EPA is committed to doing so following consultation with the federally recognized Indian tribes in Maine, consistent with Executive Order 13175 (Nov. 6, 2000) and EPA's Policy on Consultation and Coordination with Indian Tribes (May 4, 2011). Therefore, this action has no effect on Indian country. EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

K. What is codification and will the EPA codify Maine hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Maine's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart U for the authorization of Maine's program at a later date.

L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's authorization of Maine's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the

requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in taking this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). ''Burden'' is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and Recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 23, 2022.

David W. Cash,

Regional Administrator, U.S. EPA Region I.

[FR Doc. 2022–21321 Filed 9–30–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220926–0200]

RIN 0648–BH70

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Electronic Monitoring Program Regulations for Bottom Trawl and Non-Whiting Midwater Trawl Vessels in the Pacific Coast Groundfish Trawl Catch Share Program

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

ACTION: Final rule.

SUMMARY: This rule will implement electronic monitoring (EM) program regulations for vessels using groundfish bottom trawl and non-whiting midwater trawl gear in the Pacific Coast Groundfish Trawl Catch Share Program. This action will allow vessels using bottom trawl and non-whiting midwater trawl gear to use EM in place of human observers to meet requirements for 100 percent at-sea catch monitoring. This action is intended to increase operational flexibility and reduce monitoring costs for vessels in the groundfish trawl fishery. This rule also revises some language in existing regulations for EM vessels and EM service providers to clarify and streamline EM program requirements.

DATES: Effective November 2, 2022.

Electronic Access

This final rule is accessible at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region website at: *https://www.fisheries.noaa.gov/species/west-coast-groundfish* and at the Pacific Fishery Management Council's website at *https://www.pcouncil.org/managed_fishery/electronic-monitoring/.*

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206–526–4656, or email: *colin.sayre@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) specifies management measures for over 90 different groundfish species in Federal waters off the West Coast states. Target species in the commercial fishery include Pacific whiting (hake), sablefish, dover sole, and rockfish, which are harvested by vessels primarily using midwater trawl and bottom trawl gear, and to a lesser extent ''fixed gear'' fish pots and longline. The trawl fishery is managed under the West Coast Groundfish Trawl Catch Share Program (Catch Share Program), which was implemented through Amendment 20 to the FMP in January 2011. The Catch Share Program consists of an individual fishing quota (IFQ) program for the shorebased trawl fishery (including whiting and non-whiting sectors), and cooperatives for the at-sea mothership (MS) and catcher/processor (C/P) trawl fisheries (whiting only). The Catch Share Program requires 100 percent monitoring of vessels at sea, and dockside when offloading, to ensure accountability for all landings and discards of allocated IFQ species. The West Coast Groundfish Observer Program (WCGOP) is responsible for the training, briefing, and in-season support of at-sea observers in the Catch Share Program. WCGOP helps to manage and review the catch data collected by observers while at sea.

Vessel owners and first receivers are responsible for obtaining and funding catch share observers and catch monitors as a condition of participating in the Catch Share Program. To provide a potential cost-saving alternative to human observers, the Pacific Fishery Management Council, NMFS, and groundfish stakeholders have been developing an electronic monitoring (EM) program as an option to meet at-sea monitoring requirements of the Catch Share Program. EM uses cameras and associated sensors to record and monitor fishing activities while a vessel is operating at sea. Video data is later reviewed by an analyst onshore to collect catch and effort information. EM can reduce monitoring costs for some vessels because it does not require deploying a human observer to the vessel, and associated, labor, travel, and logistical expenses.

NMFS published a final rule on June 28, 2019, (84 FR 31146) that established the overall EM program requirements, including an application process and responsibilities for participating vessel owners and operators and EM service providers, and requirements for first receivers receiving catch from EM trips. These rules also detailed gear-specific protocols for the use of EM on whiting and fixed gear trips. As discussed in these rules, the Council originally considered including regulations for all gear types used in the Catch Share Program (whiting, non-whiting midwater, bottom trawl, and fixed gear)

in one regulatory amendment. However, at the time, additional information was needed to finalize protocols for the use of EM on trips using bottom trawl and non-whiting midwater gear. In April, September, and November 2017, the Council discussed various aspects of the EM program and took final action to recommend the use of EM with bottom trawl and non-whiting midwater trawl gear.

At the April and June 2020 meetings, the Council considered and ultimately recommended other minor regulatory changes to existing EM program regulations implemented under the June 2019 final rule (84 FR 31146; June 28, 2019). These regulatory changes were identified and developed from information collected through exempted fishing permits (EFPs) used to test EM systems and protocols, and are intended to clarify and streamline EM program requirements. These regulatory changes are included under this rule, and are described in the following sections of this preamble.

At the Council's recommendation, NMFS published an interim final rule on October 6, 2021 (86 FR 55525) to delay the start date for the EM program until at least January 1, 2024, and only after NMFS issues a public notice at least 90 calendar days before it will begin accepting applications for EM authorizations for the first year of the program. NMFS approved the recommendation, to strengthen Council and industry support for the EM program, increase participation when the program is implemented, and to provide additional time for industry and prospective service providers to prepare for implementation. The full rationale for the Council's recommendation to delay EM program implementation is detailed in the March 1, 2022 proposed rule for this action (87 FR 11382), and is not repeated here.

Consistent with the October 6, 2021 interim final rule (86 FR 55525), the EM program for the trip types included in this final rule will not be effective before January 1, 2024. A more extensive discussion of the development of these regulatory changes and the overall EM program is available in the March 1, 2022 proposed rule for this action (87 FR 11382) and is not repeated here.

II. Final Measures

Measures for Using EM on Bottom Trawl and Non-Whiting Midwater Trawl Trips

The June 2019 final rule (84 FR 31146; June 28, 2019) implemented the overall framework and general requirements for the EM program, including an application process for vessel owners and EM service providers and responsibilities for all program participants. This rule will allow vessels participating in the EM program to use bottom trawl gear or midwater trawl gear targeting non-whiting species, under the same general program requirements already in place for trips targeting whiting or using fixed gear. Vessel owners will be able to apply to NMFS to use EM in place of human observers to meet the 100 percent at-sea monitoring requirements of the Catch Share Program for bottom trawl or non-whiting midwater trawl trips. Vessel owners intending to use EM for bottom trawl or non-whiting midwater trawl trips are required to develop a vessel monitoring plan (VMP) which documents installation of EM systems, including specific plans and procedures for system operation, maintenance, and catch handling. This information will be submitted to NMFS for review as part of the vessel's application for authorization to use EM. The vessel operator is required to record discards of IFQ species on a logbook, which will initially be used to debit quota pounds from the vessel's account. The EM video data will then be reviewed by the vessel's EM provider and used to validate the discards reported in the logbook. The amount of video reviewed to audit the logbook will be as specified by NMFS in consultation with the Council and based on performance.

A detailed description of EM program requirements is contained in the September 2016 proposed rule (81 FR 61161; September 6, 2016) and June 2019 final rule (84 FR 31146; June 28, 2019) and is not repeated here. This proposed rule revises the gear-specific requirements of the EM program to add requirements for trips using bottom trawl and non-whiting midwater trawl gear, which are described in the following sections of this preamble.

Catch Retention

Under this rule, two different discard and catch retention rules can be used with EM on bottom trawl and non-whiting midwater trawl trips: ''maximized'' or ''optimized'' retention. Vessel operators will be able choose the preferred retention rule under which they plan to operate for a fishing trip using EM. As part of the required declaration report, prior to departing on a fishing trip, vessel operators will declare whether they intend to use maximized or optimized retention rules for EM trips. Declaration reports are described in additional detail in following sections of this preamble.

Under ''maximized'' retention requirements, vessels on bottom trawl and non-whiting midwater trawl trips do not sort or discard catch at sea, and are required to retain all catch until landing, with exceptions for prohibited and protected species.

Under ''optimized'' retention, EM vessel operators are allowed to discard species that can be differentiated on camera, and must retain those species that cannot be easily distinguished in video data. Some groundfish species are difficult to distinguish from each other without close inspection of certain physical features which cannot be easily viewed using video data. Species easily differentiated that may be discarded will be listed in § 660.604(p).

Vessel operators using EM on bottom trawl and non-whiting midwater trawl trips are responsible for ensuring all discarded catch is discarded following catch handling instructions in the NMFS-accepted VMP. This rule will allow NMFS to specify alternate retention requirements in a NMFS-accepted VMP through the process described at § 660.604(f), after consultation with the Council and issuance of a public notice of the changes.

Both retention rules have trade-offs, depending on the target species and gear type used. ''Maximized'' retention simplifies catch handling at sea, and video review, as only prohibited and protected species discards would need to be differentiated on camera. ''Optimized'' retention allows vessel operators to discard catch that can be differentiated on camera, and reduces the burden of having to store and later dispose of unmarketable or otherwise undesirable fish. The Council determined that allowing vessel operators to choose the retention rules that best fit the operation of their gear and vessel, as well as the characteristics of the target species, would provide operational flexibility while ensuring the reliability of EM video data for discard accounting.

This rule also expands the definition of prohibited species for the purposes of retention requirements under EM regulations at § 660.601. California Department of Fish and Wildlife (CDFW) recommended this regulatory change to ensure state-managed species are treated in the same manner as prohibited species if the vessel operator, or first receiver, does not have the appropriate state permit to land and sell these particular species of fish. Because the retention/discard species list can change through time, CDFW recommended to the Council regulatory language that would cover any state-

managed species to eliminate the need for further revisions should other state-managed species be added to or removed from the lists.

EM Declaration and Switching Between EM and Observers

Under the regulations being finalized through this rule, vessels on bottom trawl and non-whiting midwater trawl trips are allowed to switch between using EM systems on some trips and human observers on others. West Coast fisheries regulations at § 660.13(d) require vessel operators to declare the fishery sector in which they will participate, the area to be fished, and the gear and monitoring type (EM or observers) they intend to use prior to leaving port, with limited exemptions. The gear types or sectors, and monitoring types that must be declared are listed in regulations at § 660.13(d)(4)(iv)(A). These declarations are sent through phone call to the NMFS Office of Law Enforcement (OLE), and are binding for the duration of the fishing trip for which they have been made. Though catcher vessels participating in the Pacific whiting fisheries may change their declarations between the mothership and shorebased sectors while on the same trip, monitoring type declarations cannot be changed while at sea. This rule modifies the list of declarations to include EM as a monitoring type that may be selected and declared on trips with bottom trawl and non-whiting midwater trawl gear.

Under existing regulations at § 660.604(e)(3)(ii), EM vessel operators are required to submit annual tentative fishing plans to NMFS. Tentative fishing plans are used by WCGOP and observer providers to plan training and deployment of observers. Tentative fishing plans are a description of the vessel owner's fishing plans for the year, including which fishery the vessel owner plans to participate in, from what ports, and when the vessel owner intends to use EM and observers. The information provided in tentative fishing plans is for purposes of planning observer training and deployments, and is not binding.

Under the regulations finalized through this rule, vessel owners and operators taking bottom trawl and non-whiting midwater trawl trips would not be restricted on the number of times they could switch between EM and observers during the year. Vessel operators are required to communicate their intended monitoring type before fishing through declarations to NMFS OLE. The Council determined that by using tentative fishing plans, disruption to observer training and deployment would be mitigated should vessel operators choose to switch monitoring types, therefore eliminating the need to require limits on switching monitoring types. The option to switch between EM and observers provides vessel operators flexibility to use the best monitoring strategy when considering efficiency, cost, or other operational factors of their individual fishing and business plans at a given time. Under the regulations finalized in this rule, there is no limit on switching between observers and EM for non-whiting midwater trawl and groundfish bottom trawl vessels.

Observer Program Declaration

Under existing regulations at § 660.604(n), as described above, a vessel operator must declare their intent to use either EM or observers 48 hours prior to leaving port. Under regulations for ''maximized'' and ''optimized'' retention, the operator is also required to include the retention rules they intend to use in their declaration to WCGOP 48 hours prior to leaving port on a trip using EM with bottom trawl or non-whiting midwater trawl gear. This timeframe and declaration allows for the planning of observer deployment. ''Optimized'' retention EM trips will continue to require partial observer coverage for the purpose of collecting biological samples of discarded catch. Biological samples include age, sex, and length specimen data, which cannot be obtained through EM systems. Requiring the vessel operator to notify WCGOP of their intended retention type will ensure optimized retention trips can be selected for biological sampling. WCGOP does not require partial observer coverage on maximized retention EM trips for biological sampling at this time, but could potentially in the future.

Group EM Authorization and Self-Enforcing Agreements

Under these final regulations, a group of eligible vessel owners participating in the shorebased IFQ sector, including those that take bottom trawl and non-whiting midwater trawl trips, may obtain a group EM authorization through a self-enforcing agreement. Through a private, contractual arrangement, a self-enforcing agreement allows a co-signed group of vessels, owners, operators, and other interested parties to cooperatively encourage, and enforce, compliance of EM program requirements by members. To be considered for a group EM authorization, a group of vessel owners must submit a complete initial EM authorization application package to NMFS for review and approval. The package must include a copy of the self-enforcing agreement to be eligible to receive a group EM authorization. Participating vessel owners are required to agree to conduct fishing operations according to the terms of the self-enforcing agreement. NMFS will still bear the ultimate responsibility for enforcing the EM regulations.

The self-enforcing agreement must include a description of participating members, responsibilities, procedures for communication with members and NMFS, equipment performance standards, provisions for the use and protection of confidential data, measures to enforce compliance, procedures for addressing non-compliance of members, and annual reports to the Council.

Under final regulations, NMFS has the authority to invalidate a group EM authorization if determined that any of the vessels, owners, and/or operators no longer meet the eligibility criteria for the self-enforcing agreement. NMFS would first notify the members of the group EM authorization of the deficiencies in writing, providing instructions for members to correct the deficiencies. If the deficiencies are not resolved upon review of the first trip following the notification, NMFS will notify the members in writing that the group EM authorization is invalid and that the members are no longer exempt from observer coverage at §§ 660.140(h)(1)(i) and 660.150(j)(1)(i)(B) for that authorization period. After the invalidation of a group EM authorization, individual vessels would be able to apply for individual authorizations.

The Council recommended the allowance of self-enforcing cooperative agreements for shorebased IFQ vessels in the EM program based on prior participation in EM EFPs by fishing cooperatives. Under these final regulations, a fishing collective that has operated under a cooperative self-enforcing agreement to test EM under EFPs will be able to apply for authorization to continue self-enforced compliance with the EM program. This rule allows additional groups of shorebased IFQ vessels applying for EM authorization to enter in the self-enforcing cooperative agreements. These agreements are intended to help encourage compliance with the many day-to-day responsibilities for EM system maintenance and catch handling requirements of the EM program.

Regulatory Changes To Refine Existing EM Program

In June 2019, NMFS published the final rule (84 FR 31146; June 28, 2019)

establishing responsibility requirements for vessel operators using EM systems, and for EM service providers. These responsibilities are detailed in the 2019 final rule, and include declaration of EM systems use by vessel operators, protocols for transferring and handling EM data, logbook processing requirements, and technical reports by EM service providers. Minor changes necessary to clarify these regulations were identified after the publication of the 2019 final rule. The regulatory changes described below were developed through Council discussion with NMFS and members of industry at the Council's April and June 2020 meetings. The Council's intent in developing these regulatory changes is to refine and clarify certain EM program requirements and improve the effectiveness of the EM program overall in meeting its intended monitoring goals for the Trawl Catch Share Program.

1. Hard Drive Deadline

This regulatory change increases the hard drive submission deadline to 72 hours from the beginning of the offload following a fishing trip in which EM was used. Under EM program regulations at § 660.604(s)(3), vessels using EM systems are required to submit hard drives storing EM video data within 24 hours of beginning an offload after a fishing trip. Increasing this deadline to 72 hours aligns it with the hard drive submission requirements used under EM EFPs. This change provides additional time for vessel operators to comply with hard drive submission requirements with minimal impact to the timeliness of data. This change would also ensure a smooth transition for vessels operating under EFPs to the full EM program regulations when they become effective.

2. Reusing Hard Drives

This regulatory change requires the scrubbing of EM hard drives only if end-to-end encryption is not used. EM regulations at § 660.603(m)(3) require service providers to remove all EM data before hard drives can be reused in the field. This requirement was intended to ensure protection of confidential information for vessel owners and operators. However, regular scrubbing of hard drives can shorten their functional life, and requires their replacement more frequently, increasing operational costs for EM users. NMFS and the Council determined that the use of end-to-end encryption will sufficiently protect sensitive information and extend the life of EM hard drives. End-to-end encryption protects information encrypted by the sender, allowing only recipients with the encryption key to decrypt and access the information. Third parties without the encryption key would not have the means to read the files. Starting in 2017, NMFS stopped requiring scrubbing of hard drives that use end-to-end encryption in the EM EFP, which is consistent with practices in other regions. This regulatory change will reduce program costs, and still allow vessel owners to work with service providers to develop more strict requirements for the treatment of hard drives.

3. Limit on Switching Between EM and Observers for Whiting Vessels

This regulatory change removes the limit on switching between observers and EM for whiting trips. Regulations at § 660.604(m) previously restricted vessel operators on whiting trips from revising a monitoring declaration more than twice per calendar year, except in the case of an EM system malfunction. The limit was intended to prevent frequent switching that could disrupt deployment planning and affect the availability of observers. As NMFS described, and finalized in the June 2019 final rule (84 FR 31146; June 28, 2019), NMFS may waive the limit on switching between monitoring types if it is not necessary for planning observer deployment. After the 2019 final rule published, NMFS and the Council determined that a regulatory restriction on how many times a vessel taking whiting trips can switch between observers and EM was unnecessary. Under current regulations, vessel owners are required to provide a tentative fishing plan when they apply for their annual EM Authorization, in which the vessel owner gives NMFS advance notice of their plans to use EM and observers for the upcoming fishing year. WCGOP and observer providers then can use this information for planning purposes. This information negates the need for restrictions on switching between observers and EM. Therefore NMFS is implementing the Council's recommendation to eliminate the limit on switching between EM and observers for whiting trips under this final rule. This change will align the flexibility in moving between EM and observer coverage across all trip types (bottom trawl, whiting midwater, non-whiting midwater, and fixed gear).

4. Mothership/Catcher Vessel (MS/CV) Endorsement

EM regulations at § 660.604(e)(1)(iii) previously required a vessel applying to use EM in the mothership sector to have a valid mothership/catcher vessel (MS/CV) endorsement to qualify for authorization. This requirement was initially included for vessels testing EM under EFPs, as having valid permits for all intended fishing activities is a standard requirement for EFP eligibility. However, the regulations governing mothership cooperatives at § 660.150(g)(1) allow for a vessel without an MS/CV endorsement, but that is enrolled in the mothership cooperative, to deliver to a mothership. It was not the Council's and NMFS's intent to restrict participation with EM to only those vessels with an MS/CV endorsement. Including this eligibility criterion was a holdover from the EFP terms and conditions and is not consistent with Council intent. Therefore, this rule removes the requirement at § 660.604(e)(1)(iii) for an MS/CV endorsement to be eligible to use EM on MS/CV trips.

5. Logbook Processing

This regulatory change requires all vessel owners to submit discard logbooks directly to their EM service providers following a fishing trip in which EM was used. EM service providers will receive and process discard logbooks by entering data, performing quality assurance and control, and subsequently submit logbook data to NMFS for review. Service providers are required to submit initial logbook data to NMFS within two business days of receipt from vessel operators.

EM regulations at § 660.604(s) previously required vessel operators to submit discard logbooks directly to NMFS or its agent for processing. Under this model, NMFS would check logbooks for accuracy and issues and enter data, which would then be used to initially debit discarded catch from vessel IFQ accounts. EM service providers review video data separately, with WCGOP providing some logbook data to EM service providers that is necessary for completing the video review, such as trawl gear codend capacity, but with most identifying logbook data withheld to ensure video review is done blind.

Under previous regulations, having NMFS process logbooks directly would require back-and-forth with EM service providers to accurately match logbooks with EM trips, select trips or hauls for review, compare logbook and EM discard estimates, and investigate any discrepancies. Vessel owners were required to submit logbooks directly to NMFS via a secure transmission method to comply with confidentiality and data security requirements, limiting the methods by which NMFS can receive logbooks.

NMFS and the Council determined it is more efficient and cost effective to have EM service providers receive both logbooks and EM data directly from vessel owners for initial processing, entry, and quality control, and simply report final data to NMFS. NMFS will also receive logbooks, and use its debriefing procedures to carry out quality control on the logbook data and to check for potential bias in the video review. Having EM service providers process logbooks also allows individual vessel operators to develop optimal submission methods for discard logbooks with their respective EM service providers. NMFS supports the Council's recommendation and is therefore implementing the change through this final rule.

6. Reporting Deadlines for EM Service Providers

Under regulations at § 660.603, EM service providers are responsible for providing various feedback reports to vessel operators, and summaries to NMFS. These reports include logbook data, technical assistance, vessel operator feedback, EM summary data, and compliance reports. Submission of this information by service providers has been required in regulations as of June 2019; however, deadlines for the submission of these reports were not originally specified in regulation. Under this final rule, NMFS would establish submission deadlines for these required EM service providers' reports. This change will allow NMFS to enforce timely submission of EM data. The submission deadlines for each report are specified below.

A. Discard Logbooks

As described previously in this preamble, vessel operators would submit discard logbooks directly to EM service providers for processing. Under this final rule, service providers will submit initial logbook data to NMFS within two days of receipt from vessel operators. This deadline will help to ensure timely debiting of discards from vessel IFQ accounts, and is consistent with submission timelines used for EM EFPs and WCGOP observer data. Setting the deadline based on the receipt of initial, rather than final, logbook data will ensure service providers are not held responsible for late or incomplete submissions from vessel operators. After initial logbook submission, the EM service provider will work with the vessel operator to review data and, if necessary, revise and submit updated logbook data. Under these regulatory changes, requiring concrete deadlines for these reports in the regulations will ensure the timely submission of discard estimates from logbook data, which is essential for discard accounting in the Catch Share Program, and to provide clear expectations for all participants.

B. Reports of Technical Assistance

Under current regulations at § 660.603(k), EM service providers are required to submit reports to NMFS when technical assistance is requested by vessels on EM trips. These reports of technical assistance allow NMFS to monitor the performance of EM systems and field services, and follow up should any potential enforcement issues arise. Under this final rule, NMFS will require technical assistance reports to be submitted within 24 hours of the EM service provider being notified by the vessel operator. This change is consistent with how these notifications have occurred in the EM EFPs.

C. Vessel Feedback Reports

Under current regulations at § 660.603(m)(4), EM service providers are required to provide feedback reports to vessel operators and field services staff. Feedback is required on EM systems, crew responsibilities, and any other information that would improve the quality and effectiveness of data collection on the vessel. Through this final rule, NMFS is requiring feedback to be submitted to vessels within three weeks of the date EM data is received from the vessel operator for processing by the service provider. Prospective service providers, EFP vessel operators, and industry members have provided feedback through the Council process that three weeks is a reasonable timeline for the submission vessel feedback reports. Specifically, a submission deadline of three weeks after the service provider receives the hard drive from a vessel will ensure that EM service providers are not held responsible for late submissions by vessel operators. Concrete and enforceable deadlines are necessary to ensure service providers submit feedback reports in a timely manner, and establish the data processing procedures to meet these deadlines. It is critically important to provide timely feedback to vessel captains and crew on catch handling, EM system care, and other aspects of operations that affect data quality. Timely feedback to vessels will help to ensure the quality of EM data, and reliability of the EM program in meeting monitoring goals of the Catch Share Program.

D. EM Summary Data and Compliance Reports

Current regulations at § 660.603(m)(5) require service providers to submit EM summary data and compliance reports to NMFS following completion of video review. EM summary data includes discard estimates, fishing activity information, and trip metadata. This final rule requires EM summary data and compliance reports to be submitted to NMFS three weeks from the date the vessel operator submits EM data for processing. EM summary data and compliance reports are used by NMFS to debit vessel accounts, monitor program and vessel performance, and enforce requirements of the EM program. Trip metadata is an essential record of when and where EM data were created by the vessel, submission time, date and location of review, and point of contacts for reviewers. Trip metadata ensures fishing data can be accurately corroborated with logbook data and is necessary for a complete chain of custody and accountability between the vessel, service provider, and NMFS. Catch discards will initially be debited from vessel accounts in the IFQ database using logbook data, as described previously; discards would largely be accounted for following logbook processing, and audited using EM data. If there are large discrepancies between the logbook and EM summary data, then a longer reporting timeline may result in vessel account owners experiencing unexpected debits, or being unable to ''close-out'' an account for a fishing trip until the EM data are received. The Council recommended three weeks, with support from NMFS, as being a reasonable amount of time for service providers to complete review and subsequently prepare summary data and compliance reports.

7. Retention of EM Data

This rule will change the minimum length of time service providers are required to retain EM data records. Under previous regulations, service providers were required to maintain all of a vessel's EM data, reports, and other records specified in regulations at § 660.603(m) *Data services* for a period of not less than three years after the date of landing for that trip. The rationale for a three-year minimum retention period for EM data is detailed in the June 2019 final rule (84 FR 31146; June 28, 2019). Since that final rule, the Council recommended NMFS explore a shorter data retention period, to reduce the burden on industry to pay for data storage by third party service providers, while also meeting minimum federal

record retention requirements. NMFS evaluated the feasibility and cost effectiveness of a shorter retention period, and developed a national policy on the minimum time that EM data must be retained. The Council supported NMFS evaluation and recommended a 12 month retention data retention period starting at the conclusion of end-of-the-year data reconciliation. This regulatory change will align with the 12-month minimum data retention period in the NMFS Procedural Directive 04–115–03 (see **ADDRESSES**) for third-party minimum data retention in EM programs for federally managed U.S. fisheries

Under this final rule, EM service providers will be required to maintain EM data for a period of not less than 12 months starting after NMFS has officially completed end-of-year account reconciliation and catch monitoring. Review of catch monitoring data, including EM data, usually extends beyond the close of the fishery at the end of the calendar year. Starting the clock for the minimum retention period following end-of-the-year data reconciliation will best meet the recommendations of the procedural directive.

8. Change in Definition of Conflict of Interest for EM Service Providers

This proposed change will revise regulations at § 660.603(h) defining limitations on conflicts of interest for EM service providers to exclude providing other types of technical and equipment services to fishing companies. The definition in regulations previously excluded ''the provision of observer, catch monitor, EM or other biological sampling services, in any Federal or state-managed fisheries'' from the definition of a ''direct financial interest.'' After the June 2019 final rule (84 FR 31146; June 28, 2019) was published, an EM service provider brought to the Council's attention that many EM vendors provide a range of other services to fishing companies, including vessel monitoring systems (VMS), automatic identification system (AIS) transponders, telemetry (such as product temperature monitoring for seafood safety), buoy and gear monitoring, sonar systems, and mandatory safety services. Under the previous regulatory definition, such EM vendors were ineligible to provide EM services. The EM service provider noted that there is no evidence to suggest that providing such technical services to fishing companies creates any greater conflict of interest than providing biological sampling services, and requested that the definition be revised. Therefore, the Council recommended, and NMFS is implementing, a revised definition of a conflict of interest at § 660.603(h) to exclude providing other types of technical and equipment services to fishing companies.

9. Technical Corrections

In addition to the regulatory changes already described, the Council also recommended two clarifying corrections to language in the EM program regulations. The first correction is technical and changes the reference to ''a NMFS-accepted EM Service Plan'' under § 660.603(a)(1) to correctly refer to paragraph § 660.603(b)(1)(vii). The second correction changes a reference to ''owner or operator'' to instead be ''authorized representative of the vessel'' in § 660.603(n)(3), which is consistent with language in other regulations in 50 CFR 660-Fisheries Off West Coast States. This correction clarifies that a representative designated by the vessel owner, rather than solely the vessel owner or operator, is allowed to transfer EM data to service providers for review. NMFS supports these changes, and is implementing them through this final rule.

III. Comments and Responses

NMFS issued a proposed rule on March 1, 2022 (87 FR 11382). The comment period on the proposed rule closed March 31, 2022. No comments were received during the public comment period.

IV. Changes From the Proposed Rule

Proposed regulations intended to clarify logbook submission requirements within the EM program were adjusted to more clearly distinguish between the types of logbooks required for submission following trips with EM. The proposed regulations at § 660.604(p)(3), and (p)(4) as originally written in the proposed rule, used the term ''bottom trawl logbooks.'' This term is not defined, and is not used elsewhere in regulations, so in this final rule, the language is adjusted to instead use the term ''discard logbooks,'' as defined in existing EM regulations at § 660.604(s)(1). Additionally, the proposed regulations at § 660.604(s)(2), as originally written in the proposed rule, used the terms ''federal discard logbooks, and state retained logbooks''. This final rule revises those terms to only refer to ''discard logbooks'' and ''trawl logbooks'' as defined at § 660.13(a)(1), to maintain clarity and avoid confusion. For these reasons this regulatory language is adjusted in this final rule.

Finally, this final rule includes a correction to an error in proposed regulations at § 660.13(d)(4)(iv)(A), which lists required vessel declarations for gear type, fishery, and intended monitoring type. Vessels in the Pacific Coast Groundfish Fishery are required to declare the gear type and monitoring they will use on a given trip. As described below under *Reporting Requirements* in this preamble, vessels will be able to declare ''electronic monitoring'' or ''observer'' as possible monitoring types on trips with bottom trawl and non-whiting midwater trawl gear. For the declaration type described at § 660.13(d)(4)(iv)(A)(11) text should read ''Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl, observer''. In the proposed rule the word ''observer'' was unintentionally omitted. This final rule makes this correction to ensure the declaration type was consistent with the following declaration option which reads ''(12) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl, electronic monitoring''.

VI. Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, Magnuson-Stevens Act, and other applicable laws.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

This final rule has been determined to be not significant for the purposes of Executive Order 12866. This final rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in Executive Orders 13132 and 12630, respectively.

Final Regulatory Flexibility Analysis

NMFS issued a proposed rule on March 1, 2022 (87 FR 11382), for the use of EM on bottom trawl and non-whiting midwater trawl vessels.

An initial regulatory flexibility analysis (IRFA) was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed

rule ended on March 31, 2022. NMFS did not receive any public comments on the proposed rule. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not file any comments on the IRFA or the proposed rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. A Final Regulatory Flexibility Analysis (FRFA) was prepared and incorporates the IRFA. There were no public comments received on the IRFA. NMFS also prepared a RIR for this action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, per the requirements of 5 U.S.C. 604 follows.

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities. The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated and not dominant in its field of operation (including its affiliates). A small harvesting business has combined annual receipts of $11 million or less for all affiliated operations worldwide. A small fish-processing business is one that employs 750 or fewer persons for all affiliated operations worldwide.

For marinas and charter/party boats, a small business is one that has annual receipts not in excess of $7.5 million. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A nonprofit organization is determined to be ''not dominant in its field of operation'' if it is considered small under one of the following Small Business Administration (SBA) size standards: environmental, conservation, or professional organizations are considered small if they have combined annual receipts of $15 million or less, and other organizations are considered small if they have combined annual receipts of $7.5 million or less.

The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

No public comments were received on the proposed rule.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply and Estimate of Economic Impacts by Entity Size and Industry

This final rule mainly affects commercial harvesting entities engaged in the groundfish limited entry trawl fishery. Although this action proposes EM program regulations for only two trip types in the limited entry trawl fishery—non-whiting midwater trawl, and bottom trawl—any limited entry trawl vessel may participate in these components, provided they comply with its requirements, and therefore may be eligible to use EM as applied to these two trawl gear sectors. In addition, vessels deploying EM are likely to be a subset of the overall trawl fleet, as some vessels would likely choose to continue to use observers. However, as all trawl vessels could potentially use EM in the future under this action, this FRFA analyzes impacts to the entire trawl fleet. The total number of vessels that may be eligible to use EM is 175, the total number of limited entry trawl permits in 2021, and includes those vessels that do use bottom trawl and non-whiting midwater trawl gear, and those that do not. Given these entities participate in the program, they are most likely to be impacted by this rule in the short term. This number may be an underestimate if additional vessels elect to participate in the EM program in the future.

A Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The RFA requires Federal agencies to conduct a full RFA analysis unless the agency can certify that the proposed and/or final rule would not have a significant economic impact on a substantial number of small entities. This determination can be made at either the proposed or final rule stage. If the agency can certify, it need not prepare an IRFA, a final regulatory flexibility analysis (FRFA), or a Small Entity Compliance Guide or undertake a subsequent periodic review of such rules. The NMFS Guidelines for Economic Analysis of Fishery Management Actions suggest two criteria to consider in determining the significance of regulatory impacts, namely, disproportionality and profitability. These criteria relate to the basic purpose of the RFA, *i.e.,* to consider the effect of regulations on small businesses and other small entities, recognizing that regulations are frequently unable to provide short-term cash reserves to finance operations through several months or years until their positive effects start paying off. If either criterion is met for a substantial number of small entities, then the rule should not be certified for not having an effect on small entities. These criterion raise two questions: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Do the regulations significantly reduce profit for a substantial number of small entities?

The preferred alternative for this rule will not have a significant impact when comparing small versus large businesses in terms of disproportionality and profitability given available information. These regulations are likely to reduce fishing costs for both small and large businesses. EM is an optional monitoring alternative to observers, and may provide cost savings for some vessels. Economic effects of this action are expected to range from neutral to positive when compared to the status quo. Nonetheless, NMFS has prepared this FRFA. There were no public comments received on this conclusion presented in the IRFA.

The economic impacts on small entities resulting from the final action range from neutral to positive; these entities will have a choice between hiring an observer, as is status quo, or using EM. The choice is expected to be based on relative costs and operational flexibility. Observer costs are currently $499 to $537 per seaday. Under EM, NMFS estimates vessels in the bottom trawl fishery will spend between $342/seaday (which include the cost of new equipment and installation) or $285/seaday (without equipment costs). These estimates are based on 412 seadays for 10 bottom trawl vessels participating in EFPs from 2019–2020. Under EM, NMFS estimates per seaday costs for non-whiting midwater trawl trips to range from $142/seaday (with equipment costs), and $120/seaday (without equipment costs). These estimates are based on 3,215 seadays for 30 midwater trawl vessels participating in EFPs from 2019–2020, and averaged cost estimates from four prospective EM service providers. These cost estimates

are detailed in the section ''Industry Costs'' of the FRFA included in the supporting documents for this final rule. These costs are likely an overestimate and not an accurate estimate of seaday costs for this gear type because it does not incorporate revenue from seadays pursuing bottom trawl and whiting activities that are also part of these vessels' portfolios. Cost of EM service, including equipment installation and maintenance, along with video review and data service is expected to vary by service provider. Entities participating in this fishery are not required to use EM, and have the choice to use a human observer instead of EM. Furthermore, the cost of EM is likely to decrease as technology used in EM systems (cameras, sensors, and electronic storage devices) that meets current specification necessary to meet monitoring requirements becomes cheaper over time. Therefore, this final action would not impose new costs on these small entities, and will likely provide measurable cost savings over time as individual vessels choose the most affordable at-sea monitoring systems relative to their fishing operations.

The components of this rule have the potential to positively impact all entities in the catch share sector of the fishery, regardless of size. Therefore, the rule would impose effects on ''a substantial number'' of small entities, however, these effects are expected to range from neutral (if entities choose not to use the added flexibility of the provisions in this rule) to positive. Data used to inform this analysis was collected through EFPs and collaboration with industry and non-government organizations from 2012 to present.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action nor were there any significant alternatives to the proposed rule considered that will accomplish the stated objectives and that minimize any significant economic impact of the final rule on small entities. As fishing operations are given a choice between two alternative monitoring systems (observers vs EM), this rule is likely to have neutral to positive effects on small entities. These regulations are likely to reduce fishing costs for both small and large businesses.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. A small entity compliance guide will be sent to stakeholders, and copies of the final rule and guides (*i.e.,* information bulletins) are available from NMFS at the following website: *https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/compliance-guides-west-coast-groundfish.*

Description of the Proposed Reporting, Record-Keeping, and Other Compliance Requirements of This Proposed Rule Under the Paperwork Reduction Act (PRA)

The action contains collection-of-information requirements that have been previously approved under OMB control number 0648–0785, West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program, as per the PRA requirements. The requirements include vessel owner EM applications, renewals, and reports, EM service providers applications, renewals and reports, as well as vessel operator logbook, and hard drive submission. This rule would revise collection-of-information requirements to include submission of information for the formation of self-enforcing cooperative agreements. The action contains changes to collection-of-information requirements that are subject to review and approval by the Office of Management and Budget (OMB) as per the PRA requirements. NMFS has submitted these requirements to OMB for approval under OMB control number 0648–0785 West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program.

This rule will revise collection-of-information requirements to include submission of information for the formation of self-enforcing cooperative agreements. Collection of information for self-enforcing agreements is not mandatory, as self-enforcing agreements are an optional provision of the EM program under collection 0648–0785. Some vessel owners may choose to apply for a group EM authorization under a self-enforcing agreement in lieu of individual vessel authorizations. The self-enforcing agreement would be submitted with the initial applications for vessels in the group, and requires approval prior to accepting final applications from the group. One self-enforcing agreement would be completed and submitted by a designated representative for each group of vessel owners applying under a group authorization. NMFS expects no more than three such self-enforcing group agreements for the first three years of this collection. Each self-enforcing agreement is expected to take approximately 3 hours to complete. The total annualized time burden to prepare self-enforcing agreements would be 3 hours (3 hours × 3 agreements/3 years). The burden cost of one copy of the self-enforcing agreement is estimated at $3.00 ($0.10/page × 30 pages). A designated representative, or manager of the self-enforcing cooperative would hold at least one copy. To be deemed eligible to operate under the agreement, vessel owners and operators would be required to have executed a copy of the agreement for an adherence agreement under which they agree to be bound. At most, 10 vessel owners are expected to participate in any one self-enforcing agreement, each would be required to have a copy of the agreement, plus one original copy held by the cooperative manager, is expected to result in a total annualized burden of $33.00 ($3.00 × 11).

This rule includes a minor revision to declaration requirements for groundfish vessels using EM under West Coast Region Vessel Monitoring Requirement in the Pacific Coast Groundfish Fishery (OMB Control Number 0648–0573). Vessels in the Pacific Coast Groundfish Fishery are required to declare the gear type and monitoring they will use on a given trip. Under this rule, vessels will be able to declare ''electronic monitoring'' or ''observers'' as possible monitoring types on trips with bottom trawl and non-whiting midwater trawl gear. The change would add additional potential answers to an existing declaration questionnaire, which does not affect the number of entities required to comply with the declaration requirement (OMB Control Number 0648–0573). Therefore, the rule does not increase the time or cost burden associated with this requirement.

Similarly, this rule would adjust the requirement for EM vessels to notify the West Coast Groundfish Observer Program before each trip in place of the existing notification to an individual vessel's observer provider when using a catch share observer. This change would not be expected to increase the time or cost burden associated with the existing notification requirements approved under the collection Observer Programs' Information That Can be Gathered Only Through Questions (OMB Control Number 0648–0593).

The requirement for first receivers to report protected and prohibited species landings was previously approved under the collection Northwest Region Groundfish Trawl Fishery Monitoring

and Catch Accounting Program (OMB Control Number 0648–0619). Under the rule, first receivers would continue to report protected and prohibited species landings, but would also report landings of catch from trips monitored using EM under ''maximized'' and ''optimized'' retention rules with bottom trawl and non-whiting midwater trawl gear. The change would add additional potential answers to an existing questionnaire, and is not be expected to change the time or cost burden or number of entities associated with this requirement.

For more information, these collections, and all currently approved NOAA collections can be viewed at *https://www.reginfo.gov/public/do/PRASearch#* by entering the related OMB control number.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indians.

Dated: September 26, 2022.

Samuel D. Rauch, III

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.13 revise paragraph (d)(4)(iv)(A) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(4) * * *

(iv) * * *

(A) One of the following gear types or sectors, and monitoring type where applicable, must be declared:

(*1*) Limited entry fixed gear, not including shorebased IFQ,

(*2*) Limited entry groundfish non-trawl, shorebased IFQ, observer,

(*3*) Limited entry groundfish non-trawl, shorebased IFQ, electronic monitoring,

(*4*) Limited entry midwater trawl, non-whiting shorebased IFQ, observer,

(*5*) Limited entry midwater trawl, non-whiting shorebased IFQ, electronic monitoring,

(*6*) Limited entry midwater trawl, Pacific whiting shorebased IFQ, observer,

(*7*) Limited entry midwater trawl, Pacific whiting shorebased IFQ, electronic monitoring,

(*8*) Limited entry midwater trawl, Pacific whiting catcher/processor sector,

(*9*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership), observer,

(*10*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel), electronic monitoring,

(*11*) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl, observer,

(*12*) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl, electronic monitoring,

(*13*) Limited entry demersal trawl, shorebased IFQ, observer

(*14*) Limited entry demersal trawl, shorebased IFQ, electronic monitoring,

(*15*) Limited entry selective flatfish trawl, shorebased IFQ, observer,

(*16*) Limited entry selective flatfish trawl, shorebased IFQ, electronic monitoring,

(*17*) Non-groundfish trawl gear for pink shrimp,

(*18*) Non-groundfish trawl gear for ridgeback prawn,

(*19*) Non-groundfish trawl gear for California halibut,

(*20*) Non-groundfish trawl gear for sea cucumber,

(*21*) Open access longline gear for groundfish,

(*22*) Open access Pacific halibut longline gear,

(*23*) Open access groundfish trap or pot gear,

(*24*) Open access Dungeness crab trap or pot gear,

(*25*) Open access prawn trap or pot gear,

(*26*) Open access sheephead trap or pot gear,

(*27*) Open access line gear for groundfish,

(*28*) Open access HMS line gear,

(*29*) Open access salmon troll gear,

(*30*) Open access California Halibut line gear,

(*31*) Open access Coastal Pelagic Species net gear,

(*32*) Other gear,

(*33*) Tribal trawl,

(*34*) Open access California gillnet complex gear, or

(*35*) Gear testing.

* * * * *

■ 3. In § 660.601, add a definition for ''Prohibited species'' in alphabetical order to read as follows:

§ 660.601 Definitions.

* * * * *

Prohibited species means those species and species groups defined at § 660.11; Dungeness crab caught south of Point Reyes, California; fish in excess of state or Federal limits; fish below a state or Federal minimum size; and species for which the vessel or vessel representative does not have a state or Federal permit.

* * * * *

■ 4. In § 660.603, revise paragraphs (a)(1), (h)(1) introductory text, (k)(5), (m) introductory text, (m)(1) and (3), (m)(4) introductory text, (m)(5) and (6), and (n)(3) to read as follows:

§ 660.603 Electronic monitoring provider permits and responsibilities.

(a) * * *

(1) Operate under a NMFS-accepted EM Service Plan (see paragraph (b)(1)(vii) of this section).

* * * * *

(h) * * *

(1) EM service providers and their employees must not have a direct financial interest, other than the provision of observer, catch monitor, EM, other biological sampling services, VMS, AIS transponders, telemetry (such as product temperature monitoring for seafood safety), buoy and gear monitoring, sonar systems, mandatory safety services (*i.e.* GMDSS), or other technical or equipment services, in any Federal or state managed fisheries, including but not limited to:

* * * * *

(k) * * *

(5) The EM service provider must submit to NMFS reports of requests for technical assistance from vessels, including when the call or visit was made, the nature of the issue, and how it was resolved. Reports must be submitted to NMFS within 24 hours of the EM service provider being notified of the request for technical assistance.

* * * * *

(m) *Data services.* For vessels with which it has a contract (see § 660.604(k)), the EM service provider must provide and manage EM data and logbook processing, reporting, and record retention services, as described below and according to a NMFS-approved EM Service Plan, which is required under paragraph (b)(1)(vii) of this section, and as described in the EM Program Manual or other written and oral instructions provided by the EM program, and such that the EM program

achieves its purpose as defined at § 660.600(b).

(1) The EM service provider must process vessels' EM data and logbooks according to a prescribed coverage level or sampling scheme, as specified by NMFS in consultation with the Council, and determine an estimate of discards for each trip using standardized estimation methods specified by NMFS. NMFS will maintain manuals for EM and logbook data processing protocols on its website.

* * * * *

(3) The EM service provider must track hard drives and EM datasets throughout their cycles, including documenting any access and modifications. If end-to-end encryption is not used to protect EM data, EM data must be removed from hard drives or other mediums before returning them to the field.

(4) The EM service provider must communicate with vessel operators and NMFS to coordinate data service needs, resolve specific program issues, and provide feedback on program operations. No later than three weeks from the date of receipt of EM data for processing from the vessel operator, the EM service provider must provide feedback to vessel representatives, field services staff, and NMFS regarding:

* * * * *

(5) *Submission of data and reports.* On behalf of vessels with which it has a contract (see § 660.604(k)), the EM service provider must submit to NMFS logbook data, EM summary reports, including discard estimates, fishing activity information, and meta data (*e.g.,* image quality, reviewer name), and incident reports of compliance issues according to a NMFS-accepted EM Service Plan, which is required under paragraph (b)(1)(vii) of this section, and as described in the EM Program Manual or other written and oral instructions provided by the EM program, such that the EM program achieves its purpose as defined at § 660.600(b). Logbook data must be submitted to NMFS within two business days of receipt from the vessel operator. EM summary reports must be submitted within three weeks of the date the EM data was received by the EM service provider from the vessel operator. If NMFS determines that the information does not meet these standards, NMFS may require the EM service provider to correct and resubmit the datasets and reports.

(6) *Retention of records.* Following an EM trip, the EM service provider must maintain all of a vessel's EM data and other records specified in this section, or used in the preparation of records or reports specified in this section or corrections to these reports. The EM service provider must maintain EM data for a period of not less than 12 months after NMFS has completed its determination of the total base year IFQ catch for all vessels for end-of-year account reconciliation (*i.e.,* base year is the year in which the EM trip was taken). NMFS will issue a public notice when end-of-the-year account reconciliation has been completed, on or about March 1 of each year. The EM service provider must maintain summary EM data and other records for a period of not less than three years after the date of landing for that trip. EM data and other records must be stored such that the integrity and security of the records is maintained for the duration of the retention period. The EM service provider must produce EM data and other records immediately upon request by NMFS or an authorized officer.

(n) * * *

(3) Must not release a vessel's EM data and other records specified in this section (including documents containing such data and observations or summaries thereof) except to NMFS and authorized officers as provided in paragraph (m)(6) of this section, or as authorized by an authorized representative of the vessel.

■ 5. In § 660.604,

■ a. Revise paragraphs (e) introductory text and (e)(1);

■ b. Remove paragraph (e)(5);

■ c. Revise paragraphs (f), (i), (m), and (n);

■ d. Add paragraphs (p)(3) and (4);

■ e. Revise paragraphs (q), (s)(2), and (s)(3)(i) and (ii); and

■ f. Remove paragraph (s)(3)(iii).

The revisions and additions read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1 of the preceding calendar year. Vessel owners that want to have their EM Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year. In lieu of individual EM Authorizations, a group of eligible vessel owners participating in the shorebased IFQ sector may obtain a group EM Authorization through a self-enforcing agreement. This agreement allows a group of eligible vessels to encourage compliance with the requirements of this section through a private, contractual arrangement. To be considered for a group EM Authorization, a group of vessel owners must submit a completed application package to NMFS for review and approval. As part of a group EM Authorization application, participating vessel owners must agree to conduct fishing operations according to the self-enforcement agreement. For a vessel to be deemed eligible to operate under the agreement, its owner(s) and its operator(s) must have executed a copy of the agreement or an adherence agreement under which they agree to be bound by the agreement's terms. The existence of a self-enforcing agreement among EM vessels does not foreclose the possibility of independent enforcement action by NMFS OLE or authorized officers.

(1) *Initial application.* To be considered for an EM Authorization, the vessel owner must:

(i) Submit a completed application form provided by NMFS, signed and dated by an authorized representative of the vessel;

(ii) Meet the following eligibility criteria:

(A) The applicant owns the vessel proposed to be used;

(B) The vessel has a valid Pacific Coast Groundfish limited entry, trawl-endorsed permit registered to it;

(C) The vessel is participating in the Pacific whiting IFQ fishery, mothership sector, or the Shorebased IFQ sector;

(D) The vessel is able to accommodate the EM system, including providing sufficient uninterrupted electrical power, suitable camera mounts, adequate lighting, and fittings for hydraulic lines to enable connection of a pressure transducer;

(E) The vessel owner and operator are willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted VMP; and

(F) The vessel owner and operator are willing and able to comply with the terms and conditions of a self-enforcing agreement that was submitted as part of

a group authorization application, if applicable.

(iii) If applying for a group EM Authorization, submit a complete proposed self-enforcing agreement that describes how the group's operations will be conducted to meet the requirements of this section. NMFS will develop EM Program Guidelines containing best practices and templates and make them available on NMFS's website to assist vessel owners in developing a self-enforcing agreement. The self-enforcing agreement must include descriptions of the following:

(A) A list of all participating vessels, owners, operators, and other parties;

(B) The name and contact information of a designated representative who will be responsible for ensuring that each vessel is complying with the terms and conditions of the agreement and the requirements of this section, and who will promptly inform the appropriate parties and NMFS if any vessel fails to comply;

(C) Eligibility criteria for participating vessels, owners, and operators;

(D) The roles and responsibilities of participating vessels, owners, operators, the designated representative, and any other parties to the agreement;

(E) Procedures for communication between participating vessels, owners, operators, the designated representative, and any other parties to the agreement, NMFS or its designated agent, and EM service providers, for the execution of the agreement and the requirements of this section;

(F) Performance standards or requirements for equipment, if applicable;

(G) Reporting requirements, if applicable;

(H) Time and area restrictions, if applicable;

(I) Provisions for the use and protection of confidential data necessary for execution of the agreement;

(J) Provisions to encourage or enforce the compliance of members with the agreement and the requirements of this section;

(K) Procedures for addressing the non-compliance of members with the agreement and the requirements of this section, including procedures for restricting or terminating vessel's participation in the agreement;

(L) Procedures for notifying NMFS when a participating vessel or its owner(s) or operator(s) are not complying with the terms of the agreement or the requirements of this section;

(M) Procedures for participating vessels, owners, operators, the designated representative, or other parties to the agreement, to exit the agreement;

(N) Any other provisions that the applicants deem necessary for the execution of the agreement; and

(O) Procedures for the designated representative to submit an annual report to the Council prior to applying to renew a group EM authorization containing information about the group's performance from the previous year, including a description of any actions taken by the self-enforcing group in response to the non-compliance of members with the agreement.

* * * * *

(f) *Changes to a NMFS-accepted VMP or NMFS-approved self-enforcing agreement.* A vessel owner may make changes to a NMFS-accepted VMP by submitting a revised plan or plan addendum to NMFS in writing. A group may make changes to an approved self-enforcing agreement by submitting a revised agreement or agreement addendum to NMFS in writing. NMFS will review and accept the change if it meets all the requirements of this section. A VMP or self-enforcing agreement addendum must contain:

(1) The date and the name and signature of the vessel owner, or designated representative for a self-enforcing agreement;

(2) Address, telephone number, fax number and email address of the person submitting the revised plan or addendum; and

(3) A complete description of the proposed change.

* * * * *

(i) *Renewing an EM Authorization.* To maintain a valid EM Authorization, vessel owners must renew annually prior to the permit expiration date. NMFS will mail EM Authorization renewal forms to existing EM Authorization holders each year on or about: September 1 for shorebased IFQ vessels, and January 1 for Pacific whiting IFQ and MS/CV vessels. Vessel owners who want to have their Authorizations effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by October 15. Vessel owners who want to have their EM Authorizations effective for May 15 of the following calendar year must submit their complete renewal form to NMFS by February 15.

* * * * *

(m) *Declaration reports.* The operator of a vessel with a valid EM Authorization must make a declaration report to NMFS OLE prior to leaving port following the process described at § 660.13(d)(4). A declaration report will be valid until another declaration report revising the existing gear or monitoring declaration is received by NMFS OLE.

(n) *Observer requirements.* The operator of a vessel with a valid EM Authorization must provide advanced notice to NMFS, at least 48 hours prior to departing port, of the vessel operator's intent to take a trip under EM, including: vessel name, permit number; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished, gear type to be used, and whether the vessel will use maximized or optimized retention rules for the trip as defined at paragraphs (p)(3) and (4) of this section. NMFS may waive this requirement for vessels declared into the Pacific whiting IFQ fishery or mothership sector with prior notice. If NMFS notifies the vessel owner, operator, or manager of any requirement to carry an observer, the vessel may not be used to fish for groundfish without carrying an observer. The vessel operator must comply with the following requirements on a trip that the vessel owner, operator, or manager has been notified is required to carry an observer.

* * * * *

(p) * * *

(3) *Maximized retention bottom trawl and non-whiting midwater trawl trips.* A vessel operator on a declared maximized retention trip using bottom trawl gear, or midwater trawl gear in which Pacific whiting constitutes less than 50 percent of the catch by weight at landing, the vessel must not sort catch at sea and must retain all catch until landing, with exceptions listed below in paragraphs (p)(3)(i) through (v) of this section. All discards must be discarded following instructions in the VMP per paragraph (e)(3)(iii) of this section. All discards, regardless of the source, must be reported in a discard logbook, as defined at § 660.604(s)(1), including the species (where possible), estimated weight, and reason for discard. The vessel operator is responsible for ensuring that all catch is handled in a manner that enables the EM system to record it.

(i) Minor operational discards are permitted. Minor operational discards include mutilated fish; fish vented from an overfull codend; and fish removed from the deck and fishing gear during cleaning. Minor operational discards do not include discards that result when more catch is taken than is necessary to fill the hold or catch from a tow that is not delivered.

(ii) Large individual marine organisms (*i.e.,* all marine mammals, sea turtles,

and non-ESA-listed seabirds, and fish species longer than 6 ft (1.8 m) in length) may be discarded. For any ESA-listed seabirds that are brought on board, vessel operators must follow any relevant instructions for handling and disposition under § 660.21(c)(1)(v).

(iii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(iv) Trash, mud, rocks, and other inorganic debris may be discarded.

(v) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(4) *Optimized retention bottom trawl and non-whiting midwater trawl trips.* On a declared optimized retention trip using bottom trawl gear, or midwater trawl gear in which Pacific whiting constitutes less than 50 percent of the catch by weight at landing, the vessel owner and operator are responsible for the following:

(i) The vessel must retain IFQ species (as defined at § 660.140(c)), except for Arrowtooth flounder, English sole, Dover sole, deep sea sole, Pacific sanddab, Pacific whiting, lingcod and starry flounder; must retain salmon and eulachon; and must retain the following non-IFQ species: greenland turbot; slender sole; hybrid sole; c-o sole; bigmouth sole; fantail sole; hornyhead turbot; spotted turbot; California halibut; northern rockfish; black rockfish; blue rockfish; shortbelly rockfish; olive rockfish; Puget Sound rockfish; semaphore rockfish; walleye pollock; slender codling; Pacific tom cod; with exceptions listed in paragraphs (p)(4)(i)(A) and (B) of this section.

(A) Mutilated and depredated fish may be discarded.

(B) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(ii) The vessel must discard Pacific halibut, green sturgeon, California halibut (except as allowed by state regulations), and nearshore groundfish species below state commercial minimum size limits, following instructions in the NMFS-accepted VMP.

(iii) Incidentally caught marine mammals, non-ESA-listed seabirds, sea turtles, other ESA-listed fish, and Dungeness crab caught seaward of Washington or Oregon or south of Point Reyes, California, as described at § 660.11 *Prohibited species,* must be discarded following instructions in the NMFS-accepted VMP per paragraph (e)(3)(iii) of this section. For any ESA-listed seabirds that are brought on board, vessel operators must follow any relevant instructions for handling and disposition under § 660.21(c)(1)(v).

(iv) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(v) Trash, mud, rocks, and other inorganic debris may be discarded.

(vi) All discards must be discarded following instructions in the VMP per paragraph (e)(3)(iii) of this section. All discards, regardless of the source, must be reported in a discard logbook, as defined at § 660.604(s)(1), including the species (where possible), estimated weight, and reason for discard. The vessel operator is responsible for ensuring that all catch is handled in a manner that enables the EM system to record it.

(q) *Changes to retention requirements.* NMFS may specify alternate retention requirements in a NMFS-accepted VMP through the process described in paragraph (f) of this section, after consultation with the Council and issuance of a public notice notifying the public of the changes. Alternate retention requirements must be sufficient to provide NMFS with the best available information to determine individual accountability for catch, including discards, of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Coop Program (§ 660.150).

* * * * *

(s) * * *

(2) *Submission of logbooks.* Vessel operators must submit copies of the discard logbooks as described at § 660.604(s)(1) and if applicable, the trawl logbook as described at § 660.13 (a)(1), to the vessel owner's contracted EM service provider and to NMFS or its agent within 24 hours of the end of each EM trip.

(3) * * *

(i) *Shorebased IFQ vessels.* EM data from an EM trip must be submitted within 72 hours after the beginning of the offload (and no more than 10 days after the end of the first trip on the hard drive).

(ii) *Mothership catcher vessels.* EM data from an EM trip must be submitted within 72 hours of the catcher vessel's return to port.

* * * * *

[FR Doc. 2022–21322 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 201204–0325]

RIN 0648–BL85

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2021–2022 Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces routine inseason adjustments to management measures in commercial groundfish fisheries. This action is intended to allow commercial fishing vessels to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: This final rule is effective October 3, 2022.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, phone: 206–247–8252 or email: *keeley.kent@noaa.gov*.

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.*

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.,* a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2021–2022 biennium for most species managed under the PCGFMP on December 11, 2020 (85 FR 79880). In

general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its September 2022 meeting, the Council recommended modifying trip limits for limited entry (LE) and open access (OA) sablefish north of 36° N. latitude, modifying trip limits for LE and OA canary rockfish north and south of 40°10′ N. latitude, and modifying trip limits for LE and OA lingcod north of 42° N. latitude. Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.,* overfishing limits (OFL), acceptable biological catch (ABC), annual catch limits (ACL) and harvest guidelines (HG) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b))). During development of the harvest specifications, the Council also recommends management measures (*e.g.,* trip limits, area closures, and bag limits) that are meant to manage catch so as not to exceed the harvest specifications. The harvest specifications and management measures developed for the 2021–2022 biennium used data through the 2019 fishing year. Each of the adjustments to management measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data becomes available, adjustments to management measures are projected so as to help harvesters achieve but not exceed the harvest limits.

Sablefish

Sablefish is an important commercial species on the west coast with vessels targeting sablefish with both trawl and fixed gear (longlines and pots/traps). Sablefish is managed with an ACL for north of 36° N. lat. and an ACL for south of 36° N. lat.. The 2022 ACLs for the north and south are 6,172 mt and 2,203 mt, respectively.

At the September 2022 Council meeting, the Council's Groundfish Management Team (GMT) received requests from industry members and members of the Council's Groundfish Advisory Subpanel to examine the potential to increase sablefish trips limits for the LE and OA fisheries north of 36° N. lat.. The intent of increasing trip limits is to increase harvest opportunities for vessels targeting sablefish. To evaluate potential increases to sablefish trip limits, the GMT made model-based landings projections under current regulations and alternative sablefish trip limits, including the limits ultimately recommended by the Council, for the LEFG and OA fisheries through the remainder of the year. Table 1 shows the projected sablefish landings, the sablefish allocations, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits. These projections were based on the most recent catch information available through late August 2022. Industry did not request changes to sablefish trip limits for the LE or OA fishery south of 36° N. lat. Therefore, NMFS and the Council did not consider trip limit changes for these fisheries at this time.

TABLE 1—PROJECTED LANDINGS OF SABLEFISH, SABLEFISH ALLOCATION, AND PROJECTED PERCENTAGE OF SABLEFISH ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)	Allocation (mt)	Projected percentage attained
LE North of 36° N. lat	Current: 2,400 lb/week (1,089 kg), not to exceed 4,800 lb/ two months (2,177 kg).	155–178	320	48–56
	Recommended: 4,500 lb/week (2,041 kg), not to exceed 9,000 lb/two months (4,082).	203–246		63–77
OA North of 36° N. lat	Current: 600 lb/day (272 kg), 2,000 lb/week (907 kg), not to exceed 4,000 lb/two months (1,814 kg).	335–371	527	64–70
	Recommended: 600 lb/day (272 kg), 4,000 lb/week (1,814 kg), not to exceed 8,000 lb/two months (3,629 kg).	408–472		77–89

As shown in Table 1, under the current trip limits, the model predicts catches of sablefish will be at or below 56 percent, or 178 mt of the 320 mt allocation, for LE fishery north of 36° N. lat. and 70 percent, or 371 mt of the 527 mt allocation, for OA fishery north of 36° N. lat. Under the Council's recommended trip limits, sablefish attainment is projected to increase in the LE and OA fisheries north of 36° N. lat. up to 77 and 89 percent, respectively.

Trip limit increases for sablefish are intended to increase attainment of the non-trawl HG. The proposed trip limit increases do not change projected impacts to co-occurring rebuilding species compared to the impacts anticipated in the 2021–2022 harvest specifications because the projected impacts to those species assume that the entire sablefish ACL is harvested. Therefore, the Council recommended and NMFS is implementing, by modifying Tables 2 North and South to part 660, subpart E, and Tables 3 North and South to part 660, subpart F, trip limit changes for the LE sablefish fishery north of 36° N. lat. and trip limit changes for the OA sablefish fishery north of 36° N. lat. as shown above in Table 1. These changes will be implemented through the end of 2022.

Canary Rockfish

Prior to the September 2022 meeting, the GMT received a request from an OA fisherman from Northern California to increase the canary rockfish OA north of 40°10′ N. lat. trip limit to better align with the yellowtail rockfish trip limit in order to reduce regulatory discarding of canary rockfish. The 2022 coastwide ACL for canary rockfish is 1,307 mt.

To evaluate potential increases to canary rockfish trip limits, the GMT made model-based landings projections under current regulations and alternative trip limits, including the limits ultimately recommended by the Council, for the LE and OA fisheries through the remainder of the year. The GMT evaluated changes to the trip limits for canary rockfish both north and south of 40°10′ N. lat. Table 2 shows the projected canary rockfish landings, the

canary rockfish allocations, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits for north of 40°10′ N. lat. and Table 3 shows the same metrics for south of 40°10′ N. lat. These projections were based on the most recent catch information available through late August 2022.

TABLE 2—PROJECTED LANDINGS OF CANARY ROCKFISH, CANARY ROCKFISH ALLOCATION, AND PROJECTED PERCENTAGE OF CANARY ROCKFISH NORTH OF 40°10′ N. LAT. ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)
LE North of 40°10′ N. lat	Current: 3,000 lb/two months (1,361 kg)	3.3
	Recommended: 4,000 lb/two months (1,814 kg)	3.5
OA North of 40°10′ N. lat	Current: 1,000 lb/two months (454 kg)	9.2
	Recommended: 2,000/two months (907 kg)	11.1

TABLE 3—PROJECTED LANDINGS OF CANARY ROCKFISH, CANARY ROCKFISH ALLOCATION, AND PROJECTED PERCENTAGE OF CANARY ROCKFISH SOUTH OF 40°10′ N. LAT. ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)
LE South of 40°10′ N. lat	Current: 3,500 lb/two months (1,588 kg)	6.2
	Recommended: 4,000 lb/two months (1,814 kg)	6.5
OA South of 40°10′ N. lat	Current: 1,500 lb/two months (680 kg)	12.2
	Recommended: 2,000/two months (907 kg)	13.8

Under the current trip limits, the model predicts catches of canary rockfish coastwide will total 30.9 mt (including discard mortality), which is 25 percent of the 2022 non-trawl commercial share of canary rockfish (123.5 mt). Under the Council's recommended trip limits, canary rockfish mortality is expected to increase to 35 mt coastwide (including discard mortality), which is 28 percent of the 2022 non-trawl commercial share of canary rockfish.

Trip limit increases for canary rockfish are intended to increase attainment of the non-trawl commercial share. The proposed trip limit increases do not change projected impacts to co-occurring rebuilding species compared to the impacts anticipated in the 2021–2022 harvest specifications because the projected impacts to those species assume that the entire canary rockfish ACL is harvested. Therefore, the Council recommended and NMFS is implementing, by modifying Table 2 North and South to part 660, subpart E, and Table 3 North and South to part 660, subpart F, trip limit changes for LE canary rockfish north and south of 40°10′ N lat. and trip limit changes for OA canary rockfish fishery north and south of 40°10′ N lat. as shown above in Tables 2 and 3. These changes will be implemented through the end of 2022.

Lingcod

Prior to the September 2022 meeting, the GMT also received a request to increase the lingcod trip limits north of 42° N lat. to reduce regulatory discarding and increase economic opportunity. Lingcod is managed with an ACL north of 40°10′ N lat. and an ACL south of 40°10′ N lat. The 2022 ACL for lingcod north of 40°10′ N lat. is 4,958 mt.

To evaluate potential increases to lingcod trip limits north of 42° N lat., the GMT made model-based landings projections under current regulations and alternative trip limits, including the limits ultimately recommended by the Council, for the LE and OA fisheries through the remainder of the year. Table 4 shows the projected lingcod landings, the lingcod allocations, and the projected attainment percentage by fishery under both the current trip limits and the Council's recommended adjusted trip limits for north of 42° N lat. These projections were based on the most recent catch information available through late August 2022.

TABLE 4—PROJECTED LANDINGS OF LINGCOD, LINGCOD ALLOCATION, AND PROJECTED PERCENTAGE OF LINGCOD NORTH OF 42° N LAT. ATTAINED THROUGH THE END OF THE YEAR BY TRIP LIMIT AND FISHERY

Fishery	Trip limits	Projected landings (round weight) (mt)
LE North of 42° N lat.	Current: 5,000 lb/two months (2,268 kg)	182.76
OA North of 42° N lat.	Current: 2,500 lb/month (1,134 kg).	
LE North of 42° N lat.	Recommended: 7,000 lb/two months (3,175 kg)	188.76
OA North of 42° N lat.	Recommended: 3,500/month (1,588 kg).	

Under the current trip limits, the model predicts catches of lingcod north of 42° N lat. will total 182.76 mt, which is 7.1 percent of the 2022 non-trawl allocation of lingcod (2,573.791 mt). Under the Council's recommended trip

limits, lingcod mortality north of 42° N lat. is expected to increase to 188.76 mt, which is 7.3 percent of the 2022 non-trawl allocation of lingcod (2,573.791 mt).

Trip limit increases for lingcod are intended to marginally increase attainment of the non-trawl allocation. The proposed trip limit increases do not appreciably change projected impacts to co-occurring rebuilding species compared to the impacts anticipated in the 2021–2022 harvest specifications because the projected impacts to those species assume that the entire lingcod ACL is harvested. Therefore, the Council recommended and NMFS is implementing, by modifying Table 2 North to part 660, subpart E, and Table 3 North to part 660, subpart F, trip limit changes for LE and OA lingcod north of 42° N lat. as shown above in Table 4. These changes will be implemented through the end of 2022.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Keeley Kent in NMFS West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: *https://www.fisheries.noaa.gov/species/west-coast-groundfish.*

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document increase trip limits for fisheries in Washington, Oregon, and California to allow additional economic opportunity while keeping catch within allocations established by the 2021–2022 harvest specifications. New information became available at the September 2022 Council meeting showing that updated 2022 catch projections using the most recent available data were lower than projections made during the harvest specifications process due to a combination of changing fishery conditions, and trip limit changes made during the 2021 fishing year. The trip limit increases are for the LE and OA sectors for sablefish north of 36° N lat., canary rockfish, and lingcod north of 42° N lat. These changes are projected to increase economic value of the fisheries by $283,335 for sablefish, $25,324 for canary, and $10,660 for lingcod as well as reduce regulatory discards in these fisheries. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2021–2022 harvest specifications and management measures which published on December 11, 2020 (85 FR 79880).

Delaying implementation to allow for public comment would likely reduce the economic benefits to the commercial fishing industry and the businesses that rely on that industry because it is unlikely the new regulations would publish and could be implemented before the end of the calendar year. Therefore, providing a comment period for this action could significantly limit the economic benefits to the fishery, and would hamper the achievement of optimum yield from the affected fisheries.

Therefore, the NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by increasing opportunity and allowing greater economic benefit. These adjustments were requested by the Council's advisory bodies, as well as members of industry during the Council's September 2022 meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2021–2022 (85 FR 79880, December 11, 2020).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

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

Dated: September 28, 2022.

Jennifer M. Wallace,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. Revise Table 2 (North) to part 660, subpart E, to read as follows:

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Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/13/2022

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	40 fm line[1/] - 100 fm line[1/]					
3		30 fm line [1/]- 40 fm line [1/2/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[3/] & Darkblotched rockfish**	8,000 lb/ 2 month					
5	**Pacific ocean perch**	3,600 lb/ 2 months					
6	**Sablefish**	2,400 lb / week, not to exceed 4,800 lb / 2 months				4,500 lb / week, not to exceed 9,000 lb / 2 months	
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9 10 11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[4/8/]**	10,000 lb/ month					
12	**Whiting**	10,000 lb/ trip					
13	**Minor Shelf Rockfish[3/]**	800 lb / month					
14	**Shortbelly Rockfish**	200 lb / month					
15	**Widow rockfish**	4,000 lb/ 2 month					
16	**Yellowtail rockfish**	3,000 lb/ month					
17	**Canary rockfish**	3,000 lb / 2 months				4,000 lb / 2 months	
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish [5/]**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[4/]					
21	42°00' N. lat. - 40°10' N. lat. Minor Nearshore Rockfish	2,000 lb / 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
22	42°00' N. lat. - 40°10' N. lat. California Black Rockfish	7,000 lb / 2 months					
23	**Lingcod[6/]**						
24	North of 42°00' N. lat.	5,000 lb / 2 months				7,000 lb/ 2 months	
25	42°00' N. lat. - 40°10' N. lat.	2, 000 lb/2 months					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb / 2 months		150,000 lb / 2 months	100,000 lb / 2 months		
28	**Longnose skate**	Unlimited					
29	**Other Fish[7/]& Cabezon in California**	Unlimited					
30	**Oregon Cabezon/Kelp Greenling**	Unlimited					
31	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.(46°38.17' N. lat.),

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Revise Table 2 (South) to part 660, subpart E, to read as follows:

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/13/2022

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope rockfish[2/] &**	40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**	40,000 lb/ 2 months					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	2,400 lb / week, not to exceed 4,800 lb / 2 months				4,500 lb / week, not to exceed 9,000 lb / 2 months	
8	South of 36°00' N. lat.	2,500 lb/ week					
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**						
11	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12	South of 34°27' N. lat.	3,000 lb/ 2 months					
13 14 15	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**	10,000 lb/ month					
16	**Whiting**	10,000 lb/ trip					
17	**Minor Shelf Rockfish[2/]**						
18	40°10' N. lat. - 34°27' N. lat.	8,000 lb. / 2 months, of which no more than 500 lb. may be vermilion					
19	South of 34°27' N. lat.	5,000 lb. / 2 months, of which no more than 3,000lb. may be vermilion					
20	**Widow**						
21	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
22	South of 34°27' N. lat.	8,000 lb. / 2 months					
23	**Chilipepper**						
24	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
25	South of 34°27' N. lat.	8,000 lb. / 2 months					
26	**Shortbelly Rockfish**						
27	South of 40°10' N. lat.	200 lb/ month					
28	**Canary rockfish**	3,500 lb / 2 months				4,000 lb / 2 months	
29	**Yelloweye rockfish**	CLOSED					
30	**Cowcod**	CLOSED					
31	**Bronzespotted rockfish**	CLOSED					
32	**Bocaccio**	6,000 lb/ 2 months					
33	**Minor Nearshore Rockfish**						
34	Shallow nearshore[4/]	2,000 lb/ 2 months					
35	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
36	**California Scorpionfish**	3,500 lb/ 2 months					
37	**Lingcod[6/]**	1,600 lb / 2 months					
38	**Pacific cod**	1,000 lb/ 2 months					
39	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
40	**Longnose skate**	Unlimited					
41	**Other Fish[7/] & Cabezon in California**	Unlimited					
42	**Big Skate**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 4. Revise Table 3 (North) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

9/13/2022

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	40 fm line[1/] - 100 fm line[1/]					
3		30 fm line [1/]- 40 fm line [1/2/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[3/] & Darkblotched rockfish**	2,000 lb / months					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	600 lb/day, or 1 landing /week up to 2,000 lb, not to exceed 4,000 lb / 2 months				600 lb / day, 4,000 lb / week not to exceed 8,000 lb / 2 months	
7	**Shortpine thornyheads**	50 lb/month					
8	**Longspine thornyheads**	50 lb/month					
9 10 11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[4/8/]**	5,000 lb/ month					
12	**Whiting**	300 lb/ month					
13	**Minor Shelf Rockfish[3/]**	800 lb / month					
14	**Widow rockfish**	2,000 lb/ 2 months					
15	**Shortbelly Rockfish**	200 lb / month					
16	**Yellowtail rockfish**	1,500 lb/ month					
17	**Canary rockfish**	1,000 lb/ 2 months				2,000 lb / 2 months	
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish & CA black rockfish**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[5/]					
21	42°00' N. lat. - 40°10' N. lat. Minor Nearshore Rockfish	2,000 lb / 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
22	42°00' N. lat. - 40°10' N. lat. California Black Rockfish	7,000 lb / 2 months					
23	**Lingcod[6/]**						
24	North of 42°00' N. lat.	2,500 lb/ month				3,500 lb / month	
25	42°00' N. lat. - 40°10' N. lat.	1,000 lb / month					
26	**Pacific cod**	1,000 lb/ 2 months					
27	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months		100,000 lb/ 2 months	
28	**Longnose skate**	Unlimited					
29	**Big skate**	Unlimited					
30	**Other Fish[7/] & Cabezon in California**	Unlimited					
31	**Oregon Cabezon/Kelp Greenling**	Unlimited					
32	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
33	North	*Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here*					
34	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
35	North	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Between 46°16' N. lat. and 40°10' N. lat. and the 30 fm and 40 fm lines, fishing is only allowed with hook-and-line gear except bottom longline and dinglebar gear, as defined in §660.11

3/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 5. Revise Table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/13/2022

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**	200 lb/ month					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	600 lb/day, or 1 landing /week up to 2,000 lb, not to exceed 4,000 lb / 2 months				600 lb / day, 4,000 lb / week not to exceed 8,000 lb / 2 months	
8	South of 36°00' N. lat.	2,000 lb/week, not to exceed 6,000 lb/2 months					
9	**Shortpine thornyheads**						
10	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
11	**Longspine thornyheads**						
12	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine**						
14	South of 34°27' N. lat.	100 lb/day, no more than 1,000 lb/ 2 months					
15	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**	5,000 lb/ month					
16							
17							
18	**Whiting**	300 lb/ month					
19	**Minor Shelf Rockfish[2/]**						
20	40°10' N. lat. - 34°27' N. lat.	4,000 lb. / 2 months, of which no more than 400 lb. may be vermilion					
21	South of 34°27' N. lat.	3,000 lb. / 2 months, of which no more than 1,200lb. may be vermilion					
22	**Widow**						
23	40°10' N. lat. - 34°27' N. lat.	6,000 lb. / 2 months					
24	South of 34°27' N. lat.	4,000 lb. / 2 months					
25	**Chilipepper**						
26	40°10' N. lat. - 34°27' N. lat.	6,000 lb. / 2 months					
27	South of 34°27' N. lat.	4,000 lb. / 2 months					
28	**Shortbelly Rockfish**						
29	South of 40°10' N. lat.	200 lb/ month					
22	**Canary rockfish**	1,500 lb / 2 months				2,000 lb / 2 months	
23	**Yelloweye rockfish**	CLOSED					
24	**Cowcod**	CLOSED					
25	**Bronzespotted rockfish**	CLOSED					
26	**Bocaccio**	4,000 lb/ 2 months					
30	**Minor Nearshore Rockfish**						
31	Shallow nearshore[4/]	2,000 lb/ 2 months					
32	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
33	**California Scorpionfish**	3,500 lb/ 2 months					
34	**Lingcod[6/]**	700 lb / months					
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months		100,000 lb/ 2 months	
37	**Longnose skate**	Unlimited					
38	**Big skate**	Unlimited					
39	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 9/13/2022

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
40	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
41	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
42	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
43	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
44	South of 40°10' N. lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40o10' and 34o27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
45	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
46	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
47	*40°10' N. lat. - 38°00' N. lat.*	*100 fm line[1/] - 200 fm line[1/]*		*100 fm line[1/] - 150 fm line[1/]*			*100 fm line[1/] - 200 fm line[1/]*
48	*38°00' N. lat. - 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
49	*South of 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
50		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38o57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
51	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
52	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

Table 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels are allowed to fish inside groundfish conservation areas using hook and line only. See section 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2022–21409 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 220923–0198]

RIN 0648–BK81

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Non-trawl Logbook

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

ACTION: Final rule.

SUMMARY: This final rule creates a Federal requirement for certain vessels in the Pacific Coast Groundfish fishery target fishing for groundfish with non-trawl gear in Federal waters seaward of California, Oregon, and Washington, to complete and submit a non-trawl logbook to NMFS via an electronic application. Specifically, this non-trawl logbook requirement applies to vessels participating in the directed open access and limited entry fixed gear sectors, as well as those vessels that fish with non-trawl gear in the Shorebased Individual Fishing Quota Program. The intent of this requirement is to collect valuable fishery-dependent information in non-

trawl sectors with partial observer coverage, which will help better inform management of these fisheries.

DATES: Effective January 1, 2023.

ADDRESSES:

Electronic Access

This rule is accessible via the internet at the Office of the Federal Register website at *https://www.federalregister.gov/.* This rule's associated Compliance Guide is available on the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/compliance-guides-west-coast-groundfish.*

FOR FURTHER INFORMATION CONTACT: Lynn Massey, phone: 971–238–2514, or email: *lynn.massey@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule is being promulgated in accordance with recommendations developed by the Pacific Fishery Management Council (Council), first recommended in 2008 and reaffirmed at their March 2022 meeting. For a full history of the Council's development of this action, please see the ''Background'' section of the proposed rule (87 FR 39792, July 5, 2022).

Non-Trawl Federal Logbook Requirement

This final rule creates a Federal electronic logbook requirement for vessels participating in the directed open access (OA) and limited entry fixed gear (LEFG) groundfish fishery sectors, as well as those vessels that use non-trawl gear under the Shorebased Individual Fishing Quota (IFQ) Program (herein referred to as the ''IFQ gear switching sector''). The directed OA sector includes those vessels that target fish for groundfish in the exclusive economic zone (EEZ). The directed OA sector does not include those vessels that retain groundfish incidentally while targeting non-groundfish species (*e.g.,* the salmon troll fishery). The LEFG sector includes the primary sablefish fishery and the limited entry trip limit fisheries. The IFQ gear switching sector includes those vessels that participate in the Shorebased IFQ Program with trawl gear, but also ''gear switch'' and occasionally fish with non-trawl gear pursuant to their IFQ limits. From 2016–2019, an average of 536, 188, and 18 vessels participated in the directed OA, LEFG, and IFQ gear switching fishery sectors, respectively. Therefore, NMFS anticipates this action will affect a total of approximately 742 vessels.

This final rule will amend the regulations at §§ 660.11, 660.12, and 660.13 to include the new non-trawl logbook requirements. The amended regulations will include a new definition for the directed OA sector, as well as new gear types that vessels can declare on their declaration reports (*e.g.* declaration codes) and revisions to existing declaration codes with the primary purpose of ensuring those codes better align with the gear profiles as they will be described in the electronic non-trawl logbook application. Additionally, the revised declaration codes would allow NOAA's Office of Law Enforcement (OLE) to identify those vessels that are subject to the new non-trawl logbook requirement based on what gear type is declared.

Content and Use of Non-Trawl Logbook and Data

The non-trawl logbook will collect set-level information on catch, discards, fishing location, fishing depth, gear configuration, and sale. Most data will be required to be entered into the electronic logbook application while the vessel is fishing, with only the buyer information recorded upon landing. An electronic logbook entry will be required for each individual fishing trip. The electronic application will accommodate fishing trips for instances when gear is set and retrieved on different trips. Submission of electronic logbook data in the application will be required within 24 hours of offloading/landing (same timing requirement as electronic fish tickets).

NMFS, the Council, the Groundfish Management Team (GMT), the Northwest Fisheries Science Center, and the Pacific States Marine Fisheries Commission (PSMFC) will use the data obtained from the logbook application for analyses of catch locations and bycatch hotspots, spot verification of fish tickets, analyses on gear usage by area, stock assessments, and a variety of other applications. Additionally, Federal groundfish regulations (see 50 CFR 660.216(e)(7) and 50 CFR 660.316(e)(7)) require vessels to make the logbook data available to fishery observers under the West Coast Groundfish Observer Program (WCGOP). The observers collect biological samples and pair these samples with logbook data describing vessel position, target, depth, and retained catch. These data are not always accessible from other sources, such as equipment on the ship. Finally, the logbook data may also be used by NOAA's OLE and the U.S. Coast Guard in investigations.

Non-Trawl Logbook Electronic Application and Download Instructions

NMFS has contracted with the PSMFC to develop an electronic logbook application. The PSMFC will house and manage the logbook data. The application will ultimately be available for download free of charge on smart phones, tablets, and laptop computers; however, initial rollout may be limited to a smart phone application, subject to timing constraints. Once the electronic application is finalized and available (expected no later than December 2022), NMFS will send out an email notice to the groundfish email list that includes download and account set-up instructions. To register for the groundfish email list, provide your email address at: *https://public.govdelivery.com/accounts/USNOAAFISHERIES/subscriber/new.* After clicking submit, expand the ''Regional Updates'' drop-down list and navigate to ''West Coast Updates''. Check the box next to ''Groundfish'' and then select ''Submit'' to subscribe.

Temporary Use of Paper Logbook Forms

For a minimum of one year from the effective date of this final rule, NMFS will accept paper logbook forms to provide a grace period for adapting to the electronic application. NMFS will prescribe the paper logbook forms that may be submitted to meet this requirement. Depending on the development status of the additional formats for the electronic application, NMFS may extend the optional paper logbook provision beyond one year from the effective date of the final rule. NMFS will issue a public notice at least 90 calendar days prior to ending the optional provision to submit a paper logbook. Each non-trawl logbook paper form will represent a single fishing trip, and the data will be matched to a landing receipt (*i.e.,* fish ticket) submitted to PSMFC by seafood first receivers (*i.e.,* buyers). This matching step acts as a data corroboration process for landings, and allows the PSMFC to identify and correct any errors in the data. Paper logbook submission will be required within 30 days of the date of landing. In December 2022 or earlier, the PSMFC will mail booklets of logbook forms to the state fish and wildlife agencies, which will then assist in distributing logbook forms to their respective fishermen. Shortly prior to mailing logbook forms, NMFS will email a public notice to the groundfish email distribution list to provide advance notification.

Under this final rule, vessels will be required to send the alternative paper logbook forms to the PSFMC, on behalf of NMFS, at: Pacific States Marine Fisheries Commission, 205 SE Spokane St. Suite #100, Portland, OR 97202.

Industry Outreach and Considerations

NMFS and the PSMFC are consulting with industry representatives and end-users of the data (*i.e.,* the GMT and state representatives) on the electronic logbook layout and design. The PSFMC will organize and host beta-testing of the electronic logbook application once a draft version is ready for use (currently expected in the fall of 2022). In order to participate in the official beta-testing of the electronic logbook application, please email the PSFMC at *FedElog@psmfc.org.* NMFS will send a public announcement via the groundfish email list when the PSMFC schedules specific dates for any beta-testing workshops.

This final rule is structured to minimize impacts on those vessels that are already subject to comparable logbook requirements. For example, those vessels that gear switch in the Shorebased IFQ Program and use electronic monitoring (EM) in lieu of an observer currently record discards on a paper logbook form (see § 660.604(s)). Those vessels would be required to transition to submit the electronic non-trawl logbook application instead of the paper logbook forms, with the exception of the first year(s), when they would be permitted to continue submitting their regular paper form as they adapt to the electronic application.

Response to Public Comments

NMFS held a public comment period on the proposed rule (87 FR 39792; July 5, 2022) from July 5, 2022, to August 4, 2022. NMFS received a total of seven public comment submissions. Six of the public comments were from commercial fishermen that participate in one of the affected sectors. NMFS also received a comment from the California Department of Fish and Wildlife (CDFW). NMFS responds to each of these public comments below. In some cases, similar concepts across multiple public comment submissions are summarized and grouped in one response, and in other cases, separate concepts in one public comment submission are described and responded to separately.

Comment 1: Three fishery participants commented that the non-trawl logbook requirement is duplicative of data already collected through other means, including vessel monitoring system (VMS) units, landing receipts, and observer data.

Response: The logbook will collect location-specific catch and discard data, as well as effort data, that is not available fleet-wide from any other source in the Federal non-trawl fisheries. The OA sector, like the other non-trawl sectors, is subject to partial observer coverage. NMFS develops estimations of fleet-wide discards using the data from vessels that were observed; however, that information is not available on a location-specific basis. Landing receipts only provide retained catch information; they do not contain information on discards, specific catch location, gear configuration, or fishing depth. VMS data provide location data, but are not connected to catch and discard data by location. More precise location-specific catch and discard information collected through the logbook could help the Council and NMFS better target management responses to, for example, a bycatch concern or catch at risk of exceeding a sector allocation or annual catch limit. These management actions could potentially close smaller areas, and be less disruptive to fisheries, because management concerns could be narrowed to a specific location.

Comment 2: Two fishery participants expressed concern over the operational burden that would be imposed through the requirement to record the time and location of every gear set, especially for smaller vessels that make a large amount of drops or sets per fishing trip and across many different fishing locations.

Response: For fishing trips where traditional longline and/or pot gear are not being used, logbook users should record a new fishing location and set number if the vessel actively motors to a different location greater than 1 nautical mile away or to a distinguishably different geographic area (*e.g.,* a new reef). For example, if 30 drops from a rod and reel gear type are made in one fishing location, then the vessel should record the time that the first hook entered the water and the time that the last hook was retrieved. These methods align with what a WCGOP observer would record if onboard the vessel. These guidelines are included in the Compliance Guide associated with this rule, which is available at *https://www.fisheries./noaa.gov/west-coast/sustainable-fisheries/compliance-guides-west-coast-groundfish.*

Comment 3: A private fisher out of Santa Barbara, California, asked for clarification about whether catch in both state and Federal waters would be required in each logbook submission if both waters were fished in a single trip.

Response: Logbook data is only required for fishing activity that takes place in the EEZ. Any fishing activity that takes place in state territorial waters, even if conducted on the same trip as fishing activity in Federal waters, will not be required for inclusion in the Federal logbook submission. In some cases, West Coast states have their own requirements for fishing activity in state territorial waters.

Comment 4: A private fisher out of Half Moon Bay, California, commented that he does not oppose the collection of fishing information in the non-trawl logbook, but recommended that fishing location data be retrieved via each boat's VMS as opposed to the vessel crew recording the fishing location in the non-trawl logbook.

Response: NMFS and the PSMFC evaluated the possibility of obtaining fishing location data from VMS units as an alternative to fisher-reported latitude and longitude coordinates. Although VMS location data is precise enough for enforcement applications (*e.g.,* ensuring vessels are not fishing in closed areas), it is not precise enough for other applications that the logbook data will be used for (*e.g.,* stock assessments and area-specific management responses). Additionally, connecting VMS data to logbook submissions would be technically challenging and likely not achievable by the time of this rule's implementation. For these reasons, NMFS determined that VMS location data is not a feasible option for obtaining precise fishing location data at this time. However, if recording fishing location data proves too operationally challenging for certain types of affected vessels in the future, NMFS will continue investigating a way to use VMS data in lieu of fisher-reported latitude and longitude coordinates.

Comment 5: A private fisher out of Bolinas, California, commented that he does not have a smart phone and would be inconvenienced if required to get one for the new non-trawl logbook requirement.

Response: NMFS intends for the electronic logbook application to be available for download on tablets and laptops, in addition to smart phones. Although NMFS expects that at initial implementation in January 2023, the electronic application will only be available for download on a smart phone, NMFS is also providing a minimum one year grace period to use paper logbook forms in lieu of the electronic application. NMFS expects that by the end of this grace period, the electronic application will be available on the other devices and not just limited for download on a smart phone.

Comment 6: A private fisher from McKinleyville, California, commented that on smaller vessels, electronic devices and alternative paper logs will get damaged in the salt spray, which would cause the constant need to replace electronic devices.

Response: Under this rule, instantaneous data entry is not required. Fishermen will have 2 hours from the time of setting/retrieving gear to complete that portion of their logbook entries (see regulations below). Electronic devices and/or logbook forms can be stored in the wheelhouse while fishermen are handling gear.

Comment 7: A member of the public commented that it would be unsafe for fishermen to fill out the logbook information while fishing.

Response: Under this rule, instantaneous data entry is not required. Fishermen will have 2 hours from the time of setting/retrieving gear to complete that portion of their logbook entries (see regulations below). The fisher will not need to be handling an electronic device at the same time as setting or retrieving gear.

Comment 8: A private fisher out of Spring Valley, California, requested a change to observer data recording protocol. Specifically, the commenter asked that fish released with a descending device not count as discard mortality.

Response: NMFS is not proposing any modifications to observer protocols through this rulemaking, and therefore this comment is beyond the scope of the proposed rule.

Comment 9: CDFW commented that it generally supports the proposed rule but opposes the fact that the non-trawl logbook requirement will only apply in the EEZ. CDFW stated that the non-trawl logbook should also apply in California state waters.

Response: At the September 2021 and March 2022 Council meetings, NMFS provided reports to the Council requesting clarification on the intended scope of the action. In those reports, NMFS stated that the logbook requirement would only apply in the EEZ (*i.e.,* 3–200 nautical miles), consistent with 50 CFR 660.10(a). Accordingly, NMFS did not include analysis for vessels that fish in state waters as part of this action. NMFS recommends that if the State is interested in collecting that data, California consider a complementary state logbook requirement using the same logbook application for vessels fishing in state waters.

Comment 10: CDFW commented that the logbook is needed to collect information on seabird and whale interactions.

Response: The non-trawl logbook is required as a term and condition in the biological opinion for the Continuing Operation of the Pacific Coast Groundfish Fishery on Endangered Species Act (ESA)-listed seabirds (01EOFW00–20l7–F–0316) and is a conservation recommendation in the biological opinion for the Continuing Operation of the Pacific Coast Groundfish Fishery on ESA-listed humpback whales (WCRO–2018–01378). The purpose is to collect additional effort data in groundfish fishery sectors with partial-observer coverage (*e.g.,* number of hooks, number of pots, etc.) which help inform the bycatch estimation models used in conjunction with documented takes. The logbook will not require that fishermen record data on seabird or whale interactions.

Changes From the Proposed Rule

No changes were made from the proposed rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This final rule contains a new collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3507(d)) (PRA). This rule adds a Federal requirement to complete and submit data in the non-trawl electronic logbook application for fishing activities in the directed OA, LEFG, and IFQ gear switching fishery sectors. Public reporting burden for the Federal non-trawl logbook requirement is estimated to average 30 minutes per logbook submission, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The average vessel took about 14 fishing trips per year between 2016–2019, which would result in about 7 additional hours of paperwork to comply with the new logbook requirement over the course of the year. Vessels pursuing a targeted non-trawl groundfish strategy would be most impacted by the final rule. NMFS estimates that a subset of about ten vessels of the 742 affected vessels pursue such a strategy and take 100–180 trips per vessel per year; these entities would have an estimated additional burden of approximately 50–90 hours per vessel.

In addition, this final rule revises the existing requirements for the collection of information 0648–0573 by adding and modifying declaration codes for the purpose of monitoring and enforcing the new logbook requirement. These new declaration codes are not anticipated to alter the number of respondents, anticipated responses, burden hours, or burden costs, as the affected vessels are already required to declare their fishing activities. The new declaration codes would allow NOAA's OLE to track those vessels that are subject to the logbook requirement based on what gear type is being used and the location of their fishing activity. Public reporting burden for submitting a declaration report is estimated to average 4 minutes per individual report, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We have submitted these new collection-of-information requirements to OMB for approval. Approved information collections may be found on *www.reginfo.gov/public/do/PRAMain.* We also invite the general public and other Federal agencies to comment on information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted through *www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 23, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660–FISHERIES OFF WEST COAST STATES

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

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

■ 2. In § 660.11, under the definition for ''Open access fishery,'' add paragraph (1) and reserved paragraph (2) to read as follows:

§ 660.11 General definitions.

* * * * *

Open access fishery * * *

(1) For the purpose of the non-trawl logbook requirements at § 660.13, directed open access fishery means that a fishing vessel is target fishing for groundfish under the requirements of subpart F of this part, is only declared into an open access groundfish gear type or sector as defined at § 660.13(d)(4)(iv)(A), and has not declared into any other gear type or sector.

(2) [Reserved]

* * * * *

■ 3. In § 660.12, revise paragraph (b)(3) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(b) * * *

(3) Falsify or fail to prepare and/or file, retain or make available records of fishing activities as specified in § 660.13(a)(1) or (2).

* * * * *

■ 4. In § 660.13:

■ a. Add paragraphs (a)(2) through (4);

■ b. Revise paragraphs (d)(4)(iv) introductory text and (d)(4)(iv)(A)(*1*) through (*31*); and

■ c. Add paragraphs (d)(4)(iv)(A)(*32*) through (*37*).

The revisions and additions read as follows:

§ 660.13 Recordkeeping and reporting.

(a) * * *

(2) *Non-trawl logbook.* The authorized representative of a commercial vessel participating in the groundfish fishery sectors listed in paragraphs (a)(2)(i) through (iii) of this section must keep and submit a complete and accurate record of fishing activities in the non-trawl electronic logbook application:

(i) The directed open access fishery, as defined at § 660.11;

(ii) The limited entry fixed gear trip limit fisheries subject to the trip limits in Table 2 (North) and Table 2 (South) of subpart E of this part, and primary sablefish fisheries, as defined at § 660.211; and

(iii) Gear switching in the Shorebased IFQ Program, as defined at § 660.140(k).

(3) *Electronic logbook application.* The non-trawl electronic logbook application is a web-based portal used to send data from non-trawl fishing trips to the Pacific States Marine Fisheries Commission. The following requirements apply:

(i) The authorized representative of the vessel must complete an entry in the non-trawl electronic logbook application for all groundfish fishing trips, as defined under § 660.11. Required information for each fishing trip includes, but is not limited to, information on set-level data on catch, discards, fishing location, fishing depth, gear configuration, and sale.

(ii) The authorized representative of the vessel must complete an entry for each groundfish fishing trip in the non-trawl electronic logbook application with valid responses for all data fields in the application, except for information not yet ascertainable, prior to entering port, subject to the following requirements:

(A) Logbook entries for setting gear, including vessel information, gear specifications, set date/time/location, must be completed within 2 hours of setting gear.

(B) Logbook entries for retrieving gear, including date/time recovered and catch/discard information, must be completed within 2 hours of retrieving gear.

(C) The authorized representative of the vessel must complete and submit entries in the non-trawl electronic logbook application within 24 hours of the completion of offload.

(4) *Temporary paper logbook provision.* For a minimum of one year from January 1, 2023, vessels subject to the non-trawl logbook requirement in paragraphs (a)(2) and (3) of this section are permitted to submit a paper logbook form in lieu of the requirement to fill out the non-trawl electronic logbook application. The West Coast Regional Administrator will prescribe the paper logbook forms required under this section. NMFS will issue a public notice at least 90 calendar days prior to ending the optional provision to submit a paper logbook. The authorized representative of the vessel must complete the non-trawl logbook form on all groundfish trips, subject to the same requirements as for the non-trawl electronic logbook application, listed in paragraphs (a)(3)(i) and (ii) of this section. The authorized representative of the vessel must deliver the NMFS copy of the non-trawl logbook form by mail or in person to NMFS or its agent within 30 days of landing. The authorized representative of the vessel responsible for submitting the non-trawl logbook forms must maintain a copy of all submitted logbooks for a minimum of three years after the fishing activity ended.

* * * * *

(d) * * *

(4) * * *

(iv) Declaration reports will include: The vessel name and/or identification number, gear type, and monitoring type where applicable, (as defined in paragraph (d)(4)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using non-trawl gear may declare more than one gear type with the exception of vessels participating in the Shorebased IFQ Program (*i.e.* gear switching); however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(4)(iv)(A) of this section on any trip and may not declare non-trawl gear on the same trip in which trawl gear is declared.

(A) * * *

(*1*) Limited entry fixed gear, not including shorebased IFQ (declaration code 10);

(*2*) Limited entry groundfish non-trawl, shorebased IFQ, observer (declaration code 11);

(*3*) Limited entry groundfish non-trawl, shorebased IFQ, electronic monitoring (declaration code 11);

(*4*) Limited entry midwater trawl, non-whiting shorebased IFQ, observer (declaration code 20);

(*5*) Limited entry midwater trawl, non-whiting shorebased IFQ, electronic monitoring (declaration code 20);

(*6*) Limited entry midwater trawl, Pacific whiting shorebased IFQ, observer (declaration code 21);

(*7*) Limited entry midwater trawl, Pacific whiting shorebased IFQ, electronic monitoring (declaration code 21);

(*8*) Limited entry midwater trawl, Pacific whiting catcher/processor sector (declaration code 22);

(*9*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership), observer (declaration code 23);

(*10*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel), electronic monitoring (declaration code 23);

(*11*) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl, observer (declaration code 30);

(*12*) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl or selective flatfish trawl, electronic monitoring (declaration code 30);

(*13*) Limited entry demersal trawl, shorebased IFQ, observer (declaration code 31);

(*14*) Limited entry demersal trawl, shorebased IFQ, electronic monitoring (declaration code 31);

(*15*) Limited entry selective flatfish trawl, shorebased IFQ, observer (declaration code 32);

(*16*) Limited entry selective flatfish trawl, shorebased IFQ, electronic monitoring (declaration code 32);

(*17*) Non-groundfish trawl gear for pink shrimp (declaration code 41);

(*18*) Non-groundfish trawl gear for ridgeback prawn (declaration code 40);

(*19*) Non-groundfish trawl gear for California halibut (declaration code 42);

(*20*) Non-groundfish trawl gear for sea cucumber (declaration code 43);

(*21*) Open access bottom contact hook-and-line gear for groundfish (*e.g.,* bottom longline, commercial vertical hook-and-line, dinglebar) (declaration code 33);

(*22*) Open access Pacific halibut longline gear (declaration code 62);

(*23*) Open access groundfish trap or pot gear (declaration code 34);

(*24*) Open access Dungeness crab trap or pot gear (declaration code 61);

(*25*) Open access prawn trap or pot gear (declaration code 60);

(*26*) Open access sheephead trap or pot gear (declaration code 65);

(*27*) Open access non-bottom contact hook and line gear for groundfish (*e.g.,* troll, jig gear, rod & reel gear) (declaration code 35);

(*28*) Open access non-bottom contact stationary vertical jig gear (declaration code 36);

(*29*) Open access non-bottom contact troll gear (declaration code 37);

(*30*) Open access HMS line gear (declaration code 66);

(*31*) Open access salmon troll gear (declaration code 63);

(*32*) Open access California Halibut line gear (declaration code 64);

(*33*) Open access Coastal Pelagic Species net gear (declaration code 67);

(*34*) Other, a gear that is not listed above (declaration code 69);

(*35*) Tribal trawl gear (declaration code 50);

(*36*) Open access set net or gillnet gear—California (declaration 68); or

(*37*) Gear testing, Trawl Rationalization fishery (declaration code 70).

* * * * *

[FR Doc. 2022–21366 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC346]

Fisheries of the Exclusive Economic Zone off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the annual 2022 total allowable catch of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 28, 2022, through 2400 hours, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The annual 2022 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 23,714 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the annual 2022 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 23,514 mt and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 27, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: September 27, 2022.

Jennifer M. Wallace,

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

[FR Doc. 2022–21342 Filed 9–28–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054;RTID 0648–XC364]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher vessels to catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using pot gear and to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2022 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective September 29, 2022, through 2400 hours, Alaska local time (A.l.t.), December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 Pacific cod TAC specified for trawl catcher vessels in the BSAI is 28,855 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) and reallocation (87 FR 51004, August 19, 2022).

The 2022 Pacific cod TAC specified for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear in the BSAI is 11,216 mt as established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

The 2022 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 5,518 mt as established by final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) and reallocations (87 FR 18289, March 30, 2022; 87 FR 51004, August 19, 2022).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that trawl catcher vessels will not be able to harvest 1,000 mt of the 2022 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*).

Therefore, in accordance with § 679.20(a)(7)(iii)(A), NMFS apportions 800 mt of Pacific cod from trawl catcher vessels to the annual amount specified for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, and 200 mt of Pacific cod from trawl catcher vessels to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2022 Pacific cod included in final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) and reallocations (87 FR 18289, March 30, 2022; 87 FR 51004, August 19, 2022) is revised as follows: 27,855 mt to trawl catcher vessels, 12,016 mt to catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, and 5,718 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the originally specified apportionment of the Pacific cod TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 28, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: September 29, 2022

Jennifer M. Wallace,

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

[FR Doc. 2022–21483 Filed 9–29–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 190
Monday, October 3, 2022

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. APHIS–2021–0052]

RIN 0579–AE67

Process for Establishing Rates for Veterinary Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning user fees that we charge for veterinary diagnostic services and for certain import-related and export-related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors. We are proposing to remove the tables providing the individual fees from the regulations and post them on an Animal and Plant Health Inspection Service (APHIS) website instead. The regulations would instead specify the methodology (formula) used to calculate the fees (including imputed costs), and APHIS would update the fees using a notice-based process. Replacing the current user fee listings with a standardized methodology would increase transparency in the process of setting fee rates, align the regulations with other Departmental practices, and allow us to streamline processes and reduce the number of rules needed in order to update the fees.

DATES: We will consider all comments that we receive on or before December 2, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0052 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *www.regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Slimmer, User Fee Financial Team Manager, Veterinary Services Money Management, 920 Main Campus Drive, Raleigh, NC 27606; (919) 855–7253.

SUPPLEMENTARY INFORMATION:

Background

The regulations covering user fees to reimburse the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import/export related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors are contained in 9 CFR part 130 (referred to below as the regulations or the user fee regulations). These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (21 U.S.C. 136a(c)), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of providing import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors, and for veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

Since fiscal year (FY) 1992, APHIS has received no directly appropriated funds to cover the cost of certain veterinary diagnostics or to provide import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors. Our ability to provide these services depends on user fees. User fees associated with providing services for live animal, animal product, bird, and germplasm imports and exports fund, among other things, quarantine services, the processing of import permit applications, port of entry inspections, inspections and approvals of import/export facilities and establishments, endorsements of export certificates, and services related to emergency situations that arise during the export or import process.

The work of veterinary diagnostics is performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and, if so, to identify those organisms or agents. Services in this category include, among other things, performing laboratory (identification, serology, and pathobiology) tests and providing diagnostic reagents and other veterinary diagnostic materials and services. The National Veterinary Services Laboratories provide diagnostic goods and services.

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. Financing certain veterinary diagnostic and import/export related services and products by directly charging the users of those services internalizes those costs to those who require the service and benefit from it.

In the past, APHIS' rulemaking established user fee rates for 5-year periods of time. Individual fees would typically adjust annually and were specific to given fiscal years. The rulemaking process is lengthy and so, to establish 5 years of fees at one time, APHIS Veterinary Services (VS) had to forecast customer needs and Agency costs 6 to 7 years into the future. Even though VS based its cost estimates on the best data available, such forecasting has proven difficult, and we have found these long-range estimates unreliable for setting fees to recover the costs of providing desired goods and services without over- or undercharging our customers. For example, the user fee rates established in 2011 and 2012 used the best available data during 2009 for those years and did not anticipate the high level of investment in information technology that would be needed to

meet customer demand to conduct business with VS in the coming decade.

In order to provide both transparency and predictability to the industries served and to allow VS to effectively plan for staffing, investments in infrastructure, and other resources, we are proposing to remove specific user fees from the regulations and establish a standardized methodology by which VS will calculate fees annually. VS would post the fee rates on *www.aphis.usda.gov/business-services/vs-vd-fees.* (Please note that this site does not yet exist; it would be developed should this rule be finalized.) The components (costs) APHIS would use to calculate the fee rates would be the same components currently used to calculate rates, with the addition of imputed costs. These imputed costs include U.S. Department of Labor, U.S. Office of Personnel Management, and the U.S. Department of State (State Department) costs to provide retirement, health, life insurance, worker's compensation, legal defense, and other benefits to the Agency and employees who provide the services covered by the fees. In accordance with the Office of Management and Budget (OMB) Circular A–25, User Charges, APHIS must compensate the Treasury General fund for these costs, so they are not borne by the taxpayer. Accordingly, to comply with OMB Circular A–25, we must include imputed costs in our calculations.

Under the proposed approach, APHIS would update its fees each calendar year. Each year, prior to the beginning of the following calendar year, APHIS would propose actual fee rates through publication of a notice in the **Federal Register**. The annual notice would provide information regarding the basis for any fee change, including cost of living, information technology investment, facilities capital requirements, and inflation rates. We would also describe any cost-saving measures the agency is undertaking. The notices would take public comment. Following the comment period, we would issue a subsequent (final) notice providing the final rates. This notice would respond to any comments received on the initial notice. When the final notice is issued, APHIS would update the fee rates found at *www.aphis.usda.gov/business-services/vs-vd-fees.*

This approach would reduce the number of regulations published for user fee rate setting. It would, also, shorten the time required to update user fees for these services and products, provide greater transparency to our customers concerning the way in which we derive our user fees, avoid financial crises that may occur when APHIS does not collect sufficient funds, reduce the potential of APHIS collecting funds over the amounts needed to cover costs, and ensure user fees cover the full APHIS cost to provide a given service (as intended by these types of fees).

At this time, we are not proposing to adjust the fee rates through this rulemaking. However, we anticipate that, since APHIS' import/export and veterinary diagnostics user fees have not been updated for more than 10 years, there will be a change in the fees when APHIS applies this new approach and issues our first notice in the **Federal Register** under the approach. These changes would be the result of using current economic data, staff processing time, increased complexity of work, and cost estimates to calculate the fees; current import/export and veterinary diagnostics fees are based on data from FY 2012 and FY 2011, respectively.

Finally, it should be noted that the proposed change in the method by which we update our user fees and the removal of user fee tables from the regulations in favor of maintaining a listing of specific user fee rates online at *www.aphis.usda.gov/business-services/vs-vd-fees* would not affect the table of overtime rates currently found in § 130.50(b)(3)(i) charged in addition to certain flat rate user fees. The user fees listed in that paragraph merely reproduce those found in 9 CFR 97.1(a) to improve ease of use for regulated entities and individuals. These rates impact other entities within APHIS and are adjusted periodically through separate rulemaking.

Development of Formulas

The components (costs) we would use to calculate user fee rates are the same costs used in calculating past rates with the exception of imputed costs, which are discussed in detail below:

COMPARISON OF CURRENT VERSUS PROPOSED COMPONENTS

[Costs]

Current charges	Proposed charges
Direct labor	Direct pay (on-board and in the hiring process, and including benefits), Cost of living.
Local support	Direct operating costs (travel, training, equipment, rent, facility maintenance, supplies and materials, service contracts, information technology system operations, maintenance, and development), Consumer price index.
Program and Agency support	Department, Agency, and Program support.
Departmental charges	Department support.
Reserve	Imputed costs (new)
	Reserve.

We calculate our user fees to cover the full cost of providing the services for which we charge the fee. The cost of providing a service includes these components, which are described in more detail below. In addition, in proposed § 130.1, we are adding the following terms and their definitions in order to provide additional clarity: *Consumer price index, cost of living, direct operating costs, direct pay (including benefits), imputed costs, reserve, program, agency, and department support.*

We are proposing to add *consumer price index* (CPI) to read as the measure of the average change over time in prices paid by urban consumers for a market basket of consumer goods and services. This would be determined by the Bureau of Labor Statistics (BLS), and APHIS would use BLS' annual average for the CPI.[1]

We are proposing to add *cost of living* to read as the adjusted annual rate used to determine the cost of maintaining a certain standard of living based on the economic assumptions in OMB's Presidential Economic Assumptions (PEA). The PEA outlines the economic assumptions undergirding the

[1] The CPI is not calculated by the program, it can be found using the following link: *https://www.bls.gov/cpi/news.htm.*

President's budget for a particular fiscal year, and includes several projections related to cost of living, including anticipated inflation rates and consumer price indices.

We are proposing to add *direct operating costs* to the definitions. The term would include: Travel and transportation for personnel; materials, supplies and other necessary items; training; general office supplies; rent; facility maintenance; equipment purchase and maintenance; utilities; contractual services; and information technology systems operations, maintenance, and development costs. Materials and supplies include items like animal food and bedding, chemicals, and medicine as well as materials needed to conduct laboratory tests.

Within direct operating costs, rent and facility maintenance are the costs of using the space we need to perform veterinary diagnostic services or import- or export-related work. If space is used for veterinary diagnostic services or import- or export-related work and other Agency work, only that portion of the costs associated with the veterinary diagnostic services or import- or export-related work is included in the user fees. Equipment purchases and maintenance costs include repair and replacement of existing equipment, in addition to purchase of new equipment, and are necessitated when issues arise. Maintenance may also be determined by recurring maintenance schedules for existing equipment. Utilities include water, telephone, electricity, and heating costs. Contractual services include security service, maintenance, trash pickup, and similar services. Finally, a number of information technology systems support APHIS' import/export and veterinary diagnostics services. There are annual costs with operating and maintaining those systems as well as development costs to enhance and add new features that support import/export and veterinary diagnostic services. The type, amount, and cost of direct operating costs vary with the type of good or service provided.

We are proposing to add *direct pay (including benefits)* to read as the wage labor costs (on board and in the hiring process), including benefits, for employees who specifically support and provide the required service. For example, at APHIS' Animal Import Centers, animal caretakers and veterinarians prepare for the arrival of animals or birds to be quarantined in the center, care for them (provide feed and water, clean cages or stalls) while they are quarantined, observe them while they are quarantined, release them from quarantine, and clean the quarantine area afterwards. If the service is inspecting an animal, the direct pay costs include the time spent by the inspector to conduct the inspection. Direct pay also includes the wage labor costs, including benefits, of employees providing direct administrative support in the field for these activities such as those who assist with the review of export documents and those who complete and process billing paperwork. The costs vary with the type of service provided and with the pay rate of the employee who performs the service and support.

We are adding a definition for *imputed cost*s that would read Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; Office of Personnel Management and State Department costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs.

APHIS will forward to the Department of Treasury (U.S. Treasury) fee revenue collected based on imputed costs of other Agencies. APHIS will not retain that revenue. These costs were previously paid at the Agency level but must now be included in user fee calculation in accordance with OMB Circular, A–25 ''User Charges,'' and Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards, Number 55, ''Amending Inter-entity Cost Provisions.''

We are adding a definition of *Program, Agency, and Department support* to read indirect or direct costs of the program, including supporting services provided to the industry. Agency and Department support costs are calculated as a pro-rata share of total direct labor and direct operating costs and are added to each fee. Agency and Department support costs include the costs of providing budget and accounting services, information technology services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, working with Congress, and other general program and agency management services provided above the local level.

We are adding a definition for *reserve* to read funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt, customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events.

All user fees would contribute to the reserve proportionately. The more a program depends on fees to fund its activities, the more vulnerable it is to revenue instability. Fully funded fee programs do not necessarily see a proportional decline in costs when there is a drop in collections. The reserve would ensure that we have sufficient operating funds in cases of bad debt, customer insolvency, information technology development costs, cash flow, facilities capital needs, or fluctuations caused by unforeseen global and national events.

The reserve component would be estimated as follows: At the time annually when we would calculate our proposed user fee rates, we would estimate cash flow needs, as we currently do, by estimating 25 percent or 90 days of annual expenditures, whichever is greater. We would then forecast information technology and facilities capital needs and investments, including any major purchases or improvement of equipment or systems, for the next 5 fiscal years, and assign an estimated date at which we anticipate these costs to be actualized. Based on the expected date of cost actualization within that 5-year forecast, we would add a prorated component of that cost to the above cash flow needs. Finally, this sum would be offset by the existing amount in the reserve, and the difference calculated into each user fee.

Reserve levels would be set at a level meant to reflect the forecasted needs, as articulated above, but would be monitored and adjusted annually as needs or costs change. We intend to closely monitor the operations and operating environment including demand, costs changes, administrative policies, investment needs and the economic environment closely and propose adjustments, as needed, in our fees annually to ensure an adequate reserve balance.

We are also proposing to remove a number of definitions from the regulations because, based on the revisions we are proposing, the terms themselves would no longer appear in part 130. Specifically, we are proposing to remove: *Approved establishment, biosecurity level three laboratory, breeding animal, domestic animal, game cock, grade animal, load, miniature horse, nonstandard care and handling, nonstandard housing,*

registered animal, slaughter animal, State animal health official, zoo animal, zoo bird, zoo equine. To the extent that the terms would still be used on tables that would now appear on APHIS' website, the terms would be annotated accordingly on the website to explain what they mean, instead.

Proposed Formulas for User Fees

VS user fees are collected for activities and products that fall into four broad categories: Supervision and inspection services; housing; export health certificates; and veterinary diagnostic services and reagents. As stated previously, the regulations would specify the methodology used to calculate and implement the fees charged by VS user-funded programs. APHIS would publish the fee rates on its website, and it will publish a notice on an annual basis in the **Federal Register** to propose changes to the user fee rates.

Direct pay, direct operating costs, and most costs used in the formulas would be based on the prior fiscal year's (or applicable accounting period or historical data) actual costs and hours. Currently, some fees are charged on a per unit basis and others are charged on a per hour basis. To maintain consistency, APHIS would continue to provide fees based on a per hour and per unit basis as currently specified.

The steps we would use to generate new fees are:

1. APHIS would prorate the total inspection, certification, or laboratory service program personnel direct pay (adjusted for vacancies and including benefits) for the previous fiscal year to each fee based upon the direct time factor percentage of employee's time to perform and complete each fee code process and then multiply by the next year's percentage of cost of living increase.

2. APHIS would prorate total direct operating costs for the previous fiscal year based upon the direct time factor percentage of employee's time to perform and complete each fee code process to each fee and then multiply by the anticipated percentage of inflation for the next year.

3. APHIS would add estimates for Program, Agency, and Department support costs, imputed costs, and reserve by applying a percentage based on information from Program, Agency, and Department officials and the U.S. Treasury to the sum of the direct pay plus operating costs.

4. Steps 1–3 would be added and then we would create the new base fee rate by rounding up to the next $0.25 for all fees less than $10 or round up or down to the nearest dollar for all fees greater than $10.

Fees calculated using this approach would cover inflation and national and locality pay raises but would not support any new budgetary initiative. In the event of any such budgetary changes, such as the OMB Circular's, A–25 ''User Charges'' (requiring inclusion of imputed costs into user fee calculations), we would include an explanation of the new cost component and the method by which it is determined in the annual notice.

The foregoing would be the general formula that we would use in order to calculate the fees. However, we do recognize that there are some fees for which the formula would not be germane.

For any category of fees, if there is no identifiable volume in the previous year for the service provided by the fee, if the fee is rarely charged, or if we cannot readily identify level of effort, we would calculate the fee based on the last available historic data that encompasses multiple instances of use and add any intervening inflation, program and support costs, imputed costs, and reserve.

Fees for the exclusive use of space in animal import centers currently found in § 130.3 are unique and would be calculated somewhat differently. APHIS would calculate the fees using direct employees average time (with benefits), and then adding a prorated portion of currently identifiable expenses (facilities, rent, support cost, and admin support costs), program and support expenses, imputed costs, and reserve. These costs are combined to determine the monthly cost of providing the service within the animal import center. The costs of different spaces within the Animal Import Center are calculated based on the square footage of the location.

Miscellaneous Change

Removal of the specific tables of user fees from the regulations in favor of listing them online at *www.aphis.usda.gov/business-services/vs-vd-fees* necessitates reorganization of the text currently found in §§ 130.2 through 130.51. In some cases, the only text in a given section is a reference to the table and would therefore need to be removed. In other cases, extra stipulations and clarifying information would be retained but reorganized in light of the streamlined regulations; however, the information presented remains the same.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS Veterinary Services (VS) is proposing to amend the regulations in 9 CFR part 130 to provide for a set of standardized formulas by which import/export and veterinary diagnostic user fees would be calculated. The proposed regulations would specify the methodology used to calculate and implement the user fees and would remove tables showing specific fees. VS would instead post the fee rates on its website and annually issue a notice providing all fees calculated for the upcoming year using formulas contained in the regulations and request public comment.

VS charges user fees to recover the costs of inspection and certification services for imports and exports of live animals and animal products and byproducts and for providing veterinary diagnostic goods and services. VS does not receive appropriated funding to support these activities.

While we do not expect the proposed rule to result in cost savings for affected entities, the proposed methodology would provide a transparent, streamlined approach to user fee calculations. The change to annual fee revisions using formula-based calculations based on previous year costs would enable APHIS to avert potential funding shortfalls. Increased confidence that rate adjustments would closely match revenue requirements would benefit financial planning by both the private sector and the Agency.

The component costs that VS would use to calculate user fee revisions would be the same as at present, with the exception of imputed labor costs, such as:

- Direct pay (including benefits)
- Cost of living
- Direct operating costs (travel, training, equipment, rent, facility maintenance, supplies and materials, service contracts)
- Consumer price index

- Program, Agency, and Department support costs
- Reserve
- Imputed costs

The user fee rates would also include imputed labor costs to ensure that the full cost of providing user fee services is captured. Imputed labor costs include Department of Labor, Office of Personnel Management, and State Department costs to provide retirement, health, life insurance and other benefits to employees.

The annual regularity of the proposed VS user fee revisions would be in contrast to current circumstances. At present, VS establishes fees for 5 years at a time through rulemaking, and this process can be lengthy. VS has had to project costs 6 to 7 years into the future, which can result in unforeseen funding needs not being accounted for. For example, VS did not anticipate the high level of technological investment that has been necessary in order to meet the needs of customers.

APHIS' animal health import and export user fees cover significant activities across the country, including at border locations and quarantine facilities. These fees support personnel, brick and mortar facilities, and information technology systems. The veterinary diagnostic user fees support activity at the National Veterinary Services Laboratories facilities in Ames, IA, and Plum Island, NY.

The last rate increase went into effect October 2012 and import/export user fee revenue has been flat, on average, since 2015, at $44 million. Veterinary diagnostic user fee revenue has also been flat at $6 million, on average, since the last veterinary diagnostic user fee rate increase went into effect October 2011. The cost of providing services has continued to increase.

USDA's Agricultural and Marketing Service and Food Safety and Inspection Service have recently implemented noticed-based processes for annual user fee revisions that are very similar to the APHIS proposed process. The two agencies and their stakeholders have benefited from increased program efficiency and transparency.

A large number of the entities that would benefit from this rule are small. The import/export user fees provide for inspection and other services at the ports or point of entry. Users of these services and products include importers, exporters, non-APHIS veterinarians, commercial laboratories and pharmaceutical manufacturers, State laboratories, universities, and foreign governments.

The Small Business Administration (SBA)[2] has established guidelines for determining which entities are to be considered small. Importers and exporters of live animals are identified within the broader wholesaling trade sector of the U.S. economy. A firm primarily engaged in wholesaling animals or animal products and byproducts is considered small if it employs not more than 100 persons. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers).

Veterinary testing laboratories are identified within the broader veterinary services trade sector. A firm providing veterinary services is considered small if it generates $6.5 million or less in annual sales. The criterion for a small pharmaceutical manufacturing firm is one with 750 or fewer employees.

The number of entities that use VS diagnostic services and materials and qualify as small by SBA standards has not yet been determined. However, more than 91 percent of the firms in the NAICS Livestock Wholesale category and Other Farm Product Raw Material Wholesale category can be considered small. In addition, more than 99 percent of veterinary services firms (including veterinary diagnostic testing laboratories) are small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

[2] Data Sources: Economic Census, Small Business Administration, APHIS Veterinary Service.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to revise 9 CFR part 130 to read as follows:

PART 130—USER FEES

Sec.

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.1 Definitions.

As used in this part, the following terms shall have the meaning set forth in this section.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal. All animals except birds, but including poultry.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Animal Import Center. Quarantine facilities operated by APHIS in Newburgh, New York, and Miami, Florida.

APHIS representative. An individual, including, but not limited to, an animal health technician or veterinarian, authorized by the Administrator to perform the services for which the user fees in this part are charged.

Bird. Any member of the class aves, other than poultry.

Consumer price index. The measure of the average change over time in prices paid by urban consumers for a market basket of consumer goods and services, as determined by the Bureau of Labor Statistics annually.

Cost of living. The adjusted annual rate used to determine the cost of maintaining a certain standard of living based on the economic assumptions in the Office of Management and Budget's Presidential Economic Assumptions.

Diagnostic reagent. Substances used in diagnostic tests to detect disease

agents or antibodies by causing an identifiable reaction.

Direct operating costs. Costs attributed to travel and transportation for personnel; materials, supplies, and other necessary items; training; general office supplies; rent; facility maintenance; equipment purchase and maintenance; utilities; contractual services; and information system operations, maintenance, and development.

Direct pay (including benefits). The wage labor costs (on board and in the hiring process), including benefits, for employees who specifically support and provide the required service.

Equine. Any horse, ass, mule, or zebra.

Export health certificate. An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.

Feeder animal. Any animal imported into the United States under part 93 of this chapter for feeding.

Germplasm. Semen, embryos, or ova.

Import compliance assistance. Services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.

Imputed costs. Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; Office of Personnel Management and Department of State (State Department) costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs.

In-bond animal. Any animal imported into the United States under a United States Customs Service bond, as described in 19 CFR part 113.

National Veterinary Services Laboratories (NVSL). The National Veterinary Services Laboratories of the Animal and Plant Health Inspection Service, located in Ames, Iowa.

National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL). The National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory, located in Greenport, New York.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

Pet birds. Birds, except hatching eggs and ratites, that are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

Poultry. Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

Privately operated permanent import-quarantine facility. Any permanent facility approved under part 93 of this chapter to quarantine animals or birds, except facilities operated by APHIS.

Program, Agency, and Department support. Indirect or direct costs of the program, including supporting services provided to the industry.

Reserve. Funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt, customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events.

Standard feed. Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

Test. A single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed.

United States. The several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 130.2 Basis for fees and rates.

(a) Except as set forth in paragraphs (b) through (d) of this section, for setting fee rates for each calendar year based upon the previous fiscal year, APHIS will calculate the rates for services as follows:

(1) APHIS will prorate the total inspection, certification, or laboratory service program personnel direct pay (on board and in hiring process including benefits) for the previous fiscal year to each fee based upon the direct time factor percentage of employee's average time to perform and complete each fee code process and then multiply by the next year's percentage of cost of living increase.

(2) APHIS will prorate total direct operating costs for the previous fiscal year based upon the direct time factor percentage of employee's average time to perform and complete each fee code process to each fee and then multiply by the anticipated percentage of inflation for the next year.

(3) APHIS will add estimates for Program, Agency, and Department support costs, imputed costs, and reserve by applying a percentage based on information from Program, Agency, and Department officials and the Department of Treasury to the sum of the direct pay plus direct operating costs.

(4) The amounts derived via the process described in paragraphs (a) through (c) of this section will be added and then APHIS will round up to the next $0.25 for all fees less than $10 or round up or down to the nearest dollar for all fees greater than $10 to develop the new rate for each code.

(b) If there is no identifiable volume in the previous year for the service provided by the fee, if the fee is rarely charged, or if APHIS cannot readily identify level of effort, APHIS will calculate the fee based on the last available historic data encompassing multiple instances of use and add any intervening inflation, overhead and support costs, imputed costs, and reserve.

(c) Fees for the exclusive use of space in animal import centers will be calculated using the following formula:

(1) APHIS will calculate fees by using direct employee average time (with benefits) and adding a prorated portion of currently identifiable expenses (facilities, rent, support cost, and admin support costs), program and support expenses, imputed costs, and reserve.

(2) APHIS will combine the costs to determine the monthly cost of providing the service at a single location within the animal import center.

(3) APHIS will calculate the costs of the other locations within the animal import center based on the square footage of the location.

(d) Services listed in § 130.4 will be charged an hourly rate-based user fee in accordance with the provisions of that section.

§ 130.3 Operating details.

(a) *General standards.* (1) User fee rates may be found online at *www.aphis.usda.gov/business-services/vs-vd-fees* or by contacting *LAIE@usda.gov.* Changes in rates will be proposed annually in the following manner:

(i) APHIS will propose changes to the fee rates found at *www.aphis.usda.gov/business-services/vs-vd-fees* through publication of a notice in the **Federal Register**. The notice will provide information regarding the basis for any fee change and will take public comment.

(ii) Following the comment period, APHIS will issue a subsequent notice in the **Federal Register**providing the final rates. The notice will respond to comments received on the initial notice.

(iii) When this subsequent notice is issued, APHIS will update the fee rates found at *www.aphis.usda.gov/business-services/vs-vd-fees* accordingly.

(2) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees in accordance with this section.

(b) *User fees for individual animals and certain birds quarantined in the APHIS-owned or—operated quarantine facilities, including APHIS Animal Import Centers.* (1) Each user fee is assessed per animal or bird quarantined by APHIS. Special requirements may be requested by the importer or required by an APHIS representative. Certain conditions or traits, such as pregnancy or aggression, may necessitate special requirements for certain birds or poultry.

(2) For any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish, the importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility.

(c) *User fees for exclusive use of space at APHIS Animal Import Centers.* (1) An importer may request to exclusively occupy a space at an APHIS Animal Import Center. Any importer who occupies space for more than 30 days must pay 1/30th of the 30-day fee for each additional day or part of a day.

(2) Unless the importer cancels the reservation for exclusive use of space in time to receive a refund of the reservation fee in accordance with §§ 93.103, 93.204, 93.304, 93.404, or 93.504 of this chapter, as appropriate, the 30-day user fee will be effective as of the first day for which the importer has reserved the space, regardless of whether the user occupies the space on that date or not.

(3) Users must provide APHIS personnel at the Animal Import Center, at the time they make a reservation for quarantine space, with the following information:

(i) Species of animals and birds to be quarantined;

(ii) Ages of animals and birds to be quarantined; and

(iii) Sizes of animals and birds to be quarantined.

(4)(i) APHIS personnel at the Animal Importer Center will determine, based on the information provided by the importer under paragraph (b)(3) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(ii) If APHIS personnel at the Animal Import Center determine the number of animals and birds requested by the importer can be housed in the space requested, but two animal health technicians cannot fulfill the routine husbandry needs of the number of animals or birds proposed by the importer, then the importer must either:

(A) Pay for additional services on an hourly basis; or

(B) Reduce the number of animals or birds to be quarantined to a number which APHIS personnel at the Animal Import Center determine can be handled by two animal health technicians.

(iii) If the importer requests additional services, then APHIS will calculate the user fees for any service rendered by an APHIS representative at the hourly rate user fee found online at *www.aphis.usda.gov/business-services/vs-vd-fees* for each employee required to perform the service.

(iv) The importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility, for any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish.

(d) *User fees for inspection of live animals at land border ports along the United States-Canada border.* If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee found online at *www.aphis.usda.gov/business-services/vs-vd-fees.*

(e) *User fees for pet birds.* (1) Based on the information provided to APHIS personnel, APHIS personnel at the Animal Import Center or other APHIS owned or supervised quarantine facility will determine the appropriate number of birds that should be housed per isolette.

(2) If the importer requests additional services, then APHIS will calculate the user fees for those services at the hourly rate user fee found online at *www.aphis.usda.gov/business-services/vs-vd-fees* for each employee required to perform the service.

(f) *User fees for endorsing export certificates.* (1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are found online at *www.aphis.usda.gov/business-services/vs-vd-fees.* APHIS will calculate the user fees to apply to each export health certificate endorsed [1] for animals and birds based on the number of animals or birds covered by the certificate and the number of tests or vaccinations required. However, there will be a maximum user fee of 12 times the hourly rate user fee.

[1] An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

(2) If an export certificate covers more than one animal, but the number of tests required for different animals are not the same, the user fee for the certificate is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests.

(3) The user fees referenced in this section will not apply to an export health certificate if:

(i) An APHIS veterinarian prepares the certificate for endorsement completely at the site of the inspection in the course of performing inspection or supervision services for the animals listed on the certificate; and

(ii) An APHIS user fee is payable under § 130.4 for the inspection or supervision services performed by the veterinarian.

(4) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

(g) *User fees for inspection services outside the United States.* (1) If inspection services (including inspection, testing, and supervision services) are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee.

(2) Any person who wants APHIS to provide inspection services outside the

United States must contact the Animal and Plant Health Inspection Service, Veterinary Services, Strategy and Policy, Live Animal Imports at *LAIE@usda.gov*, to make an agreement.

(3) All agreements for inspection services outside the United States must include:

(i) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;

(ii) Explanation of inspection services to be provided, including the regulations in this chapter which provide for the services;

(iii) Date(s) and time(s) the inspection services are to be provided;

(iv) Location (including street address) where inspection services are to be provided;

(v) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(vi) A statement that APHIS agrees to provide the inspection services;

(vii) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months; and

(viii) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to maintain a user fee payment account equal to the cost of providing the described inspection services for 6 months, as calculated monthly by APHIS.

(4) APHIS will enter into an agreement only if qualified personnel can be made available to provide the inspection services.

(5) An agreement can be terminated by either party on 30 days written notice.

(6) If, at the time an agreement is terminated, any unobligated funds remain in the user fee payment account, APHIS will refund the funds to the person who requested the inspection services, or his or her agent.

§ 130.4 Hourly rate and minimum user fees.

(a) *Services subject to hourly rate user fees.* User fees for import- or export-related veterinary services listed in paragraphs (a)(1) through (18) of this section, except those services covered by flat rate user fees, will be calculated at the hourly rate found online at *www.aphis.usda.gov/business-services/vs-vd-fees,* for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.6 and 130.7.

(1) Providing services to live animals for import or entry at airports, ocean ports, and rail ports.

(2) Conducting inspections, including inspections of laboratories and facilities (such as biosecurity level two facilities), required either to obtain import permits for animal products and byproducts, aquaculture products, or organisms or vectors, or to maintain compliance with import permits. This hourly rate does not apply to inspection and approval of import/export facilities and establishments.

(3) Obtaining samples required to be tested, either to obtain import permits or to ensure compliance with import permits.

(4) Providing services for imported birds or ratites that are not subject to quarantine, such as monitoring birds—including but not limited to pet birds—between flights.

(5) Supervising the opening of in-bond shipments.

(6) Providing services for in-bond or in-transit animals to exit the United States.

(7) Inspecting an export isolation facility and the animals in it.

(8) Supervising animal or bird rest periods prior to export.

(9) Supervising loading and unloading of animals or birds for export shipment.

(10) Inspecting means of conveyance used to export animals or birds.

(11) Conducting inspections under part 156 of this chapter.

(12) Inspecting and approving an artificial insemination center or a semen collection center or the animals in it.

(13) Import or entry services for feeder animals including, but not limited to, feeder goats and feeder bison not covered by a flat rate user fee in connection with activities described in § 130.3(d).

(14) Export-related bird banding for identification.

(15) Export-related inspection and approval of pet food facilities, including laboratories that perform pet food testing.

(16) Export-related services provided at animal auctions.

(17) Various export-related facility inspections, including, but not limited to, fertilizer plants that utilize poultry waste, rendering plants, and potential embarkation facilities.

(18) Providing other import-or export-related veterinary services for which no flat rate user fee is specified.

(b) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. Instead of paying the hourly rate user fee, you pay the rate found online at *www.aphis.usda.gov/business-services/vs-vd-fees* for each employee needed to get the work done.

§ 130.5 Exemptions.

(a) *Veterinary diagnostics.* APHIS will not charge user fees for veterinary diagnostic services under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant threat to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

(b) [Reserved]

§ 130.6 Payment of user fees.

(a) *Who must pay APHIS user fees?* Any person for whom a service is provided related to the importation, entry, or exportation of an animal, article, or means of conveyance or related to veterinary diagnostics, and any person requesting such service, shall be jointly and severally liable for payment of fees assessed.

(b) *Associated charges.* (1) *Reservation fee.* Any reservation fee paid by an importer under part 93 of this chapter will be applied to the APHIS user fees described in § 130.3(b) and (c) for animals or birds quarantined in an animal import center.

(2) *Special handling expenses.* The user fees in this part do not include any costs that may be incurred due to special mail handling, including, but not limited to, express, overnight, or foreign mailing. If any service requires special mail handling, the user must pay all costs incurred, in addition to the user fee for the service.

(3) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. You pay the amount specified in paragraphs (b)(3)(i), (ii), or (iii) of this section as relevant, for

each employee needed to get the work done.

(i) *What additional amount do I pay if I receive a flat rate user fee service?* In addition to the flat rate user fee(s), you pay the overtime rate listed in the following table for each employee needed to get the work done:

TABLE 1—OVERTIME FOR FLAT RATE USER FEES [1] [2]

Service provided	Outside of the employee's normal tour of duty	Overtime rates by hour		
		Nov. 2, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities [3].	Monday through Saturday and holidays.	$75	$75	$75
	Sundays	99	99	100
Rate for commercial airline inspection services [4] ..	Monday through Saturday and holidays.	64	65	65
	Sundays	85	86	86

[1] APHIS will charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday,

[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (*See* § 97.1(b) of this chapter for specific information about commuted travel time.)

[3] *See* § 97.1(a)of this chapter or 7 CFR 354.3 for details.

[4] *See* § 97.1(a)(3) of this chapter for details.

(ii) *What amount do I pay if I receive an hourly rate user fee service?* Instead of paying the normal hourly rate user fee described in § 130.4(a), you pay the premium rate described in § 130.4(b) for each employee needed to get the work done:

(c) *When are APHIS user fees due?*—(1) *Animal and bird quarantine and related tests.* User fees for animals and birds in an Animal Import Center or privately operated permanent or temporary import quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid prior to the release of those animals or birds from quarantine.

(2) *Supervision and inspection services for export animals, animal products and byproducts.* User fees for supervision and inspection services described in § 130.4 must be paid when billed, or, if covered by a compliance agreement signed in accordance with this chapter, must be paid as specified in the agreement.

(3) *Export health certificates.* User fees for export health certificates described in § 130.3(f) must be paid prior to receipt of endorsed certificates. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(4) *Veterinary diagnostics.* User fees specified for veterinary diagnostic services, such as tests on samples submitted to NVSL or FADDL, diagnostic reagents, slide sets, tissue sets, and other veterinary diagnostic services, must be paid when the veterinary diagnostic service is requested. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(5) *Other user fee services.* User fees for import or entry services for land border ports along the United States-Mexico or United States-Canada border, inspection of germplasm being exported, release from export agricultural hold, and other services described in § 130.4 must be paid when service is provided (for example when live animals are inspected when presented for importation at a port of entry). If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(d) *What payment methods are acceptable?* Payment must be for the exact amount due and may be paid by:

(1) Cash will be accepted only during normal business hours if payment is made at an APHIS office or an Animal Import Center;

(2) All types of checks, including traveler's checks, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA;

(3) Money orders, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA; or

(4) Credit cards (VISA™ and MasterCard™) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.

§ 130.7 Penalties for nonpayment or late payment.

(a) *Unpaid debt.* If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under 7 CFR chapter III or this chapter, then:

(1) *Subsequent user fee payments.* Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due; or

(ii) For billed fees, the user fee is unpaid 60 days after date of bill; or

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(2) *Resolution of difference between estimate and actual.* APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the additional amount due.

(3) *Prepayment form.* The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) *Denied service.* Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after date the pertinent regulatory provision indicates payment is due; or

(ii) For billed fees, the user fee is unpaid 90 days after date of bill; or

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) *Unpaid debt during service.* If APHIS is in the process of providing a

service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) *Animals or birds in quarantine.* If an APHIS user fee is due for animals or birds in quarantine at an animal import center or at a privately operated import quarantine facility, APHIS will not release them.

(2) *Export health certificate.* If an APHIS user fee specified is due for an export health certificate, APHIS will not release the certificate.

(3) *Veterinary diagnostics.* If an APHIS user fee is due for a veterinary diagnostic test or service, APHIS will not release the test result, any endorsed certificate, or any other veterinary diagnostic service.

(c) *Late payment penalty.* In addition to the actions described in paragraph (b) of this section, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717 for:

(1) Unbilled user fees, if the user fees are unpaid 30 days after the date the pertinent regulatory provisions indicate payment is due; or

(2) Billed user fees, if the user fees are unpaid 30 days after the date of the bill.

(d) *Dishonored payment penalties.* User fees paid with dishonored forms of payment, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with 31 U.S.C. 3717. Administrative charges will be assessed at $20.00 per dishonored payment to be paid in addition to the original amount owed. Payment must be in guaranteed form, such as cash, money order, or certified check.

(e) *Debt collection management.* In accordance with the Debt Collection Improvement Act of 1996, the following provisions apply:

(1) *Taxpayer identification number.* APHIS will collect a taxpayer identification number from all persons, other than Federal agencies, who are liable for a user fee.

(2) *Administrative offset.* APHIS will notify the Department of Treasury of debts that are over 180 days delinquent for the purposes of administrative offset. Under administrative offset, the Department of Treasury will withhold funds payable by the United States to a person (*i.e.,* Federal income tax refunds) to satisfy the debt to APHIS.

(3) *Cross-servicing.* APHIS will transfer debts that are over 180 days delinquent to the Department of Treasury for cross-servicing. Under cross-servicing, the Department of Treasury will collect debts on behalf of APHIS. Exceptions will be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plan.

(4) *Report delinquent debt.* APHIS will report all unpaid debts to credit reporting bureaus.

(f) *Animals or birds abandoned after quarantine at an animal import center.* Animals or birds left in quarantine at an animal import center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation. APHIS may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an animal import center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition and from persons liable for user fees under § 130.6(a).

Done in Washington, DC, this 15th day of September 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–21030 Filed 9–30–22; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

[NCUA–2022–0132]

RIN 3133–AF51

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: On March 15, 2022, Congress enacted the Credit Union Governance Modernization Act of 2022 (Governance Modernization Act). Under the statute, the NCUA has 18 months following the date of enactment to develop a policy by which a federal credit union (FCU) member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. The NCUA Board (Board) is now proposing to amend the standard FCU bylaws (FCU Bylaws) to adopt such a policy.

DATES: Comments must be received by December 2, 2022.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF51, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: https://www.regulations.gov.* The docket number for this proposed rule is NCUA–2022–0132. Follow the instructions for submitting comments.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at *https://www.regulations.gov,* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Roberson, Deputy Director, Office of Consumer Financial Protection; Paul Dibble, Consumer Access Program Officer, Office of Credit Union Resources and Expansion; or Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Lisa Roberson can also be reached at (703) 548–2466, Paul Dibble can be reached at (703) 664–3164, and Rachel Ackmann can be reached at (703) 548–2601.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Credit Union Act (FCU Act) and standard FCU Bylaws, there are currently only two ways a member may be expelled: (1) A two-thirds vote of the membership present at a special meeting called for that purpose, and only after the individual is provided an opportunity to be heard; and (2) for non-participation in the affairs of the credit union, as specified in a policy adopted and enforced by the board.[1] These requirements are set out in the standard FCU Bylaws in

[1] 12 U.S.C. 1764.

Appendix A to part 701 of the NCUA's regulations.[2]

The FCU Bylaws were last amended by the NCUA Board in 2019 (2019 Bylaws Final Rule).[3] The 2019 Bylaws Final Rule was a comprehensive update that sought to modernize, clarify, and simplify the FCU Bylaws and was the culmination of several years of engagement between the NCUA and FCUs. During the 2019 Bylaws Final Rule rulemaking, several commenters expressed concern that the FCU Act expulsion provisions discussed previously made it difficult to proactively limit security threats or financial harm caused by violent, belligerent, disruptive, or abusive credit union members. Specifically, commenters were concerned about the burden from requiring members to call a special meeting to seek to expel such members.

The 2019 Bylaws Final Rule, however, did not modify the procedures for expelling an FCU member as the procedures for expelling a member are governed by the FCU Act. Instead, the 2019 Bylaws Final Rule added a new section to the FCU Bylaws on limiting services for certain members. The 2019 Bylaws Final Rule created the concept of a ''member in good standing.'' [4] So long as a member remains in good standing, that member retains all of the rights and privileges associated with FCU membership. A member not in good standing, however, may be subject to an FCU's limitation of services policy. For example, an FCU may limit all or most credit union services, such as ATM services, credit cards, loans, share draft privileges, preauthorized transfers, and access to credit union facilities to a member who has engaged in conduct that has caused a loss to the FCU or that threatens the safety of credit union staff, facilities, or other members in the FCU or its surrounding property.

The 2019 Bylaws Final Rule was clear that, without question, certain actions warrant immediate limitation of services or access to credit union facilities, such as violence against other credit union members or credit union staff in the credit union facility or the surrounding property. The Board also stated clearly that an FCU may immediately take actions such as contacting local law enforcement, seeking a restraining order, or pursuing other lawful means to protect the credit union, credit union members, and staff. Nothing in the FCU Act or the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its members, or its staff.

Even a member deemed not in good standing, however, retains fundamental rights as a credit union member. For example, a member not in good standing has the right to attend, participate, and vote at the annual and special meetings of the members and the right to maintain a share account.[5] Those rights may only be terminated through a member's expulsion, and the Board explained in the 2019 Bylaws Final Rule that it cannot amend the statutorily prescribed expulsion procedures for members.

In March 2022, however, Congress enacted the Governance Modernization Act to revise the FCU Act procedures for expelling members.[6] The legislative history of the Governance Modernization Act focused on FCUs' concerns that their ability to address violent and aggressive behaviors of certain members was inadequate. Similar to comments raised during the 2019 Bylaws Final Rule rulemaking, the legislative history included concerns that FCUs lacked the tools to adequately protect employees and other members from violent and abusive members and included concerns that members had threatened the life of an employee or in another case physically attacked a service representative. To address these concerns, Congress modified the FCU Act to provide FCUs with an option for expelling a member for cause by a two-thirds vote of a quorum of the board of directors. Additionally, the legislative history also described the need for using this authority as a rare option and focused on more extreme examples of member behavior. This statutory authority, however, is not self-enacting. The legislation gave the Board 18 months following the date of enactment of the statute to develop and promulgate pursuant to a rulemaking a policy that FCUs may adopt to expel members for cause.

The Board notes that it is focused on improving access to financial services, in part, through its Advancing Communities through Credit, Education, Stability and Support (ACCESS) initiative.[7] As part of this initiative, the NCUA is working to expand the availability of credit to stimulate economic growth and improve the financial well-being of all Americans. The Board believes that the expulsion of members is an extreme remedy that may have the effect of denying individuals access to financial services. In addition, as financial cooperatives, the expulsion of a member-owner by a credit union is an expressly significant action. Therefore, the Board concurs with certain statements in the legislative history that use of the authority under the Governance Modernization Act should be rare and saved for egregious examples of member behavior.

II. The Proposed Rule

The NCUA is now issuing a proposed rule to adopt a policy by which an FCU member may be expelled for cause by a vote of two-thirds of a quorum of an FCU's board of directors. The proposed rule would also make conforming changes to Article II of the FCU Bylaws regarding members in good standing. These proposed changes are discussed in detail below.

Member in Good Standing

As discussed previously, the 2019 Bylaws Final Rule codified the concept of a ''member in good standing.'' So long as a member remains in good standing, that member retains all of the rights and privileges associated with FCU membership.[8] A member not in good standing, however, may be subject to an FCU's limitation of services policy. The primary reason for permitting FCUs to adopt a limitation of services policy was to provide FCUs with an alternative to holding a special meeting to address certain egregious member behavior.[9] The passage of the Governance Modernization Act, however, has provided FCUs' boards of directors with direct authority (subject to the NCUA Board promulgating a policy) to expel a member for cause.

The proposed rule would retain the member in good standing provisions. The Board believes including both authorities in the FCU Bylaws provides additional flexibility for FCUs to address certain disruptive member behaviors. First, through a limitation of service policy, an FCU may pursue a more targeted approach to deal with certain disruptive behaviors that may not otherwise warrant expulsion. As the

[2] 12 CFR part 701, app. A. Section 108 of the FCU Act requires the Board to prepare periodically a form of bylaws to be used by FCU incorporators and to provide that form to FCU incorporators upon request. 12 U.S.C. 1758. FCU incorporators must submit proposed bylaws to the NCUA as part of the chartering process. Once the NCUA has approved an FCU's proposed bylaws, the FCU must operate according to its approved bylaws or seek agency approval for a bylaw amendment that is not among permissible options in the standard FCU Bylaws. 12 CFR 701.2(a).

[3] 84 FR 53278 (Oct. 4, 2019).

[4] 12 CFR part 701, app. A. Art. II, sec. 5.

[5] Assuming there is no restraining or protective order from a court in place.

[6] Public Law 117–103 (Mar. 15, 2022).

[7] *https://www.ncua.gov/support-services/access.*

[8] 12 CFR part 701, app. A. Art. II, sec. 5.

[9] 84 FR 53278 (Oct. 4, 2019).

Board noted in the 2019 FCU Bylaws Final Rule, expulsion from membership is a very serious remedy, and it may be beneficial for FCUs to have the option of choosing other remedies short of expulsion to deal with certain disruptive member behaviors. For example, a member may have caused losses due to credit card delinquencies. An FCU could limit such a member's access to certain credit products, but otherwise allow the member to maintain access to share accounts. If the FCU expels the same member, their access to both types of accounts would be terminated. Or, for example, a member may have repeatedly cursed at credit union employees such that the member is prohibited from physical access to a branch, but otherwise may electronically access the FCU's products and services.

Second, an FCU may use the limitation of services policy in the case of a violent or abusive member who has yet to be expelled. The Governance Modernization Act requires certain procedures before a member's expulsion, including a 60-day period in which the member may request a hearing. As stated in the 2019 Bylaws Final Rule, without question, certain actions warrant immediate limitation to FCU services or access to credit union facilities, such as violence against other credit union members or credit union staff in the credit union facility or the surrounding property.[10] So an FCU may use its limitation of services policy, in conjunction with its ability to expel a member for cause, to immediately address circumstances in which a member poses a risk of harm to the FCU, its staff, or its members. Therefore, the proposed rule has retained the member in good standing provisions in Article II, Section 5 of the FCU Bylaws. Finally, use of a limitation of service policy does not require a board vote. Therefore, it may be easier and more expeditious for FCUs to exercise these restrictions.

The proposed rule would include a few substantive changes to the member in good standing provisions. Specifically, the current definition of a member not in good standing would be removed. This definition includes a list of behaviors that if engaged in by a member could trigger limitation to FCU services. However, the Governance Modernization Act also includes a list of behaviors that may warrant termination of membership. Instead of including two separate lists of disruptive, abusive, or violent behaviors, the proposed rule would define a member not in good standing as a member who has engaged in any of the conduct listed in the Governance Modernization Act, as implemented in Article XIV of the FCU Bylaws. The proposed rule would also make other technical conforming changes. For example, the proposed rule would amend the requirement that the disruptive, violent, or abusive behavior have a logical relationship between the objectionable activities and the services to be suspended. This provision would be removed because it is not included in the Governance Modernization Act. The Board expects an FCU board of directors to use appropriate discretion and only limit services when necessary; however, the proposed rule would remove the express provision related to the nexus between the behavior and the limitation of services for consistency.

Question 1. The Board seeks comments on whether the limitation of services policy should remain in the FCU Bylaws. Should the Board retain the current language regarding a member not in good standing or should the Board reference the for-cause termination provision in Article XIV? Should the Board retain the current language regarding a logical relationship between the objectionable behavior and limitation of services? Should the final rule require the conduct to occur at the FCU? Depending on the input the Board receives, it may modify this provision in the final rule under one of these alternatives.

Expulsion and Withdrawal

Under the Governance Modernization Act, a member may be expelled for cause by a two-thirds vote of a quorum of the FCU's board of directors. An FCU may only use this process to expel a member after the NCUA has developed and promulgated pursuant to a rulemaking a corresponding policy for expulsion and implemented such policy through rulemaking within 18 months following the date of enactment and the credit union has adopted the standard Bylaw amendment. The proposed policy for member expulsion is discussed below.

Notice of the Expulsion Policy

Under the Governance Modernization Act, an FCU's directors may expel a member only if the FCU has provided, in written or electronic form, a copy of NCUA's expulsion policy to each member of the credit union. As such, before an FCU expels a member under these provisions, it must send a copy of its Article XIV to each member. It would be insufficient for an FCU to post a copy of Article XIV on its website, as the Act states the FCU must provide the policy to ''each member'' and also uses the phrase ''distribution of policy to members.'' Additionally, the Governance Modernization Act states that the policy has to be provided in written or electronic form. Under the proposed rule, an FCU could only provide a copy of the policy electronically if the member has elected to receive electronic communications from the FCU. The Board believes this requirement is a reasonable balance between burden on FCUs and transparency to members. Members who have not elected to receive electronic communications from the FCU may not expect important communications being received electronically and therefore may be less inclined to read the notice.

The proposed rule does not include a standard disclosure form of the NCUA expulsion policy outside of the language in Article XIV of the FCU Bylaws. However, the proposed rule states that the communication of the expulsion policy, along with all notices required under the proposed rule, must be legible, written in plain language, and reasonably understandable by ordinary members. The Board is not including a standard disclosure form in the proposed rule to provide FCUs with additional flexibility. The Board understands FCUs may adopt variations to their Article XIV. For example, some FCUs may provide additional information to members on how the FCU would conduct a hearing before the FCU's board of directors and may permit in-person attendance at the hearing. Any variation to NCUA's expulsion policy, or Article XIV, would constitute a bylaw amendment and is subject to NCUA approval.

Question 2. The Board seeks comments on whether the final rule should include a standard disclosure for all FCU members separate and apart from the language in Article XIV. The Board requests comments on whether FCUs should be required to get NCUA approval for all bylaw amendments related to expulsion procedures. Should certain modifications be considered fill-in-the-blank type provisions and therefore not require NCUA approval? For example, if an FCU opts to permit an in-person hearing, should NCUA approval be required? Should the Board also consider requiring both mail and electronic delivery of notices, even if the consumer has elected to receive electronic communications?

[10] Further, an FCU may immediately take actions such as contacting local law enforcement, seeking a restraining order, or pursuing other lawful means to protect the FCU, its members, and staff, and nothing in the FCU Act nor the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its members, or its staff.

Expulsion Vote and Notice of Pending Expulsion

The Governance Modernization Act provides that an FCU's board of directors may vote to expel a member for cause by a two-thirds vote of a quorum of the directors of the credit union. Under the proposed rule, if an FCU's board votes to expel a member, the member must be notified of the pending expulsion, along with the reason for such expulsion.[11] Such notice shall be provided in person, by mail to the member's address, or electronically. Electronic delivery is only permitted if the member has elected to receive electronic communications from the FCU. The proposed rule would require that the reason for the expulsion be specific and not just include conclusory statements. For example, a general statement saying the member's behavior has been deemed abusive and the member is being subject to expulsion procedures would be insufficient as an explanation. Instead, the FCU should include a date of the interaction(s) and specific information describing the interaction, including a general description of the member's conduct. Likewise, a notice stating the member violated the membership agreement would also be insufficient as an explanation for the expulsion. The notice should include specific information about the how the member violated the agreement and include other relevant information as appropriate. The Board notes that the member would be relying on the provided notice if a hearing is requested. As such, the notice must include sufficient detail for the member to understand why he or she is being subject to expulsion so that the member has a meaningful opportunity to present his or her case against expulsion and an opportunity to respond to the FCU's concerns in a requested hearing. The notice must also tell the member that any complaints related to their potential expulsion should be submitted to the NCUA's website.[12] Finally, the notice must also clearly state the member's right to request a hearing, but if a hearing is not requested, membership will automatically terminate after 60 calendar days.

Question 3. How prescriptive should the NCUA expulsion policy be regarding the content of the notice of expulsion? Would additional requirements on the specificity of the notice be necessary or useful to include in the policy? It is the Board's intent to balance the potential burden to FCUs with concerns regarding transparency and fairness for members subject to expulsion.

Hearing

Under the Governance Modernization Act, a member has 60 calendar days from the date of receipt of a notification to request a hearing from the board of directors of the FCU. The proposed rule further provides that the FCU must maintain a copy of the notice provided for its records. The Board notes that the member has 60 calendar days from the date of receipt, not the date the FCU provides the notice. The member also has 60 calendar days to provide the FCU with their intent to have a hearing. Therefore, the member may mail the notice 60 days after the notice is received. As such, the FCU may not receive the notice within 60 calendar days. Therefore, the Board recommends that FCUs provide sufficient time for both the member's receipt and the FCU's receipt before expelling a member.

Question 4. Should the Board require the FCU to maintain a copy of the notice provided? Is this proposed requirement burdensome for FCUs?

If a member does not request a hearing, the member is automatically expelled after the end of the 60-day period. If a member requests a hearing, the board of directors must provide the member with a hearing. The statute is silent on whether the hearing must be in person.[13] The Board does not believe it is necessary to require FCUs provide an in-person hearing and is concerned that an in-person hearing may be problematic in cases of expulsion due to violence or threatened violence. Additionally, the Board believes a virtual hearing that provides the opportunity for the member to orally present their case is sufficient, but FCUs may permit in-person attendance at the hearing.

Question 5. The Board is proposing that the hearing may take place other than in person, but the Board solicits comments on whether fairness or other principles or other law may call for an in-person hearing. Depending on the input it receives, the Board may modify this requirement in the final rule to account for any compelling basis to require in-person hearings.

Under the proposed rule, the FCU may not raise any rationale or reason for expulsion that is not explicitly included in the notice to the member. This requirement is intended to ensure members are given a fair opportunity to present their case against expulsion and an opportunity to respond to the FCU's concerns. If additional conduct that may warrant expulsion occurs after the expulsion notice is provided to the member, then the FCU may either not discuss the subsequent conduct at the expulsion meeting or provide the member a new notice with a 60-day window to request a hearing that includes the subsequent conduct.

The proposed rule would not include prescriptive requirements related to the structure and procedure for the hearing. The only requirements included in the proposed rule related to the hearing are that it permits the meaningful opportunity for the member to orally present their case to the board and that the FCU board does not raise any new fact or cause for expulsion. Instead, the Board believes that each FCU should have the flexibility to conduct a hearing as it deems appropriate. Additionally, the Board expects hearings to be held in a fair, reasonable, and consistent manner that provides members a reasonable opportunity to present their case. Finally, the member may choose to provide a written submission to the credit union board instead of a hearing with oral statements.

Question 6. Should the proposed rule include additional requirements related to the structure and procedure of an expulsion hearing? Should the rule specifically provide that a member may request to provide a written response instead of a hearing with oral submissions? Should the final rule include any requirements related to appropriate safety procedures for FCUs choosing to do an in-person hearing? The Governance Modernization Act does not include an explicit appeal right for the member. Should the final rule consider adding an appeal right for members? For example, should the supervisory committee be required to review records related to expelled members?

[11] As discussed previously, in the case of a violent member or a member who threatens violence, the FCU should take immediate action to protect its staff, other members, or its premise. An FCU may use its limitation of services policy to restrict access to FCU facilities or may contact local law enforcement as appropriate.

[12] Currently complaints can be submitted to the NCUA at either *mycreditunion.gov* or *ncua.gov.*

[13] The Board notes that in other contexts, the use of the term ''hearing'' under federal law does not necessitate that the hearing must be held in person. See generally, Jeremy Graboyes, Legal Considerations for Remote Hearings in Agency Adjudications, Administrative Conference of the United States (June 2020). As such, the Board does not believe that the statute requires an in-person hearing. However, as discussed previously, the Board is proposing to require that the hearing must provide the member with an opportunity to present their case and is soliciting comments on whether the final rule should provide for a default mandate that FCUs provide in-person hearings, with limited exceptions.

FCU Board Vote

After the hearing, the FCU board of directors must hold a vote in a timely manner on expelling the member. The proposed rule defines a timely manner as within 30 calendar days.

Question 7. The Board invites comments on whether the rule is too prescriptive and instead of a 30-day timeframe for the board vote following a hearing, should the timeliness be left to FCUs' discretion?

The Board notes that if a member requests a hearing or provides a written statement, the FCU board must vote twice on the member's expulsion. The board of directors would first vote to expel the member, which initiates the 60-day period after receipt of the notice, and then would vote again after the requested hearing. If a hearing is not requested, then the member would automatically be expelled 60-days after receipt of the notice and a second board vote would not be required.

Notice of Expulsion

If a member is expelled, either automatically at the end of the 60-day period after receipt of the notice or after the board votes to expel the member after a hearing, the FCU must provide notice of the expulsion. Under the proposed rule, the notice must provide information on the effect of the expulsion, including information related to account access and any withdrawals by the FCU related to amounts due. Specifically, the notice should include pertinent information to the member, including that expulsion does not relieve a member of any liability to the FCU and that the FCU will pay all of the member's shares upon their expulsion less any amounts due. The notice should include a line-by-line accounting of any deductions related to amounts due. The notice should also include when and how the member will receive any money in their accounts. The notice must be provided to the member in person, by mail to the member's address, in written form or, if the member has elected to receive electronic communications from the credit union, may be provided electronically.

Question 8. The FCU Act does not require FCUs to call the members' outstanding loans or other obligations if the member is expelled. Should the final rule include a minimum amount of time before an FCU is permitted to call in an existing obligation or offset amounts owed to the FCU? For example, should the rule prohibit any offsets or calling of credit for 90 days following a member's expulsion?

For Cause

Under the Governance Modernization Act, an FCU's board may expel a member for cause, which means: (A) a substantial or repeated violation of the membership agreement of the credit union; (B) a substantial or repeated disruption, including dangerous or abusive behavior (as defined by the National Credit Union Administration Board pursuant to a rulemaking), to the operations of a credit union; or (C) fraud, attempted fraud, or other illegal conduct that a member has been convicted of in relation to the credit union, including the credit union's employees conducting business on behalf of the credit union.

Regarding a repeated non-substantial violation of the membership agreement, under the proposed rule the FCU must have provided written notice to the member at least one time prior to the notice of expulsion, and the member must have repeated the violation after having been notified of the violation. Further, under the proposed rule, the written notice must state the specific nature of the violation and that if the conduct occurs again the member may be expelled from the FCU. The Board believes this is necessary to ensure members are aware that they may be expelled for repeated, non-substantial violations of the membership agreement. The Board notes that this warning notice before the notice of expulsion is only for potential expulsions related to repeated violations that are not deemed substantial. The FCU's board may act to expel a member immediately for substantial violations of the membership agreement and does not need to provide a warning notice for substantial violations of the membership agreement.

Question 9. Should there be a limit on the time between the FCU's notice of a violation and the repeated behavior? Should the Board provide, for example, that the repeated behavior must occur within two years of the notice? Or should the Board consider another period designed to ensure that repeated but insubstantial violations that are remote in time do not lead to expulsion under this provision?

Question 10. What are typical violations of a membership agreement that cause concern for FCUs? Do FCUs consider causing a loss to be a substantial violation of their membership agreement? Would FCUs consider any loss a substantial violation? Or would only material losses be considered a substantial violation? If so, the Board is interested in commenters' opinions on what threshold constitutes a material loss?

Question 11. Should the Board try to define substantial violations versus more minor or immaterial violations? An earlier version of the Governance Modernization Act expressly permitted expulsion for causing material losses to FCUs. This express authority was removed, which may imply that FCUs cannot expel a member for causing a loss. However, under the current version of the Governance Modernization Act, members may be expelled for substantial or repeated violation of the FCU's membership agreement.

The Board understands that it is customary for membership agreements to prohibit members from causing a loss to the FCU. Therefore, under the proposed rule, FCUs may expel a member for causing a loss. Should the Board consider prohibiting FCUs from expelling members for causing a loss outside of fraudulent or other criminal acts? The Board understands that FCUs currently may expel a member for causing a loss after holding a special meeting of the members. This authority would not be impacted by the proposed rule. However, the authorities in the Governance Modernization Act provide an expedited process for expelling members for more egregious conduct.

If FCU boards of directors are permitted to expel members for causing a loss, should the Board require FCUs to adopt a policy such that it is applied consistently across members? If the final rule does prohibit FCU board of directors from expelling a member for causing a loss, should the Board change the proposed member in good standing provision to expressly permit members to be denied services for causing a loss? Are there violations of the membership agreement other than causing a loss for which FCUs would seek to expel a member?

Under the proposed rule, a member may also be expelled by an FCU board for a substantial or repeated disruption, including dangerous or abusive behavior, to the operations of a credit union. The proposed rule would define dangerous or abusive behavior as: (1) Violence, intimidation, physical threats, harassment, or physical or verbal abuse of officials or employees of the credit union, members, or agents of the credit union (this includes actions while on FCU premises and through use of telephone, mail, email or other electronic method); (2) Behavior that causes or threatens damage to FCU property; and (3) Unauthorized use or access of FCU property. The proposed rule would further provide that expressions of frustration with the FCU

or its employees through elevated volume and tone; expressions of intent to seek lawful recourse, regardless of perceived merit; or repeated interactions with FCU employees are insufficient to constitute dangerous or abusive behavior. This definition is derived from the current definition of a member not in good standing.

Similar to repeated violations of the membership agreement, if the FCU's board acts to expel a member for repeated disruptions that are not substantial, the FCU must have first provided written notice to the member after an instance of such disruption. In contrast, substantial disruptions, including any conduct that would constitute dangerous or abusive behavior, may be grounds for immediate action and termination of membership. Additionally, as discussed previously in connection with limitation of services polices, an FCU may immediately take actions such as limiting services, contacting local law enforcement, seeking a restraining order, or pursuing other lawful means to protect the credit union, credit union members, and staff, and nothing in the FCU Act or the FCU Bylaws prevents an FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its members, or its staff.

A member may also be expelled for cause if the member has engaged in fraud, attempted fraud, or other illegal conduct that a member has been convicted of in relation to the credit union, including the credit union's employees conducting business on behalf of the credit union. Under the proposed rule, a criminal conviction is not necessary for membership expulsion related to fraud or attempted fraud. The Board believes that the Governance Modernization Act does not require a conviction related to fraud and attempted fraud, and a conviction is only required for the catchall category related to any other illegal conduct. This interpretation of the Act is reasonable given the concern that many factors may affect whether a person is convicted of fraud or attempted fraud, including local prosecutorial resources. The Board is aware that local authorities are not always able or willing to prosecute every instance of fraud or attempted fraud.

Question 12. Should the Board define fraud or attempted fraud? Should FCU boards be permitted to terminate membership only when a member has been convicted of fraud or attempted fraud? If a member is convicted of other illegal conduct and the conviction is later overturned, should the rule provide for automatic reinstatement or otherwise include a required procedure to allow for reinstatement in this circumstance? Alternatively, does the Governance Modernization Act's reinstatement process (discussed in the next section) adequately cover this scenario by affording an expelled member the right to seek reinstatement?

Reinstatement

Under the Governance Modernization Act, a member expelled by a two-thirds vote of an FCU's board of directors must be given an opportunity to request reinstatement of membership. The member may be reinstated by either a majority vote of a quorum of the directors of the FCU or a majority vote of the members of the FCU present at a meeting. Under the proposed rule, such a meeting would have to be a special meeting. A member would not be entitled to attend the meeting in person, as the Governance Modernization Act provides in a rule of construction. But the statute also does not bar the FCU from permitting in-person attendance. Accordingly, the proposed rule would allow the FCU to determine whether to permit in-person attendance. The proposed rule would also specify that an FCU is only required to hold a board vote or special meeting in response to a reinstatement request once.

Question 13. Should the Board require FCUs to vote on members' reinstatement more than once? For example, should the proposed rule state that FCU boards need to reconsider reinstatement requests only every six, twelve, or eighteen months?

Class of Members

Under the Governance Modernization Act, an expulsion of a member by an FCU's board of directors must be done individually, on a case-by-case basis. Further, neither the NCUA Board nor any FCU may expel a class of members. All anti-discrimination laws and regulations are applicable, and expulsions of a class of members based on any class or characteristic such as, but not limited to, race, religion, national origin, gender, sexual orientation, age, familial status, or disability status, are strictly prohibited. An FCU may have liability if it exercises its discretion in a manner that has a discriminatory purpose or effect under anti-discrimination laws. In addition, members cannot be expelled solely due to or in retaliation for their complaints to the NCUA or any other regulatory agency, such as the Consumer Financial Protection Bureau, and members who are employees or former employees of the FCU cannot be expelled for any protected whistleblower activities.[14]

Further, under the proposed official staff commentary, the prohibition on expelling a class of members would explicitly include an FCU board acting to remove all members who engaged in a certain violation of the membership agreement, or all delinquent members or a class of delinquent members in one action. For example, an FCU board may not remove all members who have caused a loss of $500 to the FCU or have been delinquent for 90 days or more. The Board would interpret such action as removing a class of members and therefore prohibited by the statutory requirement that expulsions through a vote of directors of the credit union be done individually, on a case-by-case basis.

FCUs also should be aware of the potential for disparate treatment among members. An FCU must ensure that its implementation of the authority to expel members for cause is done consistently and does not violate anti-discrimination laws or regulations. FCUs may consider adopting a policy related to when its board should expel members, especially if the FCU intends to expel members for violations of the membership agreement. To enable NCUA examiners to review relevant information related for cause expulsions, the proposed rule would require FCUs to maintain records relating to expelled members for five years. The rule would not specify necessary documents for the record, but the Board notes it would expect a record to include general documents related to the member, such as their last known contact information, membership agreement, or loan files, and specific documents related to the cause of the member's termination.

Question 14. Should the possibility of FCUs expelling some members but not others for engaging in certain behavior be a cause for concern?

Question 15. Should the Board include a record retention requirement related to expelled members? Do commenters suggest any alternative to a record retention requirement? Should the Board choose a shorter or longer retention period than five years? If so, how long should the Board require FCUs to retain their expulsion records, and why? The Board seeks comments on whether it should specify certain documents or information that FCUs are required to maintain.

Implementation

If the proposed rule is issued as a final rule, FCUs will have the option to

[14] See 12 U.S.C. 1790b.

amend their bylaws to provide their boards of directors with authority to expel members for cause. FCUs seeking to adopt these authorities would amend their bylaws through a two-thirds vote of their boards of directors. Such FCUs would not need to submit the amendment to the NCUA for its approval provided the amendment is identical to the language included in any final rule issued by the Board. However, the amendment included in the proposed rule is optional, and FCUs would not need to amend their bylaws or take any other action in response to any final rule issued.

Past Member Conduct as Grounds for Expulsion

FCUs cannot use member conduct that occurred prior to the effective date of the final rule as grounds for expelling members. For example, if a member caused a loss to the FCU before the effective date of the final rule, the FCU may not expel the member due to that loss. The FCU could only expel the member if additional conduct that warrants expulsion occurs after the effective date of the final rule.

Question 16. Should the Board consider alternative dates for which member conduct may be considered as grounds for expulsion? Should the date be related to when notice of the policy is provided to members, when the FCU board adopts the Bylaws, or when the Governance Modernization Act was enacted?

III. Request for Comments

The Board welcomes comment on all aspects of the proposal.

IV. Regulatory Procedures

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.[15] For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The current information collection requirements for FCU Bylaws are approved under OMB control number 3133–0052.

The notice requirements to be provided to the member are: (1) the notice of potential expulsion for cause, (2) the notice of expulsion, and (3) the notice of expulsion due to repeated, non-substantial violations of the membership agreement or repeated disruptions for non-substantial conduct. These notices will be provided to the member by the FCU as prescribed by proposed Sections 2 and 3 of Article XIV of Appendix A to Part 701. The information collection requirements associated with these disclosure notices vary depending on the number of respondents. It is estimated a total number 3,997 responses will be generated, taking an hour per response, for a total of 3,997 burden hours associated with the notice requirements. Additionally, FCUs are required to retain and maintain all records associated with the proposed expulsion policy and is estimated average 30 minutes per FCU for a total annual burden of 1,230 hours. Therefore, there is a total burden of 5,227 hours associated with this proposed rulemaking. The total burden associated with *OMB Control Number:* 3133–0052 is as follows:

OMB Control Number: 3133–0052.

Title of information collection: Federal Credit Union Bylaws, Appendix A to Part 701.

Estimated number respondents: 3,076.

Estimated number of responses per respondent: 347.

Estimated total annual responses: 1,066,603.

Estimated total annual burden hours per response: 0.35.

Estimated total annual burden hours: 376,033.

The NCUA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Interested persons are invited to submit written comments to (1) *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting the Agency under ''Currently under Review'' and to (2) Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314–3428; Fax No. 703–519–8579; or email at *PRAComments@ncua.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than $100 million to be small entities.[16] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The Board does not believe the proposed rule will result in any burden to small entities. First, adoption of the flexibilities included in the proposed rule is optional, and FCUs would not be required to amend their bylaws. Additionally, even if FCUs revise their bylaws in response to the proposed rule, it is within FCUs' discretion to exercise the authority provided in the proposed rule to expel a member. As such, the proposed rule includes no affirmative requirements for small credit unions and will not affect the competitive balance between small and large credit unions. Therefore, the Board certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

[15] 44 U.S.C. 3507(d); 5 CFR part 1320.

[16] NCUA IRPS 15–1, 80 FR 57512 (Sept. 24, 2015).

This proposed rule only applies to FCUs and would 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. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[17]

List of Subjects in 12 CFR Part 701

Credit, Credit Unions, Federal Credit Union Bylaws.

By the NCUA Board on September 22, 2022.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In Appendix A to part 701:
■ a. Revise Article II, Section 5;
■ b. Revise Article XIV;
■ c. Revise Official NCUA Commentary—Federal Credit Union Bylaws, Article II(iii); and
■ d. Revise Official NCUA Commentary—Federal Credit Union Bylaws, Article XIV.

The revisions read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

* * * * *

Article II. Qualifications for Membership

Section 5. *Member in good standing.* A member in good standing retains all their rights and privileges in the credit union. A member not in good standing may be subject to a policy that limits credit union services. A member not in good standing is one who has engaged in any of the conduct in Article XIV, Section 3 related to for-cause termination of membership. In the event of a suspension of service, the member will be notified of what accounts or services have been discontinued. Subject to Article XIV and any applicable limitation of services policy approved by the board, members not in good standing retain their right to attend, participate, and vote at the annual and special meetings of the members and maintain a share account.

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Article XIV. Expulsion and Withdrawal

Section 1. *Expulsion procedure.* A credit union may expel a member in one of three ways. The first way is through a special meeting. Under this option, a credit union may: call a special meeting of the members, provide the member the opportunity to be heard, and obtain a two-thirds vote of the members present at the special meeting. The second way to expel a member is under a nonparticipation policy given to each member that follows the requirements found in the Act. The third way to expel a member is by a two-thirds vote of a quorum of the directors of the credit union for cause. A credit union can only expel a member through a vote of the directors of the credit union if it follows the policy for expulsion in section 2.

Section 2. A credit union's directors may vote to expel a member for cause only if the credit union has provided, in written or electronic form, if the member has elected to receive electronic communications from the credit union, a copy of this Article to each member of the credit union. The communication of the policy, along with all notices required under this section, must be legible, written in plain language, and reasonably understandable by ordinary members.

If a member will be subject to expulsion, the member shall be notified of the expulsion, along with the reason for such expulsion. The notice must include sufficient detail for the member to understand the grounds for expulsion and cannot include only conclusory statements regarding the reason for the member's expulsion. The notice must also tell the member that any complaints related to their potential expulsion should be submitted to the NCUA's website. The FCU must maintain a copy of the provided notice for its records. The notice must clearly state the member's right to request a hearing, and if a hearing is not requested membership will automatically terminate after 60 calendar days. The notice shall be provided in person, by mail to the member's address, or, if the member has elected to receive electronic communications from the credit union, may be provided electronically.

A member shall have 60 calendar days from the date of receipt of a notification to request a hearing from the board of directors of credit union. A member is not entitled to attend the hearing in person, but the member must be provided a meaningful opportunity to orally present their case to the FCU board. The member may choose to provide a written submission to the Board instead of a hearing with oral statements. If a member does not request a hearing, the member shall be expelled after the end of the 60-day period after receipt of the notice. If a member requests a hearing, the board of directors must provide the member with a hearing. At the hearing, the board of directors may not raise any rationale or reason for expulsion that is not explicitly included in the notice to the member.

After the hearing, the board of directors of the credit union must hold a vote within 30 calendar days on expelling the member. If a member is expelled, either through the expiration of the 60-day period or a vote to expel the member after a hearing, notice of the expulsion must be provided to the member in person, by mail to the member's address, in written form or, if the member has elected to receive electronic communications from the credit union, may be provided electronically. The notice must provide information on the effect of the expulsion, including information related to account access and any deductions by the credit union related to amounts due. The notice must also tell the member that any complaints related to their potential expulsion should be submitted to the NCUA's website. The notice must also state that the member has an opportunity to request reinstatement by either a majority vote of a quorum of the directors of the credit union or a majority vote of the members of the credit union present at a special meeting.

A member expelled under this authority must be given an opportunity to request reinstatement of membership and may be reinstated by either a majority vote of a quorum of the directors of the credit union or a majority vote of the members of the credit union present at a special meeting. An FCU is only required to hold a board vote or special meeting in response to a member's first reinstatement request following expulsion. FCUs are required to maintain records related to any member expelled through a vote of the directors of the credit union for five years.

Section 3. The term cause in this Article means (A) a substantial or repeated violation of the membership agreement of the credit union; (B) a substantial or repeated disruption, including dangerous or abusive behavior, to the operations of a credit union, as defined below; or (C) fraud, attempted fraud, or other illegal conduct that a member has been convicted of in relation to the credit union, including the credit union's employees conducting business on behalf of the credit union.

If the FCU is considering expulsion for a member due to repeated non-substantial violations of the membership agreement or repeated disruptions to the credit union's operations, the credit union must provide written notice to the member at least one time prior to the notice of expulsion, and the violation or conduct must be repeated after having been notified of the violation.

The written notice must state the exact nature of the violation or conduct and that if the violation or conduct occurs again the member may be expelled from the credit union.

[17] Public Law 105–277, 112 Stat. 2681 (1998).

Dangerous or abusive behavior includes: (1) Violence, intimidation, physical threats, harassment, or physical or verbal abuse of officials or employees of the credit union, members, or agents of the credit union. This includes actions while on credit union premises and through use of telephone, mail, email, or other electronic method; (2) Behavior that causes or threatens damage to credit union property; or (3) Unauthorized use or access of credit union property. Expressions of frustration with the credit union or its employees through elevated volume and tone; expressions of intent to seek lawful recourse, regardless of perceived merit; or repeated interactions with credit union employees is insufficient to constitute dangerous or abusive behavior.

Section 4. Expulsion or withdrawal does not relieve a member of any liability to the credit union. The credit union will pay all of the member's shares upon their expulsion or withdrawal less any amounts due to this credit union.

Section 5. An expulsion of a member pursuant to section 2 shall be done individually, on a case-by-case basis, and neither the NCUA Board nor any credit union may expel a class of members.

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Official NCUA Commentary—Federal Credit Union Bylaws

Article II. Qualifications for Membership

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(iii) *Violent, belligerent, disruptive, or abusive members:* Many credit unions have confronted the issue of handling a violent, belligerent, disruptive, or abusive individual. Doing so is not a simple matter insofar as it requires the credit union to balance the need to preserve the safety of individual staff, other members, and the integrity of the workplace, on one hand, with the rights of the affected member on the other. In accordance with the Act and applicable legal interpretations, there is a reasonably wide range within which FCUs may fashion a policy that works in their case.

Thus, an individual who has become violent, belligerent, disruptive, or abusive may be prohibited from entering the premises or making telephone contact with the credit union, and the individual may be severely restricted in terms of eligibility for products or services. So long as the individual is not barred from exercising the right to vote at annual meetings and is allowed to maintain a regular share account, the FCU may fashion and implement a policy that is reasonably designed to preserve the safety of its employees and the integrity of the workplace. The policy need not be identical nor applied uniformly in all cases; there is room for flexibility and a customized approach to fit the particular circumstances. In fact, the NCUA anticipates that in some circumstances, such as violence or a credible threat of violence against another member or credit union staff in the FCU or its surrounding property, an FCU may take immediate action to restrict most, if not all, services to the member. This may occur along a parallel track as the credit union begins the process of expelling the member under Article XIV. In other situations, such as a member who frequently writes checks with insufficient funds, the FCU may attempt to resolve the matter with the member before limiting check writing services. Once a limitation of services policy is adopted or revised, members must receive notice. The FCU should disclose the policy to new members when they join and notify existing members of the policy at least 30 days before it becomes effective. The credit union's board has the option to adopt the optional amendment addressing members in good standing.

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Article XIV. Expulsion and Withdrawal

As noted in the commentary to Article II, there is a fairly wide range of measures available to the credit union in responding to abusive or unreasonably disruptive members. A credit union can limit services under Article II for a member not in good standing. A credit union may also expel the member for cause after two-thirds vote of the credit union's directors.[11] Dangerous and abusive behavior is considered any violent, belligerent, unreasonably disruptive, or abusive behavior. Examples of dangerous and abusive conduct include, but are not limited to, a member threatening physical harm to employees, a member repeatedly purchasing gifts for or asking tellers on dates, a member repeatedly cursing at employees, and a member threatening to follow a loan officer home for a denying loan.

A credit union must provide notice to the member of the expulsion. The notice must include the reason for the expulsion. The notice must be specific and not just include conclusory statements regarding the reason for the member's expulsion. For example, a general statement that the member's behavior has been deemed abusive and the member is being subject to expulsion procedures would generally be insufficient as an explanation. A credit union is prohibited from expelling a class of members under this provision. That would include a board acting to remove all delinquent members or class of delinquent members.

If a special meeting of the members is called to expel the member, only in-person voting is permitted in conjunction with the special meeting, so that the affected member has an opportunity to present their case and respond to the credit union's concerns. However, an in-person meeting is not required if a member is expelled by a two-thirds vote of the board of directors. In addition, FCUs should consider the commentary under Article XVI about members using accounts for unlawful purposes.

[FR Doc. 2022–20927 Filed 9–30–22; 8:45 am]

BILLING CODE 7535–01–P

[11] See 12 U.S.C. 1764.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2022–0421; FRL–10012–01–R1]

Maine: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Maine has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA proposes to grant final authorization to Maine for these revisions by a direct final rule, which can be found in the ''Rules and Regulations'' section in this issue of the **Federal Register**. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and the EPA will not take further action on this proposed rule.

DATES: Send your written comments by November 2, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2022–0421, at *https://www.regulations.gov/.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa dockets.*

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management, UST and Pesticides Section; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; phone: (617) 918–1647; email: *leitch.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section in this issue of the **Federal Register**, the EPA is authorizing the revisions by a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless the EPA receives adverse written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and the EPA will not take further action on this proposal. If the EPA receives comments that oppose this action, we will withdraw the direct final rule and it will not take effect. The EPA will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time. For additional information, please see the direct final rule published in the ''Rules and Regulations'' section in this issue of the **Federal Register**.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 23, 2022.

David W. Cash,

Regional Administrator, U.S. EPA Region I.

[FR Doc. 2022–21320 Filed 9–30–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[Docket No. FRA–2020–0017, Notice No. 1]

RIN 2130–AC87

Training, Qualification, and Oversight for Safety-Related Railroad Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to petitions for rulemaking, FRA proposes amending its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees (Training Rule) to codify agency guidance and clarify existing requirements.

DATES: Written comments on the proposed rule must be received by December 2, 2022. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2020–0017 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket number (FRA–2020–0017), and Regulatory Identification Number (RIN) for this rulemaking (2130–AC87). All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information. Please see the Privacy Act Statement heading in Section IV of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

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SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary

Purpose of the Regulatory Action and Legal Authority

In response to the mandate of section 401(a) of the Rail Safety Improvement Act of 2008 (RSIA),[1] on November 7, 2014, FRA published a final rule (2014 Final Rule) establishing minimum training standards for safety-related railroad employees and requiring railroad carriers, contractors, and subcontractors to develop and submit certain training programs to FRA for approval.[2]

On May 3, 2017, FRA published a final rule which delayed implementation dates in the 2014 Final Rule by one year.[3] The delay was necessary to help model training program developers and other regulated entities comply with the rule.[4] On April 27, 2018, FRA published a final rule in response to a petition for reconsideration of that May 2017 rule by granting the American Short Line and Regional Railroad Association's (ASLRRA) request to delay the implementation dates by an additional year.[5] FRA determined that the delay was necessary to improve compliance, reduce significant cost impacts associated with the rule, and prevent complicating the approval process.[6]

On June 27 and July 31, 2019, FRA received joint petitions for rulemaking filed by ASLRRA and the National Railroad Construction and Maintenance Association, Inc. (NRC) (collectively, ''Associations'') requesting additional implementation delays and other changes to the 2014 Final Rule; these petitions were docketed in DOT's Docket Management System as FRA–2019–0050. On January 2, 2020, FRA responded to the Associations' petitions for rulemaking by issuing a final rule delaying the regulation's implementation dates for all contractors,

[1] Public Law 110–432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162. The Secretary of Transportation delegated the authority to carry out this mandate to the the Federal Railroad Administrator. 49 CFR 1.89(b).

[2] 79 FR 66459.

[3] 82 FR 20549.

[4] 82 FR 20550. In December 2016, FRA completed sharing training documents FRA uses to train the agency's personnel on Federal rail safety requirements with model program developers and made those documents available on FRA's website. However, even after FRA produced those documents and performed significant outreach to educate the regulated community, one association (considered a major model program developer) informed FRA it found certain aspects of the rule confusing to implement and difficult for contractors to apply in practice.

[5] 83 FR 18455.

[6] 83 FR 18456.

and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more.[7] Regarding the Associations' remaining requests in the petitions for rulemaking, FRA's January 2, 2020, final rule stated that FRA was considering addressing the Associations' remaining requests in a separate rulemaking.[8] This proposed rulemaking would address the remaining requests in the Associations' 2019 petitions for rulemaking, clarify current requirements, and remove regulatory provisions that are obsolete.

Costs and Benefits

FRA has examined the proposed rulemaking and finds that any associated costs and benefits would be *de minimis.* It is expected that the railroad industry and FRA would experience several qualitative benefits, which are fully discussed in the Regulatory Impact section of this proposed rule. These benefits include: (1) providing clarity to the regulated community, thereby facilitating compliance with the regulatory requirements; (2) making it easier for FRA to administer the Training Rule's requirements; and (3) removing certain regulatory provisions that are obsolete.

II. Background

In the 2014 Final Rule, FRA stated its intention to issue a compliance guide with a primary emphasis on assisting small entities, but which could also be used by any employer.[9] FRA anticipated that the compliance guide would also help model program developers in drafting programs to be adopted by small railroads and contractors. FRA issued an interim compliance guide and made it available for immediate effectiveness in the 2014 Final Rule docket [10] on April 21, 2015, but provided a comment period in anticipation that the regulated community might have additional comments or concerns.

On May 25, 2016, FRA responded to the comments and posted its first version of the final compliance guide.[11] On November 30, 2016, FRA posted a second version of the final compliance guide,[12] largely to publish FRA's answers to questions received from the regulated community that broad dissemination would benefit. When FRA amended the implementation dates by final rules published on May 3, 2017, and April 27, 2018, FRA made conforming changes to the final compliance guide and posted the revised version on FRA's website at *https://railroads.dot.gov/divisions/safety-partnerships/training-standards-rule*. The same location on FRA's website contains the following additional guidance: (1) an ASLRRA Q&A Document, which contains FRA's answers to 11 questions concerning part 243 posed by ASLRRA; (2) an On the Job Training (OJT) matrix, which shows the minimum type of training (*i.e.,* formal training, OJT training, or briefing only) that FRA expects to see in a program covering each specific rail safety requirement under most circumstances; (3) OJT templates that serve as examples of OJT training standards for some types of employees; and (4) various resource documents to assist employers with training in the areas of equipment maintenance, passenger equipment requirements, brake systems, engineering and track maintenance, and signal and train control requirements.

This NPRM proposes addressing two of the Associations' overarching concerns: first, that FRA provide sufficient certainty as to how the agency will apply the requirements of part 243 in the future by converting existing guidance applicable to part 243 into regulatory text; second, that FRA adopt specific regulatory text changes so as to facilitate compliance with the Training Rule.[13] In this Background section, FRA details the petition requests made by the Associations that FRA proposes to address and those it does not. Additionally, this Background section provides a summary of other guidance FRA has provided to the regulated community that is not addressed by the petitions for rulemaking.

A. Petition Requests FRA Proposes Adopting

Through their petitions for rulemaking and informal discussions with FRA, the Associations requested that FRA amend part 243 to codify the guidance, thereby providing certainty to the regulated community as to how the agency will apply part 243's requirements in the future. In making this request, the Associations express concern that agency guidance is subject to change without rulemaking. To the extent possible, the Associations ask that FRA convert the information in guidance documents into regulatory text so that the regulated community only needs to consult the regulatory requirements to understand the part 243 regulation. FRA agrees with this request and intends this proposed rule to convert the guidance into regulatory text, to the extent possible.

Definition of Refresher Training

FRA is proposing to revise the definition of ''refresher training'' because the Associations' request for clarification in their petitions for rulemaking express confusion and request clarification. FRA currently defines ''refresher training'' as meaning periodic retraining required by an employer for each safety-related railroad employee to remain qualified. Because refresher training is already required in other FRA regulations, albeit under different names, FRA believed the general meaning of the term was understood throughout the regulated railroad community. However, in reviewing FRA's other refresher training requirements, and the Associations' and other industry members'questions about refresher training, FRA recognizes that clarifying the term would be helpful—especially for small entities.

[7] 85 FR 10 (Jan. 2, 2020).

[8] 85 FR 10 (stating FRA's intent to initiate a separate rulemaking which would be limited to amending FRA's training regulation so that the regulatory text includes the latest guidance intended to help small entities and other users of model programs). FRA's response to address the Associations' remaining requests in a separate rulemaking was consistent with its previous statement on the subject. 84 FR 64447, 64449 (Nov. 22, 2019).

[9] 79 FR 66474.

[10] Document number FRA–2009–0033–0031.

[11] Document number FRA–2009–0033–0035.

[12] Document number FRA–2009–0033–0036.

[13] FRA notes that representatives of the Associations met with FRA on January 17, 2020, to discuss their requests for greater clarity pertaining to the requirements for refresher training, program submission, model program adoption, and periodic oversight. A follow-up meeting with the Associations was held by phone on December 4, 2020, so that FRA could express its continuing interest to respond to the petitions for rulemaking and the Associations could emphasize concerns of greatest interest to their members.

Accordingly, FRA proposes to revise the definition of the term ''refresher training'' in part 243 to, among other things: (1) acknowledge that FRA refers to refresher training in its other regulations with a variety of terms (*e.g.,* ''recurrent training,'' ''re-training,'' ''periodic training,'' ''training that occurs periodically,'' or ''training that is required within defined intervals''); and (2) state that those refresher training programs or plans required by FRA's other regulations need not be submitted to FRA for review under § 243.103(b).[14]

FRA's proposed definition of refresher training explains that the purpose of this type of training is to improve the job performance of existing employees by acquainting them with any problematic issues or new skills, methods, and processes. In conjunction with the proposed revisions to the definition of ''refresher training,'' FRA is also proposing revisions to the refresher training requirements and options in § 243.201(e) to clarify what employers need to include, at a minimum, to complete acceptable refresher training.

Definition of Training Organizations or Learning Institutions

FRA is proposing to add a definition of ''training organizations or learning institutions'' to address an issue FRA is currently answering through guidance. FRA has been asked several times whether certain small- and medium-sized businesses that provide training to employers are ''training organizations or learning institutions'' for purposes of part 243. Because part 243 currently lacks a definition, some businesses were confused about their need to comply with the rule. To provide clarity, and as explained in more detail in the section-by-section analysis, FRA is proposing a definition that identifies four characteristics of a training organization or learning institution.

Model Program Developer or Employer With an Approved Program Wants To Be Treated as a Training Organization or Learning Institution

FRA has received inquiries from entities with FRA-approved programs (either model programs under § 243.105 or employer programs under § 243.101) asking whether they need additional FRA-approval to provide training services to employers as a training organization or learning institution. In conformance with verbal guidance that FRA has previously provided, this NPRM would clarify that such entities need not resubmit an approved model or employer program to be recognized under part 243 as a training organization or learning institution. Rather, such entities would only need to submit an informational filing for FRA-approval containing the information required § 243.111(c).

Section 243.101 Employer Program Required

FRA is proposing to revise this section to remove requirements that are obsolete and to clarify and incorporate guidance. Among other things, FRA is proposing to delete the effective date of January 1, 2020, as that implementation deadline has already passed and is now unnecessary.

In addition, this NPRM would incorporate guidance that FRA has previously provided in response to industry stakeholders' questions regarding the ability of employers to classify their safety-related railroad employees based on the FRA regulations the employees are required to comply with for their work, rather than traditional craft terminology. Specifically, this NPRM would clarify that it is permissible for an employer to classify its safety-related railroad employees by listing the Federal railroad safety laws, regulations, and orders that the employee is required to comply with to complete the employee's assignments and duties.

Further, the NPRM would incorporate FRA guidance to employers on how training is required to be structured, developed, and delivered. Specifically, OJT is required when tasks require neuromuscular coordination to learn, unless FRA approves alternative, formal training that addresses the need to practice safety-related tasks, with the ability to objectively measure task completion proficiency. Examples of alternative, formal training could include: training facilities that permit students to practice tasks that require neuromuscular coordination to learn in a controlled environment with minimal or no risk of personal injury; classroom practical exercises; role play; lab simulation; or virtual reality (VR) and other emerging technologies.

In addition, this NPRM would incorporate FRA guidance regarding contractor employers. Currently, § 243.101(e) requires a contractor that chooses to train its own safety-related railroad employees to provide each railroad that utilizes its services with a document indicating that the contractor's program of training was approved by FRA. However, the existing paragraph does not consider that some similar training programs or plans, pursuant to other regulatory requirements contained elsewhere in this chapter, are not required to be submitted in accordance with this part and, therefore, the contractor would not have a document that it could show a railroad validating FRA's approval of its program. For this reason, FRA is proposing to clarify that the requirement does not apply when the contractor is not required to submit a training program to FRA or retain a document indicating FRA's approval of the program.

Section 243.103 Training Components Identified in Program

FRA is proposing three clarifying revisions to the requirements of § 243.103. First, existing paragraph (a)(1) requires each employer's program to include a unique name and identifier for each formal course of study. The proposed revision to this requirement clarifies that the types of formal courses needing a unique name and identifier include both initial and refresher training. An initial or refresher training course that FRA has previously approved would not need a new unique name and identifier each time it is revised.

Second, existing paragraph (a)(2)(v) requires each employer's program to include a course outline, and the outline to include the anticipated course duration. However, the existing requirement does not specify whether the anticipated course duration includes OJT. To address that gap, FRA proposes to revise the requirement to state that the employer's course outline for each course must include the anticipated course duration for all formal training combined, apart from OJT. Because OJT is rarely scheduled for a specific time duration, FRA proposes that any estimate of OJT duration be excluded from the formal training duration estimate.

Third, as discussed in the definition of Refresher Training section above, this NPRM would clarify that similar training programs or plans, currently required by other FRA regulations, do not have to be submitted to FRA under part 243. As noted in footnote 13 above, FRA has published a chart identifying those already-maintained training programs that FRA expects will not be submitted as initial or refresher training under part 243.

[14] FRA published a chart identifying those already-maintained training programs that FRA expects will not be submitted as initial or refresher training under part 243. Although FRA does not intend to maintain this chart, as FRA is perpetually removing, revising, or adding regulatory requirements, the chart published on May 1, 2019, in the compliance guide can be found at *https://railroads.dot.gov/divisions/safety-partnerships/training-standards-rule.*

Additional Changes to Miscellaneous Sections

As described in the section-by-section analysis below, FRA has identified a number of additional requirements that can be eliminated as obsolete or revised to add regulatory certainty and clarity. Those changes that can be found in the proposed requirements for Training Components Identified in Program (§ 243.103), Optional Model Program Development (§ 243.105), Training Program Submission, Introductory Information Required (§ 243.107), Approval of Programs Filed by Training Organizations or Learning Institutions (§ 243.111), Records (§ 243.203), and Periodic Oversight (§ 243.205).

In addition, the Associations' petitions requested that FRA revise § 243.113 to allow any employer, not just small employers with less than 400,000 total employee work hours annually, to have the option to submit a training program by a method other than electronic submission. However, during subsequent communications, the Associations retracted that request and told FRA that they would not object to FRA proposing mandatory submission electronically for all employers through FRA's part 243 web portal. Accordingly, this NPRM proposes that change in § 243.113, Electronic and Written Program Submission Requirements.

B. Petition Requests FRA Does Not Propose Adopting

Although FRA is proposing to adopt many of the recommendations the Associations suggested in their petitions for rulemaking, there are several items that FRA is not.

FRA is not proposing any additional implementation date delays. The implementation dates in the existing rule have come due with the exception of those for implementing the refresher training requirements (December 31, 2024, for each Class I railroad and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more, or December 31, 2025, for each employer conducting operations subject to this part that is not covered by the earlier implementation date). Thus, the need for implementation date delays appears to have passed or is not yet ripe for review.

Neither is FRA proposing a different set of training requirements for the Class II and III freight railroads and contractors compared to the Class I railroads. Because the work of each safety-related railroad employee must comply with the same Federal railroad safety laws, regulations, and orders, and the consequences for failing to comply with those laws can be just as dangerous regardless of the size or type of operation of the employer, it is FRA's position that safety-related railroad employees should not be held to different training standards based on the size or type of their employer. Instead, FRA's existing regulation and the proposed changes in this rulemaking provide for differences in employer size or type by allowing employers to draft their own programs or use model programs to develop training in ways that are tailored to smaller entities, or contract for training services from one or more training organizations or learning institutions.

Additionally, for the same reasons, FRA is not proposing relief for Class II and III freight railroads and contractors to have a different set of qualification requirements versus Class I railroads when an employee is qualified by an entity other than the employee's current employer and the previous qualification records are unavailable under § 243.201(d)(1). Likewise, FRA is not proposing relief for Class II and III freight railroads and contractors to have a different refresher training period than the three-year period in the existing regulation.

FRA is also declining the Associations' suggestions to add a definition of ''program'' that would mean the written and electronic instructional and testing materials, and add a definition of ''template'' that would mean an outline of the training program, and then allow employers to submit either one. However, FRA's approach to a training program goes more to the employer describing the methodology of determining how safety-related railroad employees are to be trained and how the employer can determine that the training is effective. Because the Associations' proposed definitions would impair that approach, FRA is declining to propose adding these two terms to the definitions section of this NPRM.

The Associations petitioned FRA to propose removing the burden on an employer to affirmatively state that it has chosen to use an FRA-approved model program, contending that the burden is unnecessary. FRA declines to propose this revision. Although the Associations acknowledge the burden is relatively small on each employer, they state that the cumulative burden on small employers is relatively large. FRA's decision to decline adopting this revision is based on the statutory requirement for the submission of ''training and qualification plans to the Secretary for approval, including training programs and information deemed necessary by the Secretary to ensure that all safety-related railroad employees receive appropriate training in a timely manner.'' [15] It would be difficult for FRA to ensure that an employer's safety-related railroad employees were being trained as statutorily required without an affirmative submission from the employer. Meanwhile, FRA is proposing revisions to § 243.105(b) to help employers conceptualize the steps necessary to learn about what model programs are available and how they can obtain the model programs they need. Thus, this proposed rulemaking is targeted to easing the burden raised by the Associations in their petitions for rulemaking, even if it does not remove the burden.

The Associations' petitions suggest that FRA propose revising the records requirement in § 243.203 to eliminate the specific requirements and allow their members to keep whatever records the Class II and III railroads and contractors believe are necessary to demonstrate compliance with part 243. FRA declines to propose this suggestion because it would eliminate objective recordkeeping requirements in exchange for an unknown, subjective, and variable response.

The Associations' petitions suggest that FRA propose revising the periodic oversight requirements in § 243.205 to require a contractor that employs supervisory safety-related railroad employees to perform oversight only when those supervisory employees are available to perform it. FRA is not proposing this suggestion because the Associations' recommendation regarding a contractor's supervisory employees would likely render that requirement unenforceable as FRA would expect any employer could make a reasonable argument that its supervisors were too busy to perform the oversight required.

Finally, the Associations' petitions suggest that FRA propose to exclude Class II and III railroads from the requirement to conduct annual reviews. This would be an expansion of the existing exclusion which covers a railroad with less than 400,000 total employee work hours annually. FRA is not proposing this revision because the exclusion was purposely designed to exclude only the smallest Class III railroads. A railroad with at least 400,000 total employee work hours annually is large enough that it should be expected to have the resources to

[15] 49 U.S.C. 20162(a)(2).

effectively evaluate its training programs on a regular basis. Annual reviews help ensure that a railroad is updating the program as needed and addressing rising systemic safety concerns through targeted training program changes.

C. Summary of FRA Guidance to the Regulated Community

Since the effective date of the 2014 Final Rule, FRA has received questions from the regulated community regarding the agency's plans for auditing program implementation and enforcement. The following background reiterates guidance FRA provided on these subjects in response to questions received. Please note that these issues are matters of agency discretion, policy, or rules of agency organization, procedure, or practice that are exempt from notice and comment rulemaking.[16] Nevertheless, FRA will consider any comments on its procedures or practices filed in response to this proposed rule.

One question FRA answered in the compliance guide asked what an FRA audit will include. FRA understands that each employer, organization, or business required to comply with part 243 wants this information so that it can best ensure that FRA will continue to find its program, records, and activities in compliance. In the compliance guide, FRA explained that agency personnel will likely engage in the following audit activities: (1) attend classes and observe different types of training; (2) review periodic oversight records; (3) review annual review records; (4) review employee training records; (5) review training evaluation methods; and (6) confirm that each employer is complying with its training program. While FRA provided this list of standard audit activities to inform the regulated community of the general direction of most part 243 audits, the list was not intended to be exhaustive, and certainly FRA could conduct additional audit activities, including conducting interviews of relevant personnel, and conducting site visits, if applicable.

Also, in the compliance guide, FRA answered a question regarding whether the agency would provide a grace period before taking enforcement action. FRA's answer in the compliance guide reflected the agency's understanding that, as with all new regulations, it will take some time for employers to learn how to comply fully with part 243, and potentially 12 to 18 months after training program implementation for FRA to begin scheduling routine audits. Consequently, FRA's response in the compliance guide explained how FRA expects to help employers, particularly small entities, comply with part 243, albeit without a grace period. In addition, FRA clarified that it reserves the right to use its full enforcement authority to ensure compliance, especially in cases where gross disregard for compliance is observed.

In reviewing the guidance in the compliance guide regarding FRA enforcement, FRA adds that regulated entities should expect FRA's audits will focus on both compliance and performance. If a training program is not effective, FRA will address those performance objectives with the regulated entity. After all, the purpose of part 243 is to ensure safety-related railroad employees are properly trained and qualified so as to improve rail safety generally. To achieve that purpose, FRA expects each regulated entity to continuously look for and consider implementing industry best practices.

III. Section-by-Section Analysis

Subpart A—General

Section 243.1 Purpose and Scope

Section 243.1 sets forth the purpose and scope of part 243. This NPRM proposes to add two new paragraphs, paragraphs (f) and (g), to this section to incorporate existing guidance related to railroad bridge engineers and non-railroad employees who perform elective audits or assessments.

Proposed paragraph (f) codifies guidance in the compliance guide, which explains that part 243 does not apply when the training required under FRA's regulations is obtained through earning a college degree or certification from an accredited training organization or learning institution.[17] For example, part 243 does not require railroad bridge engineers to receive ''in-house'' training when an individual qualifies as a bridge engineer under 49 CFR 237.51(b). That section provides that an individual may qualify as a bridge engineer based on a degree in engineering from an accredited school or organization. Employers are not required to provide or duplicate the same types of classes a person might need to earn a college degree or certification from a college or university. However, if a railroad bridge engineer is conducting a bridge inspection as required by 49 CFR part 237, an employer is required to provide training on how to conduct a proper bridge inspection safely as required by 49 CFR part 214. Not only is it unlikely that a college engineering course would cover railroad bridge safety rules for inspections, but each railroad is likely to have its own unique combination of rules.

Proposed paragraph (g) codifies guidance in the compliance guide clarifying that employers are not required to train non-railroad employees who perform audits or assessments that are not required by Federal railroad safety laws, regulations, or orders.[18] FRA is proposing this change in response to the Associations' concerns specifically pertaining to employees of the Short Line Safety Institute (SLSI) who conduct safety audits and provide recommendations to short line railroads on ways to improve safety. The Associations assert in their petitions that SLSI employees are not conducting ''oversight inspections or testing'' and ''do not train railroad employees in specific tasks.'' FRA agrees with the Associations' position on this issue and notes that, although the Associations suggest in their petitions that FRA amend the definition of ''safety-related railroad employee'' to exclude these types of non-railroad employees and SLSI employees specifically, FRA finds that the exclusion is better placed in § 243.1. FRA also finds that specifically excluding SLSI employees is unnecessary as SLSI employees clearly fall within the revised language as proposed.

Section 243.3 Application and Responsibility for Compliance

Section 243.3 provides that, with certain exceptions, part 243 applies to all railroads, contractors of railroads, and training organizations or learning institutions that train safety-related railroad employees. The section further makes clear that any person, including a railroad or a contractor for a railroad, that performs any duty covered by part 243 is responsible for performing that duty in accordance with part 243. In response to industry's request that a parent or holding company be able to submit a part 243 training program on behalf of its subsidiaries, FRA has allowed parent and holding companies to submit training programs on behalf of their subsidiaries as long as the filing thoroughly describes which companies are covered by the submission and how each company is covered. The current regulation, however, is silent on this issue and FRA has not issued guidance on the issue.

[16] 5 U.S.C. 553(b).

[17] Compliance Guide at 49–50 located at *https://railroads.dot.gov/elibrary/training-qualification-and-oversight-safety-related-railroad-employees-compliance-guide-0*.

[18] *Id.* at 43.

To address this issue in a clearer, more transparent manner, FRA proposes adding paragraph (c) to this section to clarify how a parent or holding company may comply with the requirements of this part on behalf of one or more subsidiaries. In paragraph (c)(1), FRA proposes a requirement that the arrangement be specified and submitted as other programs are required in subpart B. Paragraph (c)(1)(i) proposes that the arrangement may be used to fulfill all or a portion of a subsidiary's responsibility for compliance required by part 243. This proposed provision is intended to allow flexibility for each subsidiary to opt out of a parent or holding company's program when the subsidiary's training needs are different.

Proposed paragraph (c)(1)(ii) would require that a parent or holding company that submits a training program on behalf of one or more subsidiaries must initially and continually maintain in its submission a list of the subsidiaries covered and the extent to which each subsidiary is adopting a parent or holding company's training program.

Recognizing that the efficiencies of a joint filing arrangement would be lost if a subsidiary were to duplicate a parent or holding company's filing on its behalf, paragraph (c)(2) proposes to prohibit a subsidiary from filing a duplicate of any training program a parent or holding company submitted on its behalf.

Proposed paragraph (c)(3) would provide that each railroad, even if it is a subsidiary of a parent or holding company, is responsible for compliance with the training program submission requirements in subpart B. A subsidiary should not presume that the parent or holding company will fulfill the program submission requirements without confirming the arrangement. FRA reserves the right to take enforcement action against each ''person,'' as defined in § 243.5, that fails to comply with the program submission requirements of subpart B.

Proposed paragraph (c)(4) would require that when a parent or holding company's training program submission is filed on behalf of the parent or holding company's subsidiaries, each subsidiary is required to comply with that training program submission unless the subsidiary files its own program with FRA. The existing and proposed requirements in part 243 are predicated on each employer submitting a training program and complying with that training program submission. This proposed requirement ensures that a subsidiary understands that it would have an obligation to comply with the parent or holding company submission unless it takes the affirmative step to file its own training program submission.

FRA's decision to accept programs filed by parent or holding companies on behalf of their subsidiaries is based on the recognition that companies that are legally related may often share company rules or operating practices that make it possible to share a training program. Meanwhile, there are legal considerations that parent companies, holding companies, and their subsidiary companies must consider before filing a program under part 243 and FRA expects that all companies involved will discuss and agree to the submission as represented to FRA. For instance, there is a legal difference between a holding company, which has a passive relationship with its subsidiaries because, in general, it does not participate in the daily decision making of the subsidiaries and each subsidiary has its own management running those day-to-day operations, and a parent company. A parent company typically has its own business operations and will choose whether to be actively or directly involved in managing its subsidiaries. Accordingly, FRA's proposed revisions to this section are intended to ensure that all companies covered by a submission are legally bound and accept the submission, and that subsidiaries may opt out of a parent or holding company's submission, in whole or in part.

Section 243.5 Definitions

To codify existing guidance and respond to questions from industry, FRA is proposing to revise two definitions and add one new definition to part 243. Specifically, FRA proposes to revise the existing definitions of the terms ''designated instructor'' and ''refresher training,'' and add a definition for the term ''training organizations or learning institutions.''

First, FRA proposes to revise the definition of ''designated instructor.'' As currently defined, a ''designated instructor'' is ''a person designated as such by an employer, training organization, or learning institution, who has demonstrated, pursuant to the [applicable] training program . . . an adequate knowledge of the subject matter under instruction, and where applicable, has the necessary experience to effectively provide formal training.'' FRA understands that some industry members read this definition to mean that to be a ''designated instructor'' a person must be: (1) an employee of the employer; and (2) ''qualified'' as that term is used in part 243. To clarify these issues, FRA is proposing to add two sentences to the existing definition. The first proposed sentence would specify that a ''designated instructor'' is not required to be an employee of the employer and thus designated instructors can be in-house employees or outside contractors, such as professional trainers. The second proposed sentence would explain that employers are required to ensure that employees and non-employees used as designated instructors have the necessary knowledge, skills, and abilities to provide sound coaching, mentoring, and guidance to new learners. FRA notes, however, that ''designated instructors'' are not required to be ''qualified'' as that term is defined in part 243.

FRA proposes to revise the definition of ''refresher training'' to explain that the purpose of this type of training is to improve the job performance of existing employees by acquainting them with any changed standards, any relevant problematic issues or new skills, methods, and processes, and to ensure no important skills or knowledge have been lost due to lack of use. This proposed explanation is intended to distinguish refresher training from initial training, which is targeted to employees who generally are new to the subject matter. FRA also proposes to revise the definition of ''refresher training'' to acknowledge that FRA has referred to refresher training in its other railroad safety regulations with a variety of terms and that those refresher training programs or plans required in its other railroad safety regulations need not be submitted for review pursuant to § 243.103(b). This proposed acknowledgment is intended to be read in conjunction with the proposal in § 243.201(e) that refresher training be at an interval not to exceed three calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. Thus, for example, if FRA requires ''recurrent training'' each calendar year in a different FRA rail safety regulation, then that more stringent refresher training requirement would not be superseded by the more relaxed refresher training requirement of three calendar years in § 243.201(e). In addition, FRA is proposing revisions to the refresher training requirements and options in § 243.201(e) that would clarify what employers need to include, at a minimum, to complete acceptable refresher training.

FRA also proposes to add a definition of ''training organizations or learning institutions'' to clarify which businesses

that provide training to employers are ''training organizations or learning institutions.'' FRA's proposed definition identifies four characteristics of a training organization or learning institution. First, a training organization or learning institution is an entity that provides training services for people who are safety-related railroad employees or independent students who will rely on the training services provided to qualify to become safety-related railroad employees, but not employees of the entity providing the training. This proposed characteristic is intended to clarify that FRA's training organization or learning institution definition does not include an employer providing training to its employees. Second, the proposed definition identifies the main examples of training organizations and learning institutions as businesses that provide formal training, and colleges and universities that provide rail safety courses necessary for a person to qualify as a safety-related railroad employee. A business that performs consulting work or some type of training that does not rise to the level of ''formal training,'' as defined in part 243, would not be considered a training organization or learning institution. Third, the proposed definition explains that even though an entity may not maintain a fixed training facility, it could still be considered a training organization or learning institution as it could rent or lease meeting space to deliver training, deliver training at an employer's facility, or deliver virtual training. Thus, the proposed definition would clarify that a business that goes to an employer's property to deliver formal training may be considered a ''training organization or learning institution.'' Fourth, while some railroads have in-house training for their employees and also train safety-related railroad employees of other employers, FRA does not consider these railroads as training organizations or learning institutions, and therefore proposes to clarify that exclusion.

Subpart B—Program Components and Approval Process

Section 243.101 Employer Program Required

FRA is proposing to delete paragraphs (a)(1) and (2) and state the employer requirement to submit, adopt, and comply with a training program for its safety-related railroad employees in paragraph (a) without implementation dates. Paragraphs (a)(1) and (2) are no longer needed as the implementation deadlines specified in those existing requirements have already passed and all employers currently must comply.

Paragraph (b) requires that employers commencing operations after January 1, 2020, submit, adopt, and comply with a training program before commencing operations. As above, paragraph (b) would also be revised to remove the implementation date that has passed. Thus, the proposed rule would apply any time an employer commences operations.

In response to the Assocations' request, proposed revisions to paragraph (c) clarify that employers may create programs based on applicable CFR parts, United States Code sections, or citations to orders. Accordingly, FRA is proposing to revise paragraph (c)(1) to clarify what it means for an employer to classify its safety-related railroad employees by ''other suitable terminology,'' which includes references to the applicable part of the CFR, section of the United States Code, or citation to an order. Also, FRA proposes to revise paragraphs (c)(2) and (3) to exclude an employer that classifies its safety-related railroad employees by direct reference to Federal railroad safety laws, regulations, and orders because the existing requirement would be redundant for an employer who classifies in that way.

FRA proposes to revise paragraph (c)(5) to codify guidance that OJT is required when tasks require neuromuscular coordination to learn unless FRA approves alternative, formal training that addresses the need to practice safety-related tasks with the ability to objectively measure task completion proficiency.[19] As background, some employers or training organizations may have access to state-of-the-art indoor/outdoor training facilities that permit students to practice tasks that require neuromuscular coordination to learn in a controlled environment with minimal or no risk of personal injury. Other approaches may include classroom practical exercises, role play, lab simulation, VR, and other emerging technologies. FRA's proposal recognizes that some safety-related tasks that require neuromuscular coordination can be taught effectively through formal training other than traditional OJT.

Paragraph (e) requires a contractor that chooses to train its own safety-related railroad employees to provide each railroad that utilizes its services with a document indicating that the contractor's training program was approved by FRA. However, paragraph (e) does not account for the fact that some similar training programs or plans, pursuant to other regulatory requirements contained elsewhere in this chapter, are not required to be submitted in accordance with part 243 and, therefore, the contractor would not have a document that it could show a railroad validating FRA's approval of that program. For this reason, FRA is proposing to change this requirement. To the extent that a contractor chooses to train its own safety-related railroad employees with an FRA-approved program under part 243, FRA proposes that the contractor provide each railroad utilizing the program with a document declaring or proving that its training program was approved by FRA. However, as proposed, if a contractor is not required to submit the training program or plan as permitted by § 243.103(b), but is maintaining the similar training program or plan pursuant to other regulatory requirements contained elsewhere in this chapter, then the contractor's requirement to provide the railroad with a document is limited to declaring or proving that information. For this proposed requirement, any FRA approval document will be considered sufficient proof and, when that proof is unavailable, a contractor may simply declare that the statement in the document is true. FRA is also proposing revisions to paragraph (f) that would similarly change the type of document a railroad is responsible to retain based on the proposed corresponding changes in paragraph (e).

Section 243.103 Training Components Identified in Program

FRA is proposing four revisions to the requirements in this existing section.

Paragraph (a)(1) requires each employer's program to include a unique name and identifier for each formal course of study. The proposed revision to this requirement clarifies that the types of formal courses needing a unique name and identifier include both initial and refresher training courses. An initial or refresher training course that FRA has previously approved would not need a new unique name and identifier each time it is revised.

Paragraph (a)(2)(v) requires each employer's program to include a course outline, and the outline to include the anticipated course duration. However, the existing requirement does not specify whether the anticipated course duration includes OJT. Accordingly, FRA proposes revising this paragraph to provide that the employer's course outline for each course include the anticipated course duration for all

[19] *Id.* at 15.

formal training combined, apart from OJT.

The proposed revisions to paragraph (b) would clarify which ''similar training programs or plans'' that FRA requires in its other rail safety regulations do not have to be submitted to FRA under part 243. Additionally, proposed paragraph (b) would clarify that if an employer needs to amend any such similar program or plan required by an FRA railroad safety regulation, other than part 243, the employer is required to amend its program but not submit it to FRA under § 243.109.

FRA is proposing to amend paragraph (d) to clarify that an employer is not required to submit courseware (*i.e.,* lesson plans, instructor guides, participant guides, job aids, practical exercises, tests/assessments, and other materials used in the delivery of any course) as part of a training program submission, although FRA may require an employer to provide FRA with such program courseware upon request.

Section 243.105 Optional Model Program Development

FRA is proposing several revisions to this existing section, which permits the optional development of model programs that can be adopted by multiple employers. The proposed changes would remove a requirement no longer necessary and add information to the regulatory text that was previously issued as guidance.

FRA proposes to remove paragraph (a)(3) as it is no longer needed. The existing paragraph provided model program developers with the option to file model training programs by May 1, 2019, to guarantee an FRA review process of no more than 180 days. The existing requirement is no longer needed because the deadline for early filing passed.

The proposed revisions to paragraph (b) would add information intended to help an employer that is planning to use a model program. Existing paragraph (b) already specifies that an employer that chooses to use an FRA-approved model program must submit only the unique identifier associated with the program, and all other information that is specific to that employer or deviates from the model program. However, proposed paragraph (b) would contain information about how an employer can go to FRA's part 243 web portal, obtain contact information from a model program developer, and contact that developer to access the courseware associated with the model program. Further, FRA is proposing to revise paragraph (b) to confirm that an employer that submits, adopts, and implements an FRA-approved model program, consistent with the operations of that employer, will be considered in compliance with the employer program requirements of § 243.101.

FRA proposes adding paragraph (c) to address how model program developers are required to provide notice of any FRA-approved changes to authorized users. FRA proposes that sufficient notice of any FRA-approved changes may depend on whether the model program developer loosely allows adoption of the model program by anyone with access to the developer's website or more stringently requires an employer to obtain explicit authorization to use a model program. In short, FRA proposes that the model program developer disseminate its FRA-approved updates in at least the same (and no less stringent) manner as it made the model program available to employer users.

Section 243.107 Training Program Submission, Introductory Information Required

FRA proposes amending paragraph (a) to remove the requirement that an employer that does not provide, but is responsible for, training for its safety-related railroad employees must submit a training program. FRA also proposes adding a sentence to paragraph (a) notifying employers using FRA's part 243 web portal that the web portal will prompt the employers to provide the information required in this section. Thus, an employer using FRA's part 243 web portal would not need to provide this information elsewhere in its submission as the web portal itself will prompt the employer to provide the information.

FRA also proposes amending paragraph (a) to reduce the types of information required at the time of filing. The types of information paragraphs (a)(4) and (5) require do not directly apply to employers that must submit training programs and thus the requirements are unnecessary. Accordingly, FRA proposes deleting both requirements, and redesignating and revising paragraph (a)(6) as (a)(4).

Similarly, paragraphs (b) and (c) require a level of detail that is unnecessary for FRA to evaluate an employer's training program submission. Paragraph (b) requires an employer to provide FRA with information about the different methods it will utilize to train its various categories of safety-related railroad employees. Paragraph (c) requires an employer to provide FRA with information about the training organizations or learning institutions it elects to use to train all or some of its safety-related railroad employees. FRA recognizes that the agency can determine this information during an audit or investigation. For this reason, FRA proposes to remove paragraphs (b) and (c) in their entirety and would reserve paragraph (b).

Section 243.109 Initial and Refresher Training Program Submission, Review, and Approval Process

FRA is proposing revisions to this section clarifying that refresher training programs must be submitted to FRA for review and approval in the same manner as an employer's initial training program. This proposal includes revising the heading of this section to make clear that it addresses the submission, review, and approval process for both initial and refresher training programs. Similarly, FRA proposes revising the introductory heading in paragraph (a), which refers only to initial programs, so that it refers to both initial and refresher training programs. Finally, FRA is proposing to revise paragraph (a)(2) to reference both initial and refresher programs.

Section 243.111 Approval of Programs Filed by Training Organizations or Learning Institutions

FRA proposes several revisions to this section to remove unnecessary requirements and eliminate regulatory ambiguity.

Paragraph (a) currently requires a training organization or learning institution to submit its program to FRA for review and approval. Because FRA received inquiries from the Associations, and some employers, requesting guidance on whether they would need to resubmit a previously approved employer program so they could also be recognized under part 243 as a training organization or learning institution, FRA proposes new requirements to address the issue. Accordingly, when an entity has previously received FRA approval of a model program under § 243.105 or an employer program under § 243.101, under proposed paragraph (a)(1) the program does not need to be submitted a second time for FRA's approval. Meanwhile, FRA proposes requiring in paragraph (a)(2) that an entity with such a previously approved program must submit an informational filing to its previously approved program containing the information required in paragraph (c) of this section for a training organization or learning institution program.

The proposed revisions to paragraph (c) would remove paragraphs (5)

through (7), which require programs submitted by training organizations and learning institutions to include designated instructors' resumes, a list of employer customers, and a summary showing the methodology used to develop training programs. FRA proposes deleting these three requirements because FRA is not an educational accrediting agency and finds that the existing requirements may wrongly suggest FRA would be deciding whether each training organization or learning institution is suitable to provide such training when that is a decision for each employer to make. By deleting these three existing requirements, the regulation would make clear that FRA approves training programs and not any particular training organization or learning institution. In other words, no training organization or learning institution should refer to itself as ''FRA-approved'' but it may say that its training program is ''FRA-approved.''

FRA proposes revising paragraph (e) to clarify that a training organization or learning institution may transfer an approved program to another training organization or learning institution, or an employer. As proposed, the acquiring entity need only submit an informational filing with FRA noting the transfer unless the acquiring entity is making substantial additions or revisions to the previously approved program. If the acquiring entity is making substantial additions or revisions to the previously approved program, then the acquiring entity must obtain FRA's approval of those changes pursuant to paragraph (f) of this section. FRA is considering an alternative requirement that the acquiring entity will need to submit the entire previously approved program under the acquiring entity's web portal account for administrative reasons.

243.113 Electronic and Written Program Submission Requirements

FRA proposes several revisions to this section to clarify that when FRA refers to electronic program or informational filings submission requirements, FRA means submission through FRA's part 243 web portal. For example, paragraph (a) would be revised to specifically reference FRA's part 243 web portal and to inform electronic submitters that the web portal will prompt them to submit all required training program information.

FRA proposes the elimination of the written program submission option for an employer with less than 400,000 total employee work hours annually. For this reason, FRA proposes deleting that option from paragraph (a) and removing existing paragraphs (d) through (f). The cost in time and resources to print and mail a submission is likely the equivalent to the time and resources needed for a person to go to FRA's part 243 web portal, fill out the information required, and upload the submission documents. For these reasons, this proposed requirement is not expected to increase the costs on an employer with less than 400,000 total employee work hours annually, while reducing administrative and cost burdens for FRA personnel that would need to receive the written program, scan it, and upload it to FRA's part 243 web portal.

In paragraph (b), FRA proposes to clarify that a submitter will need to register for access to the part 243 web portal through a website before being granted web portal access.

In paragraph (c), FRA proposes to clarify that the electronic submitters providing consent are the users of FRA's part 243 web portal. FRA also proposes adding for clarity the existing paragraph (e) requirement that a person that electronically submits documents to FRA shall be considered to have provided their consent for FRA to electronically store those materials required by this part.

Subpart C—Program Implementation and Oversight Requirements

Section 243.201 Employee Qualification Requirements

FRA proposes revising this section to provide more direction on what must be included in refresher training, and how refresher training is distinguished from initial training.

FRA proposes several revisions and additions to paragraph (a). The revisions include the removal of implementation dates that have passed. Proposed paragraph (a)(1) includes the existing requirement that each employer must only permit employees appropriately trained and qualified to perform safety-related service. Proposed paragraph (a)(2) addresses the Associations' petitions by permitting an employer to limit a safety-related railroad employee's training to only the relevant Federal requirements that apply to the safety-related tasks that the employer authorizes the employee to perform, in addition to any knowledge-based training that is required. FRA proposes to move the requirement for designating existing employees by occupational category or subcategory in current paragraph (a)(1) to proposed paragraph (a)(3)(i).

FRA also proposes adding paragraph (a)(3)(ii) to address an issue, like the one addressed in proposed § 243.101(c), concerning employers that prefer to categorize their employees by CFR parts or other legal requirements, rather than by occupational category or subcategory. Proposed paragraph (a)(3)(ii) addresses employers that do not designate employees by department, occupational category, or subcategory. For those employers who do not designate employees, paragraph (a)(3)(ii) proposes that the employer must retain a record for each employee identifying the list of Federal railroad safety laws, regulations, and orders that cover the work the person is designated as qualified to perform.

In response to the Assocations' request, FRA proposes to revise paragraph (c)(2) to allow an employee, who is not yet qualified, to perform tasks during OJT under the direct onsite observation of a qualified person and in accordance with certain conditions for the qualified person, before the employee has completed all of the formal training, including classroom training and OJT. The existing rule requires the employee to complete classroom or other formal training, before the employer may allow an employee, who is not yet qualified, to perform tasks during OJT under the direct onsite observation of a qualified person, and under the same specified conditions for the qualified person. The proposed change would not be expected to impact safety detrimentally as the employee would still be required to perform the OJT tasks under the direct onsite observation of a qualified person, provided the qualified person has been advised of the circumstances and is capable of intervening if an unsafe act or non-compliance with Federal railroad safety laws, regulations, or orders is observed.

FRA proposes to amend paragraph (d), which addresses how an employer can avoid training an employee that was previously trained or qualified by an entity other than the current employer. FRA is not proposing to amend the existing options in paragraphs (d)(1) and (2). Instead, FRA proposes changing ''FRA-approved'' to ''FRA-required,'' and ''submitted'' to ''completed'' to coincide with other changes in this proposed rule. The rule currently requires that, in order to exercise one of the options, the employee's training or qualification must have been provided previously ''through participation in a FRA-approved training program'' that was submitted by an entity other than the employee's current employer. Through the proposed changes to § 243.103(b), FRA is recognizing that an employee could have been previously trained or qualified by an entity other

than the current employer using a similar training program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter that do not require submission to FRA or FRA-approval.

In conjunction with the proposed definition of ''refresher training,'' FRA proposes revisions to the requirements for refresher training in paragraph (e). Specifically, proposed paragraph (e)(3)(i) would require as a baseline that the employer ensure that each employee's refresher training include notification of changes to any rule, practice, or procedure relevant to the employee's assigned duties. Proposed paragraph (e)(3)(ii) would clarify that each employer must ensure that an employee is not allowed to test out of refresher training. Proposed paragraph (e)(3)(iii) would include the sentence in existing paragraphs (e)(1) and (2) which is intended to capture that, ultimately, the employer is required to ensure that the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders. That existing requirement is for ensuring that refresher training is used to fill any gaps in an employee's knowledge base. FRA recognizes that proposed paragraphs (e)(1) and (2) contain ''beginning'' implementation dates that may no longer be relevant when a final rule is published and will make changes to these paragraphs to remove the unnecessary implementation dates that have passed.

Proposed paragraph (e)(3)(iii) also describes the options available to employers for refresher training. For instance, rather than repeating initial training, refresher training may be limited and carefully tailored to review: (1) all the required steps of a complicated safety-related task; (2) existing rules or procedures that were initially learned but rarely used; and (3) safety-related tasks that address skill gaps that the employer identified in the workforce through efficiency testing, periodic oversight, annual reviews, accident/incident data, FRA inspection data, or other performance measuring metrics.

FRA is proposing to add paragraph (f) to require an employer to consider ways to provide remedial training and retesting of any employee who fails to successfully pass any training or testing. Additionally, proposed paragraph (f) would make clear that a failure of any test or training does not bar the person from successfully completing the training or testing later.

Section 243.203 Records

FRA proposes revisions to paragraph (b)(2) of this section to clarify that an employer that designates its employees by ''other suitable terminology,'' *i.e.,* other than occupational category or subcategory, is required to keep a record of that designation for each qualification of each qualified employee. This proposed revision is intended to work in tandem with the other proposed requirements, §§ 243.101(c) and 243.201(a)(2)(ii), which would permit an employer to categorize its employees by CFR parts or other Federal railroad safety legal requirements, rather than by occupational category or subcategory.

In addition, FRA proposes revising paragraph (b)(6)'s recordkeeping information requirement to clarify that the person determining that the employee successfully completed all OJT training necessary to be considered qualified to perform certain safety-related tasks must be a designated instructor. The existing rule does not specify that the person making this determination must be a designated instructor, but instead only requires that the record identify the person. Proposed revisions to paragraph (b)(6) would also add ''other suitable terminology'' to the phrase ''occupational categories or subcategories.''

FRA is proposing to revise the recordkeeping requirement for records other than individual employee records and annual review records, for consistency with part 217 of this chapter. The existing requirement in § 243.203(c) requires each employer to maintain test, inspection, and other event records that do not demonstrate the qualification status of a safety-related railroad employee, for a period of three calendar years after the end of the calendar year to which the event relates. FRA received feedback from the Associations that this recordkeeping requirement is more stringent than FRA's requirement for operational tests and inspections under 49 CFR 217.9(d)(1). As the test and inspection records in the two regulations are similar and are required to be kept for similar reasons, FRA proposes this change. No change is proposed for the existing annual review recordkeeping requirement in § 243.203(c), as 49 CFR 217.9(f) also has a similar annual review recordkeeping requirement of the same length and likewise is required to be retained for similar reasons.

Section 243.205 Periodic Oversight

FRA is generally proposing two changes to § 243.205. Changes to proposed paragraphs (a), (c), (d), (e)(1), (g), and (i) would, as requested in the Associations' petitions, allow periodic oversight to be limited to tests ''or'' inspections, rather than require both tests ''and'' inspections. In the context of periodic oversight, a ''test'' is conducted by a qualified supervisor who changes the work environment so that one or more employees would need to act to prevent non-compliance, while an ''inspection'' involves a qualified supervisor observing one or more employees at a job site and determining whether the employees are in compliance.[20] In revisiting the current requirement for both tests and inspections, FRA recognizes that tests are more difficult to design and execute, while inspections can be completed through routine observations. By revisiting this section, FRA recognizes that the goal of periodic inspection may be achieved by tests or inspections, and that both tests and inspections may have set a higher bar than a minimum requirement.

FRA also proposes to revise § 243.205(h) to provide railroads and contractors the flexibility to decide which entity would be responsible for conducting periodic oversight. This proposed revision to the periodic oversight requirements would address an issue raised in the Associations' petitions, which asked that FRA allow a railroad and a contractor to agree to any division of the periodic oversight responsibility requirements that the parties desire, rather than be bound by the required assigned responsibilities in the regulation. From a safety perspective, it does not make a difference whether periodic oversight is conducted by a railroad or a contractor. Thus, FRA proposes to revise § 243.205(h)(2) to state that, regardless of the requirements in § 243.205 that assign specific periodic oversight responsibilities to a railroad or contractor, these parties may agree to a different periodic oversight responsibility arrangement. This proposed revision will allow the regulated entities to decide which entity is in the best position to conduct the oversight and to make any necessary arrangements to comply with the periodic oversight requirements.

[20] 79 FR 66487.

IV. Regulatory Impact and Notices

A. Executive Order 12866

This proposed rule is a non-significant regulatory action within the meaning of Executive Order (E.O.) 12866. FRA made this determination by finding that this proposed regulatory action did not meet the definition of ''significant regulatory action'' in Section 3(f) of E.O. 12866.

FRA is issuing the proposed rulemaking to address issues raised in the Associations' petitions for rulemaking, provide clarity to current requirements, and remove requirements that are no longer necessary. For example, FRA proposes removing certain requirements from § 243.111 because FRA found some of the information submitted by training organizations and learning institutions to be unnecessary. FRA also proposes removing implementation dates that have passed. Overall, most changes would codify existing regulatory guidance that FRA has issued.

The proposed rule would provide regulatory clarity and promote regulatory compliance by the regulated industry through, among other things: (1) clarifying that FRA will accept a training program that categorizes employees by legal requirement references rather than occupational categories; (2) eliminating certain submissions such as similar training programs or plans; (3) requiring that each employer under § 243.103(a)(2)(v) exclude the course duration of OJT for an employer's estimate of the anticipated course duration for all formal training combined; (4) clarifying the use of model programs without requiring an entity to refer to guidance or asking FRA for assistance; (5) amending requirements for training program submissions and the introductory information required in § 243.107 due to FRA's part 243 web portal; (6) revising § 243.109 to clarify refresher training program submission requirements; (7) requiring each training organization and learning institution provide less information in its submission than required currently by § 243.111; (8) revising the refresher training requirements and options, clarifying what employers need to include to complete minimum acceptable refresher training; and (9) allowing each railroad and contractor the flexibility to decide which entity would be responsible for conducting periodic oversight.

FRA expects the proposed rule would result in several, non-quantifiable benefits for the regulated industry and FRA, such as: permitting training programs that categorize employees by referencing the applicable part of the CFR, a statute, or an order, rather than occupational categories associated by craft; clarifying that an employer need not submit courseware unless FRA requests that additional documentation is needed to conduct an adequate review; and clarifying what employers need to include to complete minimum acceptable refresher training, as well as allow for tests or inspections, instead of requiring both. FRA expects these clarifications would provide employers an easier means of complying with this regulation, as well as save time understanding what needs to be submitted and preparing submissions to FRA. By codifying existing regulatory guidance, FRA expects that the railroads would have greater regulatory certainty for future submissions while complying with training program requirements. FRA estimates that there will be no costs associated with this proposed rulemaking. FRA requests comments on the benefits and costs related to this proposed rule.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 [21] and E.O. 13272 [22] require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This proposed rule directly affects all railroads, of which there are approximately 754. FRA estimates that approximately 93 percent of these railroads are small entities. This proposed rule also affects approximately 300 contractors of railroads and approximately 109 training organizations or learning institutions, most of which, by definition, are considered small entities. Therefore, FRA has determined that this proposed rule will have an impact on a substantial number of small entities.

The requirements of this proposed rule would apply to employers of safety-related railroad employees, whether the employers are railroads, contractors, or subcontractors. Although a substantial number of small entities would be subject to this proposed rule, the proposed rule would codify agency guidance, reduce submissions to FRA, and clarify existing requirements. Accordingly, the FRA Administrator hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. FRA invites comment from members of the public who believe there will be a significant impact on small railroads.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.[23] The sections that contain the proposed and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section [24]	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [25]
243.3(c)—Application and responsibility for compliance—A parent or holding company that submits a training program on behalf of one or more subsidiaries must initially and continually maintain in its written submission a list of the legal name of each subsidiary (New requirements).	The estimated paperwork burden for this requirement is covered under 49 CFR 243.101(b).				

[21] 5 U.S.C. 601 *et seq.*

[22] 67 FR 53461 (Aug. 16, 2002).

[23] 44 U.S.C. 3501 *et seq.*

CFR section [24]	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [25]
243.101(a)(2)—Training program required for each employer not covered by (a)(1) and subject to this part by May 1, 2021 *(includes burden associated with the usage of FRA's part 243 web portal and compliance guide.)*.	1,046 railroads/contractors.	60 training programs	250 hours ..	15,000	$1,155,000
—(b) Submission by new employers commencing operations after Jan. 1, 2020, not covered by (a)(2).	10 new railroads/contractors.	10 training programs	20 hours	200	24,000
—(c) and (d) Employer's classification of its safety-related railroad employees and on-the-job (OJT) training requirements.	The burden for this requirement is included under § 243.101.				
—(e) Contractor's duty to validate approved program to a railroad *(Revised requirement text, no impact on burden)*.	400 railroads/contractors.	50 documents	15 minutes	12.5	963
—(f) Railroad's duty to retain copies of contractor's validation document *(Revised requirement text, no impact on burden)*.	10 new railroads	10 copies	2 minutes ..	.3	23
243.103(a) and (c)—Training components identified in program *(Revised requirement text, no impact on burden)*.	The burden requirements for paragraphs (a) and (c) are included under § 243.101(a) and (b). Regarding the burden for paragraph (b), FRA estimates that it will receive zero (0) supplementary document.				
—(d) Training components identified in program; modifications to components of the training programs *(Revised requirement text, no impact on burden)*.	1,155 railroads/contractors.	70 modified training programs.	5 hours	350	26,950
243.105(a) and (b)—Optional model program development *(Revised requirement text, no impact on burden)*.	The burden requirement for paragraph (a) has been fulfilled. The burden for paragraph (b) is included under § 243.101(a)–(b).				
—(c) Optional model program development; model program revisions: notice of FRA-approved changes to authorized users *(New requirement)*.	30 model programs ..	10 notifications	10 minutes	2	154
243.107(a)—Training program submission, introductory information required *(Revised requirement text, no impact on burden)*.	The burden for this requirement has been fulfilled.				
243.109(b)—Previously approved programs requiring an informational filing when modified *(Revised requirement text, no impact on burden)*.	1,155 railroads/contractors/learning institutions.	10 informational filings.	8 hours	80	6,160
—(c) New portions or substantial revisions to an approved training program.	10 railroads/contractors.	10 revised training programs.	16 hours	160	12,320
—(c) New portions or substantial revisions to an approved training program found non-conforming to this part by FRA—revisions required.	5 railroads/contractors.	5 revised training programs.	8 hours	40	3,080
—(d)(1)(i) Copy of additional submissions, resubmissions, and informational filings to labor organization presidents.	10 railroads/contractors.	25 copies	10 minutes	4.2	323
—(d)(1)(ii) Railroad statement affirming that a copy of submissions, resubmissions, or informational filings has been served to labor organization presidents.	228 railroads/contractors.	76 affirming statements.	10 minutes	12.7	978
—(d)(2) Labor comments on railroad training program submissions, resubmissions, or informational filings.	228 railroads' labor organizations.	1 comment	30 minutes	0.5	39

CFR section [24]	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [25]
243.111(a) through (f)—Approval of programs filed by training organizations or learning institutions (TO/LI) *(Revised requirement text, no impact on burden)*.	The burden requirements for paragraphs (a) and (c) are included under § 243.101(a) and (b). The burden requirement for paragraphs (b) and (d) are covered under § 243.103(d). The burden requirement for paragraphs (e) and (f) are covered under § 243.109(b).				
—(g) Safety-related railroad employees instructed by TO/LI —Recordkeeping.	109 TO/LI	5,450 records	5 minutes ..	454.2	34,973
—(h) TO/LI to provide student's training transcript or training record to any employer upon request by the student.	109 TO/LI	545 records	5 minutes ..	45.4	3,496
243.113—Electronic and written program submission requirements *(Revised requirement text, no impact on burden)*.	The burden requirement for paragraph (a) has been fulfilled. The burden for paragraph (b) is included under § 243.101(a)–(b).				
243.201(a)(2)—Designation of existing safety-related railroad employees by job category (for employers not covered by (a)(1) and subject to this part by January 1, 2022) *(Revised requirement text, no impact on burden)*.	1,039 railroads/contractors.	346 designation lists	15 minutes	86.5	6,661
—(b) New employers operating after January 1, 2020, not covered by (a)(2), designation of safety-related employees by job category—Lists.	10 new railroads/contractors.	10 designation lists ...	15 minutes	2.5	193
—(c) Training records of newly hired employees or those assigned new safety-related duties *(Revised requirement text, no impact on burden)*.	4,800 employees	4,800 records	15 minutes	1,200	92,400
—(d)(1)(i) Requests for relevant qualification or training record from an entity other than current employer *(Revised requirement text, no impact on burden)*.	4,800 employees	960 record requests	5 minutes ..	80	6,160
243.203(a) through (e) Recordkeeping—Systems set up to meet FRA requirements *(Revised requirement text, no impact on burden)*.	1,155 railroads/contractors/TOLI.	1,046 recordkeeping systems.	30 minutes	523	40,271
—(f) Transfer of records to successor employer.	1,155 railroads/contractors/TOLI.	3 records	30 minutes	1.5	116
243.205(a), (b), (e) and (g)—Periodic oversight *(Revised requirement text, no impact on burden)*.	The burden for adopting and complying with a program of periodic oversight under paragraph (a) is included above under the training program requirements in §§ 243.101(a)(2) and 243.109. Furthermore, FRA estimates that zero (0) training programs will be changed as the result of the assessments under parts 240 and 242.				
—(c) Railroad identification of supervisory employees who conduct periodic oversight tests by category/subcategory *(Revised requirement text, no impact on burden)*.	300 contractors	100 identifications	5 minutes ..	8.3	639
—(f) Notification by RR of contractor employee non-compliance with Federal laws/regulations/orders to employee and employee's employer.	300 contractors	90 employee notices	10 minutes	15	1,155
—(f) Notification by RR of contractor employee non-compliance with Federal laws/regulations/orders to employee and employee's employer.	300 contractors	270 employer notices	10 minutes	45	3,465
—(i) and (j) Employer records of periodic oversight *(Revised requirement text under paragraph (i), no impact on burden)*.	1,046 railroads/contractors.	150,000 records	5 minutes ..	12,500	962,500

CFR section [24]	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent [25]
243.207(a)—Written annual review of safety data (Railroads with 400,000 annual employee work hours or more).	22 railroads	22 reviews	16 hours	352	27,104
—(b) Railroad copy of written annual review at system headquarters.	22 railroads	22 review copies	5 minutes	1.8	139
—(e) Railroad notification to contractor of relevant training program adjustments.	22 railroads	2 notifications	15 minutes	.5	39
243.209(a) and (b)—Railroad maintained list of contractors utilized.	754 railroads	754 lists	30 minutes	377	29,029
—(c) Railroad duty to update list of contractors utilized and retain record for at least 3 years showing if a contractor was utilized in last 3 years.	754 railroads	75 updated lists	15 minutes	18.8	1,444
Total	1,155 railroads/contractors/training organizations/learning institutions.	164,832 responses	N/A	31,574	2,439,774

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202–493–0440.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells via email at *Hodan.Wells@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism,'' [26] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed the proposed rule under the principles and criteria contained in Executive Order 13132. This proposed rule would 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. In addition, FRA has determined that the proposed rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 would not apply. However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or

[24] FRA will be requesting to revise the previously approved OMB control number (OMB No. 2130–0597) corresponding to existing part 243.

[25] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

[26] 64 FR 43255 (Aug. 10, 1999).

order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this proposed rule under the principles and criteria in Executive Order 13132. As explained above, FRA has determined this proposed rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Therefore, preparation of a federalism summary impact statement for this proposed rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 [27] prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This proposed rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA),[28] the Council on Environmental Quality's NEPA implementing regulations,[29] and FRA's NEPA implementing regulations [30] and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[31] Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review.[32]

The purpose of this rulemaking is to codify agency guidance and clarify existing requirements for complying with FRA's regulation on the training, qualification, and oversight of safety-related railroad employees. This proposed rule does not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[33] FRA has concluded that no such unusual circumstances exist with respect to this proposed regulation and the proposal meets the requirements for categorical exclusion.[34]

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[35] FRA has also determined that this rulemaking would not approve a project resulting in a use of a resource protected by Section 4(f).[36]

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and DOT Order 5610.2C [37] require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 [38] each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act [39] further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a statement detailing the effect on State, local, and tribal governments and the private sector. This proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [40] FRA evaluated this proposed rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

J. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public

[27] 19 U.S.C. Ch. 13.

[28] 42 U.S.C. 4321 *et seq.*

[29] 40 CFR parts 1500 through 1508.

[30] 23 CFR part 771

[31] 40 CFR 1508.4.

[32] *See* 23 CFR 771.116(c)(15) (categorically excluding ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise'').

[33] 23 CFR 771.116(b).

[34] 23 CFR 771.116(c)(15).

[35] 54 U.S.C. 306108.

[36] Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[37] Available at: *https://www.transportation.gov/sites/dot.gov/files/Final-for-OST-C-210312-003-signed.pdf.*

[38] Public Law 104–4, 2 U.S.C. 1531.

[39] 2 U.S.C. 1532.

[40] 66 FR 28355 (May 22, 2001).

to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *https://www.transportation.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 243 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES

■ 1. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Section 243.1 is amended by adding paragraphs (f) and (g) to read as follows:

§ 243.1 Purpose and scope.

* * * * *

(f) The requirements in this part do not require an employer to adopt and comply with a training program when the training required for a qualified person is obtained through earning a college degree or certification from an accredited training organization or learning institution. For example, the requirements in this part do not require the training program of an engineering firm that conducts bridge inspections to include training of railroad bridge engineers on the subjects taught as part of a professional engineering curriculum covered by 49 CFR 237.51(b).

(g) The requirements in this part do not require an employer to train contractors who are hired to perform elective audits or assessments that are not required by Federal railroad safety laws, regulations, or orders.

■ 3. Section 243.3 is amended by adding paragraph (c) to read as follows:

§ 243.3 Application and responsibility for compliance.

* * * * *

(c)(1) A parent or holding company may comply with the requirements of this part on behalf of one or more subsidiaries if the arrangement is specified and submitted with the relevant training program(s) under subpart B of this part.

(i) The arrangement may be used to fulfill all or a portion of a subsidiary's responsibility for compliance with this part.

(ii) A parent or holding company that submits a training program on behalf of one or more subsidiaries must initially and continually maintain in its submission a list of the legal name of each subsidiary. The submission must reflect which courses each subsidiary is adopting if a subsidiary is not adopting the parent or holding company's training program in its entirety. The submission must reflect whether each subsidiary is adopting all of a parent or holding company's training programs or identify which courses each subsidiary is adopting.

(2) A subsidiary must not duplicate a training program submission a parent or holding company has made on its behalf.

(3) A subsidiary must file a training program submission, in accordance with the requirements of subpart B of this part, if a parent or holding company does not submit one or more training programs on behalf of the subsidiary that is intended to fulfill all of the subsidiary's responsibilities under this part.

(4) A subsidiary must comply with a parent or holding company's training program submission that is filed on behalf of the parent or holding company's subsidiaries unless the subsidiary files its own submission, in accordance with the requirements of subpart B of this part.

■ 4. Section 243.5 is amended by revising the definitions for ''Designated instructor'' and ''Refresher training'' and adding a definition for ''Training organizations or learning institutions,'' to read as follows:

§ 243.5 Definitions.

* * * * *

Designated instructor means a person designated as such by an employer, training organization, or learning institution, who has demonstrated an adequate knowledge of the subject matter under instruction and, where applicable, has the necessary experience to effectively provide formal training on the subject matter. The designated instructor is not required to be an employee of the employer. Employers are required to ensure that employees and non-employees used as designated instructors have the necessary knowledge, skills, and abilities to provide sound coaching, mentoring, and guidance to new learners.

* * * * *

Refresher training means periodic retraining required for each safety-related railroad employee that is designed to maintain, improve, and update the skills and knowledge of existing employees to ensure they are sufficiently acquainted with any changed standards, or any relevant problematic issues or new skills, methods, and processes, and to ensure no important skills or knowledge have been lost due to lack of use. Similar training programs or plans required elsewhere in this chapter but identified by a term other than refresher training such as ''recurrent training,'' ''re-training,'' ''periodic training,'' ''training that occurs periodically,'' or ''training that is required within defined intervals,'' are considered refresher training for purposes of this subpart although they need not be submitted for review pursuant to § 243.103(b).

* * * * *

Training organizations or learning institutions mean entities that provide training services for people who are safety-related railroad employees or independent students who will rely on the training services provided to qualify to become safety-related railroad employees, but not employees of the entities providing the training. Training organizations and learning institutions include businesses that provide formal training, and colleges and universities that provide rail safety courses, necessary for a person to qualify as a safety-related railroad employee. Training organizations and learning institutions also include entities that do not maintain fixed facilities (*i.e.,* do not have a physical location), as they may rent or lease meeting space to deliver formal training, deliver formal training at an employer's facility, or deliver computer-based training virtually. A railroad that trains its own employees and also trains safety-related railroad employees of other employers is not a training organization or learning institution.

Subpart B—Program Components and Approval Process

■ 5. Section 243.101 is amended by revising paragraphs (a), (b), (c)(1) through (3), (c)(5), (e), and (f) to read as follows:

§ 243.101 Employer program required.

(a) Each employer conducting operations subject to this part shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(b) Each employer that has not yet commenced operations subject to this part shall submit a training program for its safety-related railroad employees before commencing operations. Upon commencing operations, the employer shall adopt and comply with the training program.

(c) * * *

(1) Classify its safety-related railroad employees in occupational categories or subcategories by craft, class, task, or other suitable terminology. Other suitable terminology for classifying safety-related railroad employees may include references to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order as described in paragraph (c)(2) of this section;

(2) Define the occupational categories or subcategories of safety-related railroad employees. The definition of each category or subcategory shall include a list of the Federal railroad safety laws, regulations, and orders that the employee is required to comply with, based on the employee's assignments and duties, broken down at a minimum to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order. The listing of the Federal requirements shall contain the descriptive title of each law, regulation, or order. An employer that classifies its safety-related railroad employees by direct reference to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order as permitted in paragraph (c)(1) of this section, is not required to define the occupational categories or subcategories of its safety-related railroad employees;

(3) Create tables or utilize other suitable formats which summarize the information required in paragraphs (c)(1) and (2) of this section, separated by major railroad departments (*e.g.,* operations, maintenance-of-way, maintenance-of-equipment, signal and communications). After listing the major departments, the tables or other formats should list the categories and subcategories of safety-related railroad employees within those departments. An employer that does not have major railroad departments and classifies its safety-related railroad employees by direct reference to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order, as permitted in paragraph (c)(1) of this section, is not required to summarize the information required in paragraphs (c)(1) and (2) of this section;

* * * * *

(5) Determine how training shall be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, OJT, or other formal training. The curriculum shall be designed to impart knowledge of, and ability to comply with, applicable Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those applicable Federal railroad safety laws, regulations, and orders. OJT is required when tasks require neuromuscular coordination to learn, unless FRA approves alternative, formal training that addresses the need to practice safety-related tasks, with the ability to objectively measure task completion proficiency.

* * * * *

(e) Contractor's responsibility to validate approved program to a railroad: A contractor is being utilized by a railroad when any of the contractor's employees conduct safety-related duties on behalf of the railroad and the railroad does not otherwise qualify those employees of the contractor that are allowed to perform those duties. A contractor that chooses to train its own safety-related railroad employees shall provide each railroad that utilizes it with a document proving or stating that:

(1) The contractor's training program was approved by FRA; or

(2) The contractor is not required to submit the similar training program or plan as required in § 243.103(b) but is maintaining the similar training program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter.

(f) Railroad's responsibility to retain contractor's validation of program: A railroad that chooses to utilize contractor employees to perform safety-related duties and relies on contractor-provided training as the basis for those employees' qualification to perform those duties shall retain a document from the contractor declaring or proving that the contractor's program was approved by FRA, or the contractor is not required to submit the similar training program or plan as required in § 243.103(b) but is maintaining the similar training program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter. A copy of the document required in paragraph (e) of this section satisfies this requirement.

■ 6. Section 243.103 is amended by revising paragraphs (a)(1) and (2)(v), (b), and (d) to read as follows:

§ 243.103 Training components identified in program.

(a) * * *

(1) A unique name and identifier for each formal initial and refresher training course of study;

(2) * * *

(v) The anticipated course duration for all formal training combined, excluding the course duration of OJT;

* * * * *

(b) An employer that is required to adopt and comply with similar training programs or plans, pursuant to other regulatory requirements contained elsewhere in this chapter, is not required to submit those similar training programs or plans in accordance with this part. When any such similar program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter, includes OJT but does not include the OJT components specified in paragraph (a)(3) of this section and in § 243.101(d), the employer shall supplement its program to include the OJT components in accordance with this part. Additionally, when any such similar program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter, is amended for any reason, the employer shall amend its program without submission to FRA under § 243.109.

* * * * *

(d) FRA may require modifications to any programs, including those programs referenced in paragraph (b) of this section, if it determines essential program components, such as OJT, or arranged practice and feedback, are missing or inadequate. Unless requested by FRA, an employer is not required to submit courseware (*i.e.,* lesson plans, instructor guides, participant guides, job aids, practical exercises, tests/assessments, and other materials used in the delivery of any course) as part of a training program submission.

■ 7. Section 243.105 is amended by removing paragraph (a)(3), revising paragraph (b), and adding paragraph (c) to read as follows:

§ 243.105 Optional model program development.

* * * * *

(b)(1) An employer that chooses to use a model program approved by FRA is not required to submit the entire program to FRA. Instead, the employer must submit only the unique identifier associated with the program, and all other information that is specific to that employer or deviates from the model program.

(2) An employer that chooses to adopt a model program at FRA's part 243 web portal (*https://safetydata.fra.dot.gov/Part243/*) will be prompted for the required information and find each model program developer's contact information if the developer has an FRA-approved training program.

(3) An employer that chooses to adopt and implement a model program must contact the model program developer and obtain the associated course/training materials necessary for training safety-related railroad employees. FRA does not prohibit a model program developer from charging an employer a fee for the right to use a model training program it developed or requiring each employer obtain its explicit authorization before the employer adopts one of its model programs.

(4) An employer that submits, adopts, and implements an FRA-approved model program, consistent with the operations of that employer, will be considered in compliance with the employer program requirements of § 243.101.

(c)(1) Once a model program is approved by FRA, the developer must consider when it is necessary to make revisions in accordance with § 243.109. A developer that revises its model program is required to provide notice of the FRA-approved changes to its authorized users. A model program developer is required to provide notice of any model program revisions by engaging in any form of communication that positively affirms the developer provided notice to employers likely to be impacted by the changes to the program, including posting the information at the organization's website, writing letters to the employers, and including information in periodic newsletters. Such notice must be at least as effective as the notice the developer provided to employers when it developed the model program. For example, if the developer makes its model program available to anyone with access to the developer's website, then posting a notice of any revisions to the program on its website will be sufficient. In contrast, if a model program developer requires explicit authorization to use its model programs, the developer must provide adequate notice to those entities that it has specifically authorized in a manner consistent with its authorization practices.

(2) Once notified, an employer that is adopting and complying with a model program must:

(i) Adopt and comply with the revisions to the model program made by the developer; or

(ii) Submit information explaining how the employer's training program will deviate from the model program in accordance with § 243.109.

■ 8. Section 243.107 is amended by:

■ a. Revising paragraph (a) introductory text and paragraph (a)(4);

■ b. Removing paragraphs (a)(5) and (6);

■ c. Removing and reserving paragraph (b); and

■ d. Removing paragraph (c).

The revisions read as follows:

§ 243.107 Training program submission, introductory information required.

(a) An employer who provides training of safety-related railroad employees shall submit its training program to FRA for review and approval. For an employer using FRA's part 243 web portal, the web portal will prompt the employer to provide the required information in this section. Each employer shall state in its submission whether, at the time of filing, it:

* * * * *

(4) Uses any combination of paragraphs (a)(1) through (3) of this section.

(b) [Reserved]

* * * * *

■ 9. Section 243.109 is amended by revising the section heading, the introductory heading in paragraph (a), and paragraph (a)(2) to read as follows:

§ 243.109 Initial and refresher training program submission, review, and approval process.

(a) *Initial and refresher programs.*

* * * * *

(2) An employer's initial program, as required by § 243.101(a) or (b), or an employer's refresher program, as required by § 243.201(e), must be submitted to the Associate Administrator and is considered approved and may be implemented immediately upon submission. Following submission, the Associate Administrator will review the program and inform the employer as to whether the program conforms to this part. If the Associate Administrator determines that all or part of the program does not conform, the Associate Administrator will inform the employer of the specific deficiencies. The deficient portions of the non-conforming program may remain in effect until approval of the revised program, unless FRA provides notification otherwise. An employer shall resubmit the portion of its program, as revised to address specific deficiencies, within 90 days after the date of any notice of deficiencies from the Associate Administrator. A failure to resubmit the program with the necessary revisions shall be considered a failure to implement a program under this part. The Associate Administrator may extend this 90-day period upon written request.

* * * * *

■ 10. Section 243.111 is amended by revising paragraphs (a), (c)(3), and (e), and removing paragraphs (c)(5) through (7) to read as follows:

§ 243.111 Approval of programs filed by training organizations or learning institutions.

(a) A training organization or learning institution that provides training services for safety-related railroad employees, including providing such training services to independent students who enroll with such training organization or learning institution and who will rely on the training services provided to qualify to become safety-related railroad employees, must submit its program to FRA for review and approval unless:

(1) The program is approved as a model program under § 243.105 or an employer program under § 243.101; and

(2) The training organization or learning institution submits an informational filing to its previously approved program containing the information required in paragraph (c) of this section.

* * * * *

(c) * * *

(3) The training organization or learning institution's primary telephone number and point of contact; and

* * * * *

(e) Previously approved programs require an informational filing when modified. The training organization or learning institution shall review its previously approved training program and modify it accordingly when new safety-related Federal railroad laws, regulations, or orders are issued, or new safety-related technologies, procedures, or equipment are introduced into the workplace and result in new knowledge requirements, safety-related tasks, or in modifications of existing safety-related duties. A training organization or learning institution that modifies its

training program for these described reasons shall submit an informational filing to the Associate Administrator not later than 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise. Programs modified in accordance with this paragraph are considered approved upon modification and may be implemented immediately. Any program deficiencies noted by the Associate Administrator shall be addressed as specified in this section. A training organization or learning institution may transfer an approved program to another training organization or learning institution, or an employer, and that transfer will require the acquiring entity to file an informational filing unless the acquiring entity is making substantial additions or revisions to the previously approved program, which will require FRA review under paragraph (f) of this section. The filing shall contain a summary description of sufficient detail so that FRA can associate the changes with the training organization's or learning institution's previously approved program, and shall include:

* * * * *

■ 11. Section 243.113 is revised to read as follows:

§ 243.113 Electronic and written program submission requirements.

(a) Each employer, training organization, or learning institution to which this part applies is required to file by electronic means at FRA's part 243 web portal any program submissions required under this part in accordance with the requirements of this section. FRA's part 243 web portal will prompt users to submit all required training program information. Each organization, business, or association that develops an optional model program in accordance with § 243.105 is required to file by electronic means at FRA's part 243 web portal the program in accordance with the requirements of this section.

(b) Before any person's first program submission electronically at FRA's part 243 web portal, the person must register for access at the portal, *https://safetydata.fra.dot.gov/Part243/.* Users must provide the following information to complete registration:

(1) The name of the employer, organization, learning institution, business, or association;

(2) The names of two individuals, including job titles, who will be the person's points of contact and will be the only individuals allowed access to FRA's secure document submission site;

(3) The mailing addresses for the person's points of contact;

(4) The person's system or main headquarters address located in the United States;

(5) The email addresses for the person's points of contact; and

(6) The daytime telephone numbers for the person's points of contact.

(c) A person that electronically submits an initial program, informational filing, or new portions or revisions to an approved program required by this part at FRA's part 243 web portal shall be considered to have provided their consent for FRA to electronically store any materials required by this part and to receive approval or disapproval notices from FRA by email.

Subpart C—Program Implementation and Oversight Requirements

■ 12. Section 243.201 is amended by revising paragraphs (a), (b), (c)(2), (d) introductory text and (d)(1), and (e)(1) and (2), and adding paragraphs (e)(3) and (f) to read as follows:

§ 243.201 Employee qualification requirements.

(a)(1) Each employer must permit only employees appropriately trained and qualified to perform safety-related service.

(2) In addition to any required knowledge-based training, an employer may limit a safety-related railroad employee's training to only the relevant Federal requirements that apply to the safety-related tasks that the employer authorizes the employee to perform.

(3) Each employer conducting operations subject to this part shall either:

(i) Declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory; or

(ii) For an employer that does not designate employees by occupational category or subcategory, retain a record for each employee identifying the list of Federal railroad safety laws, regulations, and orders that cover the work the person is designated as qualified to perform.

(b) An employer commencing operations shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory before beginning operations, and only permit designated employees to perform safety-related service in that category or subcategory. Any person designated shall have met the requirements for newly hired employees or those assigned new safety-related duties in accordance with paragraph (c) of this section.

(c) * * *

(2) If the training curriculum includes OJT, the employee shall demonstrate, to the satisfaction of a designated instructor, OJT proficiency by successfully completing the safety-related tasks necessary to become a qualified member of the occupational category or subcategory. However, as part of the OJT process and before completing any of the formal training, including classroom training and OJT, and passing the field evaluation, a person may perform such tasks under the direct onsite observation of any qualified person, provided the qualified person has been advised of the circumstances and is capable of intervening if an unsafe act or non-compliance with Federal railroad safety laws, regulations, or orders is observed. An employee designated to provide formal training to other employees, and who is not a designated instructor, shall be qualified on the safety-related topics or tasks in accordance with the employer's training program and the requirements of this part.

(d) Employees previously trained or qualified, but not by the current employer: If an employee has received relevant training or qualification for a particular occupational category or subcategory through participation in a FRA-required training program completed by an entity other than the employee's current employer, that training shall satisfy the requirements of this part:

(1) Provided that:

(i) A current record of training is obtained from that other entity; or

(ii) When a current record of training is unavailable from that other entity, an employer performs testing to ensure the employee has the knowledge necessary to be a member of that category or subcategory of safety-related railroad employee. Testing shall include an oral or written examination, as well as the ability to inspect, identify, and initiate corrective action necessary for compliance with Federal railroad safety laws, regulations, or orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, or orders. A designated instructor must make the final determination as to whether the employee has the knowledge, skills, and abilities to become a member of an occupational category; and

* * * * *

(e) * * *

(1) Beginning January 1, 2022, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part with 400,000 total employee work hours annually or more, shall deliver refresher training at an interval not to exceed three calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within three calendar years from that prior training event or no later than December 31, 2024.

(2) Beginning May 1, 2023, each employer conducting operations subject to this part not covered by paragraph (e)(1) of this section shall deliver refresher training at an interval not to exceed three calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within three calendar years from that prior training event or no later than December 31, 2025.

(3) Each employer shall ensure that, as part of each employee's refresher training:

(i) An employee is advised of changes to any rule, practice, or procedure relevant to the employee's assigned duties;

(ii) An employee must not be allowed to test out of refresher training; and

(iii) The employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders. An employer must consider developing refresher training to address railroad-wide or industry-wide safety concerns, or those safety concerns that address an individual employee's weaknesses. To ensure an employee is trained and qualified, rather than repeating initial training, an employer is permitted to consider refresher training as a limited and carefully tailored review of:

(A) All the required steps of a complicated safety-related task;

(B) Existing rules or procedures that were initially learned but rarely used; and

(C) Safety-related tasks that address skill gaps that the employer identified in the workforce through efficiency testing, periodic oversight, annual reviews, accident/incident data, FRA inspection data, or other performance measuring metrics.

(f) An employer must consider ways to provide remedial training and retesting of any employee who fails to successfully pass any training or testing. Under this part, a failure of any test or training does not bar the person from successfully completing the training or testing at a later date.

■ 13. Section 243.203 is amended by revising paragraphs (b)(2) and (6), and (c) to read as follows:

§ 243.203 Records.

* * * * *

(b) * * *

(2) Occupational category or subcategory designations, or other suitable designations, for which the employee is deemed qualified;

* * * * *

(6) The employee's OJT performance, which shall include the unique name or identifier of the OJT program component in accordance with § 243.103, the date the OJT program component was successfully completed, and the identification of the designated instructor(s) determining that the employee successfully completed all OJT training necessary to be considered qualified to perform the safety-related tasks identified with the occupational categories or subcategories, or other suitable terminology, for which the employee is designated in accordance with the program required by this part;

* * * * *

(c) *Record accessibility for other than individual employee records.* Except for records demonstrating the qualification status of each safety-related railroad employee as described in paragraph (b) of this section or otherwise specified in this part, each annual review required by this part shall be accessible for three calendar years after the end of the calendar year to which the annual review relates, and each test, inspection, or other event record required by this part shall be accessible for one calendar year after the end of the calendar year to which the event relates. Each employer shall make these records accessible at one headquarters location within the United States, including, but not limited to, a railroad's system headquarters, a holding company's headquarters, a joint venture's headquarters, a contractor's principal place of business or other headquarters located where the contractor is incorporated. This requirement does not prohibit an employer with divisions from also maintaining any of these records at any division headquarters.

* * * * *

■ 14. Section 243.205 is amended by revising paragraphs (a), (c) introductory text, (d), (e)(1), (g) introductory text, (h), and (i) to read as follows:

§ 243.205 Periodic oversight.

(a) *General.* As part of the program required in accordance with this part, an employer shall adopt and comply with a program to conduct periodic oversight tests or inspections to determine if safety-related railroad employees comply with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. The program of periodic oversight shall commence on the day the employer files its program with FRA pursuant to § 243.101(a) or on the day the employer commences operations pursuant to § 243.101(b). The data gathered through the testing or inspection components of the program shall be used to determine whether systemic performance gaps exist, and to determine if modifications to the training component of the program are appropriate to close those gaps.

* * * * *

(c) *Railroad oversight.* Each railroad shall identify supervisory employees, by category or subcategory, responsible for conducting periodic oversight tests or inspections for the safety-related railroad employees that it authorizes to perform safety-related duties on its property, except a railroad is not required to:

* * * * *

(d) *Operational test exception for a railroad.* A railroad is not required to perform operational tests or inspections of safety-related railroad employees employed by a contractor.

(e) * * *

(1) When oversight test or inspection sessions are scheduled specifically to determine if safety-related employees are in compliance with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety; or

* * * * *

(g) *Contractor oversight.* Each contractor shall conduct periodic oversight tests or inspections of its safety-related railroad employees provided:

* * * * *

(h) *Oversight divided by agreement.* (1) Notwithstanding the requirements of paragraphs (c) and (g) of this section, a railroad and a contractor may agree that the contractor will provide the oversight by specifying in the program that the railroad has trained the contractor employees responsible for training and oversight; or

(2) Notwithstanding the requirements of this section that assign specific periodic oversight responsibilities to a railroad or a contractor, a railroad and a contractor may agree to a different periodic oversight responsibility arrangement.

(i) *Detailed records required.* Each employer that conducts periodic oversight in accordance with this section must keep a record of the date, time, place, and result of each test or inspection. The records shall specify each person administering tests or inspections, and each person tested. The record shall also provide a method to record whether the employee complied with the monitored duties, and any interventions used to remediate non-compliance. Modifications of the program required by § 217.9 of this chapter may be used in lieu of this oversight program, provided a railroad specifies it has done so in its program submitted in accordance with this part.

* * * * *

Issued in Washington, DC, under the authority set forth in 49 CFR 1.89(b).

Amitabha Bose,

Administrator.

[FR Doc. 2022–21277 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 87, No. 190
Monday, October 3, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) 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; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by November 2, 2022. 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.

National Agricultural Statistics Service

Title: Agricultural Resource Management and Chemical Use Surveys—Substantive Change.

OMB Control Number: 0535–0218.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The National Agricultural Statistics Service (NASS) is requesting a substantive change to the ARMS and Chemical Use Survey information collection request (OMB No. 0535–0218) for the 2022 ARMS Phase 3 Surveys. The change is needed to accommodate the addition of the 2022 ARMS Phase 3 questionnaires. There will be two versions of the ARMS Phase 3 questionnaires: The Cost and Returns Report and Wheat Production Practice and Cost Report.

In January, 2023, NASS will be conducting the 2022 Census of Agriculture (0535–0226) which has a mandatory reporting requirement. In addition, NASS will be conducting the 2022 Agricultural Resource Management Survey (ARMS) Phase 3 which has a voluntary reporting requirement. Both of these surveys collect whole farm data for the calendar year of 2022. The entire ARMS 3 sample is included in the Census of Agriculture population. Both versions will contain the questions from the Census of Agriculture questionnaire with the unique questions asked by the ARMS 3 questionnaires.

This change will not change the approved burden, which includes additional Phase 3 samples in order to collect data from additional historically underserved producer groups. Collecting more data from these groups will support President Biden's and USDA's priority to advance racial justice, equity, and opportunity by providing more detailed data and research on the socioeconomic characteristics of farmers and ranchers in the United States to ensure all USDA policies and decisions are inclusive of all people the Department serves. In order to meet these objectives, it is essential to modify the sampling methodology for the ARMS to gather additional information from historically underserved groups. This effort will ensure USDA is able to provide data about the financial well-being and other characteristics for historically underserved groups.

Need and Use of the Information: These changes will allow useful and relevant economic and wheat enterprise data to be collected.

Description of Respondents: Farms and Ranches.

Number of Respondents: 105,850.

Frequency of Responses: Reporting: Less than five times per year.

Total Burden Hours: 109,277.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–21381 Filed 9–30–22; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Reinstate and Revise a Previously Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations this notice announces the National Institute of Food and Agriculture's (NIFA) intention to reinstate and revise a previously approved information collection, entitled *Small Business Innovation Research (SBIR) Program Survey.* This information collection replaces an expired information collection, entitled

Small Business Innovation Research (SBIR) Program.

DATES: Written comments on this notice must be received by December 2, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Martin, 202–445–5388, *Robert.martin3@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Small Business Innovation Research (SBIR) Program Survey.

OMB Control Number: 0524–0049.

Expiration Date of Current Approval: 7/31/2019.

Type of Request: Notice of intent to reinstate and revise a previously approved information collection. The total annual burden for this collection has been reduced from approximately 2500 hours to 121 hours.

NIFA is requesting approval to reinstate a previously approved, but expired, information collection.

NIFA is also proposing to update the collection by reducing the number of questions, in order to eliminate redundant or repetitive questions and reduce the burden on respondents. NIFA is also proposing to update the wording of certain questions to improve clarity, and also adding additional qualitative questions in order to improve the quality and usefulness of the data collected.

Abstract: The Small Business Innovation Research (SBIR) program at United States Department of Agriculture (USDA) makes competitively awarded grants to qualified small businesses to support high quality, advanced concepts research related to important scientific problems and opportunities in agriculture that could lead to significant public benefit if successful.

The USDA SBIR Program Office proposes to contact Phase II awardees to determine their success in achieving commercial application of a market ready technology that was funded under the USDA SBIR Program. The survey would collect information from Phase II companies that received funding during the years of 2016–2019.

Data from the survey will be used to provide information that currently does not exist. The data will be used internally by the USDA SBIR Office to identify past and current activities of Phase II grantees in the areas of technology development, commercialization success, product development or services, and factors that may have prevented the technology from entering into the market place. Depending on the results of the survey, information from the survey will be used to highlight commercialization successes within the small business community; improve and refine program interactions with, and responsiveness to, the small business community; potentially refocus the strategies that are used to accomplish SBIR objectives for commercialization; and identify areas in need of improvement and enhancement. This survey will not be used to formulate or change policies. Rather, it will be used to enable the USDA SBIR Office to be responsive to its constituents and document successes within the USDA SBIR Program.

The objectives of the SBIR Program are to: Stimulate technological innovations in the private sector; strengthen the role of small businesses in meeting Federal research and development needs; increase private sector commercialization of innovations derived from USDA-supported research and development efforts; and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovations.

The USDA SBIR program is carried out in three separate phases:

1. Phase I awards to determine, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential.

2. Phase II awards to further develop work from Phase I that meets particular program needs and exhibits potential for commercial application.

3. Phase III awards where commercial applications of SBIR-funded Research/Research and Development (R/R&D) are funded by non-Federal sources of capital; or where products, services or further research intended for use by the Federal Government are funded by follow-on non-SBIR Federal Funding Agreements. The USDA SBIR Program is administered by NIFA of the USDA. NIFA exercises overall oversight for the policies and procedures governing SBIR grants awarded to the U.S. small business community, representing approximately 3.2% of the USDA extramural R/R&D budget. This represents approximately $72,886,724 in Phase II grants awarded to the U.S. small business community from 2016–2019.

Plan

A total of 121 USDA SBIR Phase II grants were awarded to small businesses between 2016–2019, and the USDA SBIR Program plans to contact past Phase II awardees to determine their success in achieving commercial application of a market ready technology under Phase III.

The survey will be administered through a USDA led contract where a contractor will perform an initial web-based survey administered through a secure internet link with SBIR Phase II grantees. The web-based survey will consist of a series of questions that relate to the commercial status of the technology developed with USDA SBIR Phase II funding as well as general questions regarding the USDA SBIR Program. The USDA SBIR Program office will coordinate the initial contact with the Phase II companies in an effort to introduce the scope of the survey, provide straightforward instructions and facilitate the survey work that the contractor will initiate and complete. Phase II companies that do not respond within two weeks to the initial contact from the USDA SBIR Program Office will be sent a second request by email or by phone to respond.

Estimate of Burden: NIFA estimates that the survey will be sent to 121 respondents, and that it will take respondents approximately one hour to complete the survey. The total annual burden for the SBIR Program collection is 121 hours.

Types of respondents	Number of respondents	Frequency of response	Average time per response (hours)	Annual burden hours requested
USDA SBIR Phase II Grantees	121	1	1	121

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this day of September 9, 2022.

Dionne Toombs,

Acting Director, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2022–21343 Filed 9–30–22; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No.: RHS–22–SFH–0021]

60-Day Notice of Proposed Information Collection: American Rescue Plan Act, 2021 (ARPA)—7 CFR Part 3550, Direct Single Family Housing Sections 502 and 504 Loan Programs; OMB Control No.: 0575–NEW

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Housing Service announces its intention to request approval of a new information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by December 2, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and in the ''Search for Rules, Proposed Rules, Notices or Supporting Documents'' box, enter the following docket number: (RHS–22–SFH–0021). To submit or view public comments, click ''Search'' button, select the ''Documents'' tab, then select the following document title: (American Rescue Plan Act, 2021 (ARPA)—7 CFR PART 3550, Direct Single Family Housing Sections 502 and 504 Loan Programs) from the ''Search Results'' and select the ''Comment'' button. Before submitting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskla@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that the Rural Housing Service is submitting to OMB as a new information collection.

Title: American Rescue Plan Act, 2021 (ARPA)—7 CFR PART 3550, ''Direct Single Family Housing Sections 502 and 504 Loan Programs''.

OMB Control Number: 0575–NEW.

Expiration Date of Approval: N/A.

Type of Request: Regular approval of a new information collection.

Estimate of Burden: Public reporting for this collection of information is estimated to average .20 hours per response.

Respondents: Not-for-profit institutions and other businesses; individuals.

Estimated Number of Respondents: 4,420.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 2,602 hours.

Abstract: The Rural Housing Service, through its Direct Single Family Housing Section 502 and 504 loan programs, provide eligible applicants with financial assistance to own adequate but modest homes in rural areas. Title 7 CFR part 3550 sets forth the programs' policies and the programs' procedures can be found in its accompanying handbooks (Handbook-1–3550 and Handbook-2–3550). To originate and service direct loans and grants that comply with the programs' statute, policies, and procedures, RHS must collect information from low- and very low-income applicants, third parties associated with or working on behalf of the applicants, borrowers, and third parties associated with or working on behalf of the borrowers.

The American Rescue Plan (ARP) Act of 2021 (Pub. L. 117–2; sec. 3207, H.R. 1319) appropriated additional funds for the Single Family Housing (SFH) Section 502 and 504 Direct Loan Program borrowers. The stated purpose of the American Rescue Plan Act (ARPA) of 2021 is to provide ''additional relief to address the continued impact of COVID–19 on the economy, public health, state and local governments, individuals, and businesses.'' The Agency's objective under the ARPA is to refinance the existing section 502 direct and section 504 borrowers who have been granted and received a COVID–19 payment moratorium. Refinancing these loans with a lower interest rate and extended terms will help provide needed relief to low- and very-low-income borrowers, so that mortgage payments are more affordable post-moratorium.

Information needed for origination purposes is largely collected by RD field staff from applicants and third parties associated with or working on behalf of the applicants. Information needed for servicing purposes is largely collected by the Servicing and Asset Management Office (Servicing Center) from borrowers and third parties associated with or working on behalf of the borrowers. The party collecting the information provides the respondent with the needed form(s) and/or non-form(s) along with submission instructions. The information collected is used to:

- Determine if the applicable eligibility and/or action standards are met.
  - If they are, the appropriate processing steps are taken.
  - If they are not and the decision is adverse to the applicant/borrower, the respondent is notified of their rights.
- Ensure that any payments (*i.e.,* the extended financing and payment

subsidies) are proper under statutory, contractual, administrative, or other legally applicable requirements.

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 will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Kimble Brown, Rural Development Innovation Center—Regulations Management Division, at (202) 720–6780. Email: *kimble.brown@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Jamal Habibi,

Acting Administrator, Rural Housing Service.

[FR Doc. 2022–21356 Filed 9–30–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1:00 p.m. CT on Monday, November 14, 2022. The purpose of this meeting is to discuss the Committee's project on policing practices in the state.

DATES: The meeting will take place on Monday, November 14, 2022, from 1:00 p.m.–2:00 p.m. CT.

Link to Join (Audio/Visual): https://tinyurl.com/yb4nk6cp.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 067 3171.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference 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. 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. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *dbarreras@usccr.gov* at least ten (10) days prior to the meeting.

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

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

Agenda

I. Welcome & Roll Call
II. Civil Rights Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: September 28, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–21375 Filed 9–30–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. 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 Indiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting via Zoom on Tuesday, October 4, 2022, at 1 p.m. eastern time for the purpose of planning and discussing the Committee's civil rights project.

DATES: The meeting will take place on Tuesday, October 4, 2022, from 1 p.m.–2 p.m. eastern time.

ADDRESSES:

Meeting Link (Audio/Visual): https://www.zoomgov.com/j/1612742190.

Telephone (Audio Only): Dial 833–435–1820 USA Toll Free; Meeting ID: 161 274 2190.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, DFO, at *idavis@usccr.gov* or 202–376–7533.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions.

Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also 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 Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 312–353–8311.

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, Indiana 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. Roll Call
II. Welcome
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Public Comments
VII. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing shortage.

Dated: September 28, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–21376 Filed 9–30–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. 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 Indiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting via Zoom on Tuesday, October 4, 2022, at 1:00 p.m. Eastern time for the purpose of planning and discussing the Committee's civil rights project.

DATES: The meeting will take place on Tuesday, October 4, 2022, from 1:00 p.m.–2:00 p.m. Eastern time.

Meeting Link (Audio/Visual): https://www.zoomgov.com/j/1612742190.

Telephone (Audio Only): Dial 833–435–1820 USA Toll Free; Meeting ID: 161 274 2190.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, DFO, at *idavis@usccr.gov* or 202-376–7533.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. 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. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also 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 Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 312–353–8311.

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, Indiana 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. Roll Call
II. Welcome
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Public Comments
VII. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing shortage.

Dated: September 27, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–21374 Filed 9–30–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Direct Investment Surveys: BE–577, Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 06/14/2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Economic Analysis (BEA), Commerce.

Title: Quarterly Survey of U.S. Direct Investment Abroad.

OMB Control Number: 0608–0004.

Form Number: BE–577.

Type of Request: Regular submission, reinstatement without change.

Number of Respondents: 3,500 U.S. parents filing for 22,700 foreign affiliates per quarter, 90,800 annually.

Average Hours per Response: 1 hour is the average but may vary considerably among respondents because of differences in company structure and complexity.

Burden Hours: 90,800.

Needs and Uses: The Quarterly Survey of U.S. Direct Investment Abroad (BE–577) is a sample survey that covers all foreign affiliates above a size-exemption level. The sample data are used to derive universe estimates in non-benchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is conducted every five years. The data are essential for the preparation of the U.S. international transactions accounts, the national income and product accounts, the input-output accounts, and the international investment position of the United States. The data are needed to measure the size and economic significance of direct investment abroad,

measure changes in such investment, and assess its impact on the U.S. and foreign economies.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0608–0004.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–21382 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–46–2022]

Foreign-Trade Zone 59—Lincoln, Nebraska; Application for Expansion of Subzone 59B; CNH Industrial America LLC, Grand Island, Nebraska

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by Lincoln Foreign Trade Zone, Inc., grantee of FTZ 59, requesting an expansion of Subzone 59B on behalf of CNH Industrial America LLC. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on September 28, 2022.

Subzone 59B was approved by the FTZ Board on August 19, 2010 (Board Order 1700, 75 FR 54092, September 3, 2010) and production activity was authorized on August 15, 2013 (B–40–2013, 78 FR 51707, August 21, 2013). The subzone consists of the following sites in Hall County: *Site 1* (132.52 acres)—3445 W Stolley Park Road, Grand Island; and, *Site 2* (38.93 acres)—1011 Claude Road, Grand Island.

The applicant is requesting authority to expand the subzone to include an additional 32.2 acres within Site 1 located at 3445 W Stolley Park Road in Grand Island (new site total—164.72 acres). No authorization for additional production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is [INSERT DATE 40 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to [INSERT DATE 55 DAYS AFTER DATE OF PUBLICATION IN THE **Federal Register**].

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: September 28, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–21361 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

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

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Respondent Selection

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

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

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse

certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

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

Deadline for Particular Market Situation Allegation

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

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

Opportunity to Request a Review: Not later than the last day of October 2022,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in October for the following periods:

	Period
Antidumping Duty Proceedings	
Australia: Certain Hot-Rolled Steel Flat Products, A–602–809	10/1/21–9/30/22
Brazil:	
Carbon and Certain Alloy Steel Wire Rod, A–351–832	10/1/21–9/30/22
Certain Hot-Rolled Steel Flat Products, A–351–845	10/1/21–9/30/22
India: Stainless Steel Flanges, A–533–877	10/1/21–9/30/22
Indonesia: Carbon and Certain Alloy Steel Wire Rod, A–560–815	10/1/21–9/30/22
Japan: Certain Hot-Rolled Steel Flat Products, A–588–874	10/1/21–9/30/22
Mexico:	
Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/21–9/30/22
Refillable Stainless Steel Kegs, A–201–849	10/1/21–9/30/22
Moldova: Carbon and Certain Alloy Steel Wire Rod, A–841–805	10/1/21–9/30/22
Republic of Korea: Certain Hot-Rolled Steel Flat Products, A–580–883	10/1/21–9/30/22
Taiwan: Steel Concrete Reinforcing Bar, A–583–859	10/1/21–9/30/22
Thailand: Glycine, A–549–837	10/1/21–9/30/22
The Netherlands: Certain Hot-Rolled Steel Flat Products, A–421–813	10/1/21–9/30/22
The People's Republic of China:	
Barium Carbonate, A–570–880	10/1/21–9/30/22
Barium Chloride, A–570–007	10/1/21–9/30/22
Boltless Steel Shelving Units Prepackaged For Sale, A–570–018	10/1/21–9/30/22
Certain Helical Spring Lock Washers, A–570–822	10/1/21–5/25/22
Certain Cut-to-Length Carbon Steel, A–570–849	10/1/21–9/30/22
Electrolytic Manganese Dioxide, A–570–919	10/1/21–9/30/22
Polyvinyl Alcohol, A–570–879	10/1/21–9/30/22
Steel Wire Garment Hangers, A–570–918	10/1/21–9/30/22
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804	10/1/21–9/30/22
Turkey: Certain Hot-Rolled Steel Flat Products, A–489–826	10/1/21–9/30/22
United Kingdom: Certain Hot-Rolled Steel Flat Products, A–412–825	10/1/21–9/30/22
Countervailing Duty Proceedings	
Brazil:	
Carbon and Certain Alloy Steel Wire Rod, C–351–833	1/1/21–12/31/21
Certain Hot-Rolled Steel Flat Products, C–351–846	1/1/21–12/31/21

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

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

	Period
India: Stainless Steel Flanges, C–533–878	1/1/21 –12/31/21
Iran: Roasted In Shell Pistachios, C–507–601	1/1/21–12/31/21
Republic of Korea: Certain Hot-Rolled Steel Flat Products, C–580–884	1/1/21–12/31/21
The People's Republic of China: Boltless Steel Shelving Units Prepackaged For Sale, C–570–019	1/1/21–12/31/21
Suspension Agreements	
Argentina: Lemon Juice, A–357–818,	10/1/21–9/30/22
Russia: Uranium, A–821–802	10/1/21–9/30/22

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

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

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

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

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

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of October 2022. If Commerce does not receive, by the last day of October 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

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

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the

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

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

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

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

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

Federal Register.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

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

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

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

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

Special Instructions for Petitioners and Foreign Governments

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

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

Dated: September 27, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–21363 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–DS–P

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

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

[10] *Id.*

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

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

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–884]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Notice of Court Decision Not in Harmony With the Results of Countervailing Duty Review; Notice of Amended Final Results

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

SUMMARY: On September 19, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Hyundai Steel Company* v. *United States,* Court No. 20–03799, sustaining the U.S. Department of Commerce's (Commerce) first remand results pertaining to the administrative review of the countervailing duty (CVD) order on certain hot-rolled steel flat products (HRS) from the Republic of Korea (Korea) covering the period of review (POR) January 1, 2017, through December 31, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the countervailable subsidy rate assigned to Hyundai Steel Company (Hyundai Steel).

DATES: Applicable September 29, 2022.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations,

Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 2020, Commerce published its *Final Results* in the 2017 CVD administrative review of HRS from Korea. In the *Final Results,* Commerce, after examining the information on the record, found that Hyundai Steel received additional benefits from certain other fees under the Port of Incheon program (*i.e.,* harbor exclusive usage fee(s)) that are measurable.[1] We found that, because necessary information was not available on the record with respect to these fees, it was appropriate to calculate the benefit from them based on facts available, pursuant to section 776(a)(1) of the Tariff Act of 1930, as amended (the Act). Commerce computed a 0.06 percent *ad valorem* subsidy rate for the provision of port usage rights at the Port of Incheon program.

Hyundai Steel appealed Commerce's *Final Results.* On August 27, 2021, the CIT remanded the *Final Results* to Commerce to reconsider our application of facts available and, if appropriate, the rate assigned to Hyundai Steel.[2]

In its final remand redetermination, issued in October 2021, Commerce recalculated the benefit amount Hyundai Steel received under the provision of port usage rights at the Port of Incheon program. As a result of our redetermination, we find that Hyundai Steel's overall subsidy rate for the POR is *de minimis*.[3] The CIT sustained Commerce's final redetermination.[4]

Timken Notice

In its decision in *Timken,*[5] as clarified by *Diamond Sawblades,*[6] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's September 19, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Hyundai Steel as follows:

Company	Subsidy rate (percent *ad valorem*)
Hyundai Steel Company[7]	0.46*

* (*de minimis*)

Cash Deposit Requirements

Because Hyundai Steel has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries of HRS from Korea that were produced and/or exported by Hyundai Steel Co., Ltd., (a/k/a Hyundai Steel Company), that were the subject of Commerce's *Final Results* that were entered, or withdrawn from warehouse, for consumption, during the period January 1, 2017, through December 31, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess CVDs on unliquidated entries of subject merchandise produced and/or exported by Hyundai Steel in accordance with 19 CFR 351.212(b). We will instruct CBP to assess CVDs on all appropriate entries covered by this review when the *ad valorem* rate is not zero or *de minimis.* Where an *ad valorem* subsidy rate is zero or *de minimis,*[8] we will instruct CBP to liquidate the appropriate entries without regard to CVDs.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 27, 2022.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–21364 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable October 3, 2022.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in

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[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2017,* 85 FR 64122 (October 9, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum, at Comment 6.

[2] *See Hyundai Steel Company* v. *United States,* Court No. 20–03799, Slip Opinion 21–112 at 6–7 (CIT August 27, 2021).

[3] *See Final Results of Redetermination Pursuant to Court Remand, Hyundai Steel Company* v. *United States,* Court No. 20–03799, Slip Op. 21–112 (CIT August 27, 2021), dated October 20, 2021, available at *https://access.trade.gov/resources/remands/21-122.pdf.*

[4] *See Hyundai Steel Company* v. *United States,* Court No. 20–03799, Slip Opinion 22–109 at 10 (CIT September 19, 2022).

[5] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[6] See *Diamond Sawblades Manufacturers Coalition* v. *United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[7] This company is also known as Hyundai Steel Co., Ltd.

[8] *See* 19 CFR 351.106(c)(2).

Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–831	731–TA–683	China	Fresh Garlic (5th Review)	Jacky Arrowsmith, (202) 482–5255.
A–570–972	731–TA–1186	China	Stilbenic OBAs (2nd Review)	Mary Kolberg, (202) 482–1785.
A–583–848	731–TA–1187	Taiwan	Stilbenic OBAs (5th Review)	Mary Kolberg, (202) 482–1785.
A–588–850	731–TA–847	Japan	Large Diameter Seamless Pipe (4th Review)	Mary Kolberg, (202) 482–1785.
A–588–851	731–TA–847	Japan	Small Diameter Seamless Pipe (4th Review)	Mary Kolberg, (202) 482–1785.
A–485–805	731–TA–849	Romania	Small Diameter Seamless Pipe (4th Review)	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: September 15, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–21419 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC384]

Adjustment of Fees for Seafood Inspection Services

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

ACTION: Notice of a revised fee schedule for seafood inspection services.

SUMMARY: The NMFS Seafood Inspection Program is notifying program participants of a revised fee schedule.

DATES: The revised fee schedule applies to services rendered as of November 1, 2022, until notified otherwise.

FOR FURTHER INFORMATION CONTACT: Steven Wilson, Office of International Affairs, Trade, and Commerce, 301–427–8350 or at *steven.wilson@noaa.gov.*

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service (NMFS) operates a fee-for-service Seafood Inspection Program (Program) under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970. The regulations implementing the Program are contained in 50 CFR part 260 and 261. The Program offers inspection, grading, and certification services, including the use of official quality grade marks, which indicate that specific products have been federally inspected. Those wishing to participate in the program must request the services and submit specific compliance information. Since 1992, NMFS implemented inspection services based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP).

Under the implementing regulations for the Program, fees are reviewed at least annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered. Any necessary adjustments to fees are made in accordance with the requirements of 50 CFR 260.81 and are notified to program participants as stipulated at 50 CFR 260.70. This **Federal Register** notice serves to inform program participants of an adjusted fee schedule, effective November 1, 2022.

Program costs used for the calculation of user fees include all relevant direct and indirect costs to the program, and applicable administrative overhead and surcharges. Program fees must be set to promote full cost recovery of the program absent other appropriations.

Program costs include all field operations, program administrative overhead, and management, and include expenses for labor for inspectors, facilities, information technology infrastructure, and other operational costs. The Program fees are set to recover those costs based on revenue projections from expected billable service hours and the number of certificate requests. Forecasts of demand for services use historical data on actual billed services that are adjusted annually for inflation, known events that might affect the predicted output of billable services, and seasonality of when forecasted services will take place throughout the year.

The magnitude of the change to fees is larger than in previous rate increases. NOAA had sought to limit drastic and unpredictable changes to fees while industry operations were disrupted by the COVID 19 pandemic and now is making adjustments in an effort to ensure full cost recovery, as nearly as possible, for the program for FY23. The fees for some services will remain unchanged or will change modestly based on the latest calculations of service costs, while other fees will increase more significantly than previous rate increases. We do not expect the program will need such significant fee increases in the future, assuming no unexpected changes in the demand for services.

NMFS will adjust its fees as outlined in this notice, which will apply until notified otherwise. Fees will be charged to contract and non-contract customers requesting services as listed below. The cost of other applicable services rendered will be recovered through fee collection using the base rate of $238 per hour.

NMFS will continue to monitor revenues and expenses and will use adaptive adjustments to react to changing levels of demand and expenses. Future fee changes will be announced if needed to promote full cost recovery and to ensure the level and structure of reasonable fees are consistent with the cost of the services rendered and in accordance with financial requirements. NMFS will also reduce fee levels if revenues are projected to exceed expenses, with the goal of recovering costs as nearly as possible.

Revised Fees and Charges for the U.S. Department of Commerce (USDC) Seafood Inspection Program

Effective November 1, 2022, per hour fees and charges for fishery products inspection services will be as follows. The base contract and non-contract rates will increase by 45 percent from the current established rate and will apply until notified otherwise. The rate for certificate requests will be reduced by 2 percent based on current estimates of the cost of delivering the service. The rate for HACCP/QMP (Quality Management Program) contract services will decrease by 12 percent based on current estimates of the cost of delivering the service. Any travel associated with a billable service will be an additional charge.

Contract Rates

Regular time: Services provided during any 8-hour shift.

Overtime: Services provided outside the inspector's normal work schedule.

In addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6 p.m. and before 6 a.m. A guarantee of payment is required for all contracts equal to three months of service or $10,000, whichever is greater.

Non-Contract Rates

Regular time: Services provided within the inspector's normal work schedule, Monday through Friday.

Overtime: Services provided outside the inspector's normal work schedule.

Any services under contract in excess of the contracted hours will be charged at the non-contract rate.

Contract Rates

Non-HACCP Contracts

Regular Time: $238.00
Overtime: $357.00
Sunday & Holidays: $476.00

HACCP/QMP Contracts

HACCP Regular: $238.00
HACCP Overtime: $357.00
HACCP Sunday & Holidays: $476.00

All Non-Contract Work Rates

Regular Time: $357.00
Overtime: $536.00
Sunday & Holidays: $714.00

Certificates

All certificate requests, whether or not a product inspection was conducted, will be billed at a set flat rate of $97 per request.

Additional information about, and applications for, Program services and fees may be obtained from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Dated: September 28, 2022.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2022–21393 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Resident Perceptions of Offshore Wind Energy Development Off the Oregon Coast

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the

Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 2, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0744 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Sarah Gonyo, Economist, 1305 East-West Hwy, SSMC 4, Room 9320, Silver Spring MD 2091, 240–621–1999, *sarah.gonyo@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to E.O. 14057 (Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability), the Outer Continental Shelf Land Act, the National Environmental Policy Act, and the Coastal Zone Management Act, this request is for a reinstatement of an information collection with change. This information collection will focus on a different geographical location (the coast of Oregon) and include focus groups, which will help guide any revisions necessary to the survey instrument.

The BOEM Pacific OCS Region has an active Renewable Energy Program and is currently processing wind and wave energy lease requests. Due to the relatively steep continental slope and deep water off the West Coast, different types of offshore renewable energy technologies have been proposed for the Pacific Region than for the Atlantic Region. Outside of official public engagement forums, preferences about offshore wind energy development generally remain unknown for members of the public, as well as for groups who may not perceive themselves as stakeholders. Failure to gain the perspective of communities regarding potential benefits or impacts is problematic, particularly when latent stakeholders to local projects emerge late in the planning process.

The National Ocean Service (NOS) proposes to collect data on the opinions, values, and attitudes of Oregon Coast residents relative to offshore wind energy development. Respondents (age 18 years and older) will be randomly sampled from households in seven coastal counties. This information will be used by BOEM, NOAA, and others to understand what is important to communities; understand how differing values and perceptions across communities influence local receptivity to proposed development; and improve communication efforts targeted to residents, enabling agencies to more effectively and efficiently direct outreach and community inclusion activities. Additionally, NOAA has a vested interest in offshore wind energy development, from many perspectives, including as it relates to the resilience, well-being, and sustainability of coastal communities.

II. Method of Collection

Information will be collected with a combination of mail recruitment with push-to-web and mail-back survey instrument.

III. Data

OMB Control Number: 0648–0744.
Form Number(s): None.
Type of Review: Regular (Reinstatement with change).
Affected Public: Individuals or households.
Estimated Number of Respondents: Focus groups: 48; Questionnaire: 4,500.
Estimated Time per Response: Focus groups: 1 hour; Questionnaire: 20 minutes.
Estimated Total Annual Burden Hours: 1,548.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Voluntary.
Legal Authority: NOAA's Programmatic Authority—Integrated Coastal and Ocean Observation System Act (33 U.S.C. 3601 *et seq.*); BOEM's Programmatic Authority—Outer Continental Shelf Lands Act (43 U.S.C. 1346).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–21357 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC421]

Fall Meeting of the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas

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

ACTION: Notice of meeting.

SUMMARY: In preparation for the 2022 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held on October 19–20, 2022. There will be an open session on Wednesday, October 19, 2022, from 9 a.m. through approximately 12 p.m. The remainder of the meeting will be closed to the public and is expected to end by 12 p.m. on October 20. Interested members of the public may present their views during the public comment session on October 19, 2022, or submit written comments by October 12, 2022 (see **ADDRESSES**).

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Washington, DC—Silver Spring, 8727 Colesville Road, Silver Spring, Maryland 20910. Written comments should be sent via email to *bryan.keller@noaa.gov.* Comments may also be sent via mail to Bryan Keller at NMFS, Office of International Affairs, Trade, and Commerce, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, (202) 897–9208 or at *bryan.keller@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 19–20, 2022, first in an open session to consider information on the status of Atlantic highly migratory species and other scientific matters and then in a closed session to discuss sensitive matters related to their conservation and management. The open session will be from 9 a.m. to 12 p.m. on October 19, 2022, including an opportunity for public comment beginning at approximately 11:30 a.m. Comments may also be submitted in writing for the Advisory Committee's consideration. Interested members of the public can submit comments by mail or email; use of email is encouraged. All written comments must be received by October 12, 2022 (see **ADDRESSES**).

NMFS expects members of the public to conduct themselves appropriately at the open session of the Advisory Committee meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (*e.g.,* alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations on the conservation and management of Atlantic highly migratory species.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bryan Keller at *bryan.keller@noaa.gov* at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: September 28, 2022.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2022–21394 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC276]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Anadarko Petroleum Corporation (Anadarko) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from October 1, 2022, through April 1, 2023.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

Except with respect to certain activities not pertinent here, 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).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of

taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Anadarko plans to conduct one of the following vertical seismic profile (VSP) survey types: Zero Offset, 2D, or 3D in the vicinity of the Horn Mountain field in the Mississippi Canyon area, around block MC–81. The location is in approximately 3,500 ft (1,067 m) water depth. See Section E of Anadarko's application for a map. Anadarko plans to use either a 12-element, 2,400 cubic inch (in^3) airgun array, or a 6-element, 1,500-in^3 airgun array. The sound source used will be determined by the survey type that Anadarko ultimately determines that it needs to conduct. Please see Anadarko's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Anadarko in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take numbers for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No VSP surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for use in evaluation of these survey types. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220; June 22, 2018). Coil was selected as the best available proxy survey type in this case because the spatial coverage of the planned survey is most similar to the coil survey pattern. For the planned survey, the seismic source array will be deployed in one of the following forms: Zero Offset VSP—the 1,500-in^3 airgun array (hyper cluster) would be suspended at 5 meters (m) of water depth with a crane on one side of the drill ship without the use of a dedicated source vessel; 2D VSP—using a dedicated source vessel, the 2,400-in^3 airgun array (dual magnum) would be towed along a straight line; 3D VSP—also using a dedicated source vessel, the dual magnum source would be towed in a spiral pattern, starting around the well, shooting in circles of increasing radius. Only the zero offset option would be stationary. The 3D VSP option is expected to cover the most area, compared with the zero offset and 2D VSP options, with a maximum radius of 7 kilometers (km). (Note that this 7-km radius around the survey location would cover a depth range of approximately 900–1,700 m.) The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Anadarko is not proposing to perform a survey using the coil geometry, its planned VSP survey is expected to cover only up to a maximum 7-km radius around the platform, meaning that the coil proxy is most representative of the effort planned by Anadarko in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, estimated take numbers for this LOA are considered conservative due to differences between the acoustic source planned for use (12 or 6 elements, 2,400 or 1,500 in^3) and the proxy array modeled for the rule.

The survey is planned to occur for up to 8 days in Zone 5. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that produces the greater value.

Additionally, for some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. This can result in unrealistic projections regarding the likelihood of encountering particularly rare species and/or species not expected to occur outside particular habitats. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, our rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5322, 5442 (January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results that are inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100–400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling identified similar habitat (*i.e.,* approximately 100–400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016), although the core habitat area contained approximately 92 percent of the predicted abundance of Rice's whales. See discussion provided at, *e.g.,* 83 FR 29228, 83 FR 29280 (June 22, 2018); 86 FR 5418 (January 19, 2021).

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. Anadarko's planned activities will occur in water depths of approximately 900–1,700 m in the eastern central GOM. In addition, although this activity is located further to the east than other survey activities associated with issued LOAs, we considered the maximum duration of 8 days for this survey, which minimizes the potential for encounter with Rice's whales. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through this LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. GOM. The predictions represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992–2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017–18 (Waring *et al.,* 2013; *www.boem.gov/gommapps*). Two other species were also observed on less than 20 occasions during the 1992–2009 NOAA surveys (Fraser's dolphin and false killer whale [4]). However, observational data collected by Protected Species Observers (PSOs) on industry geophysical survey vessels from 2002–2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002–2008 and 2009–2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322, 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia* spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of four killer whales, noting that the whales performed 20 times as many dives to 1–30 m depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. In addition, as noted above in relation to the general take estimation methodology, the assumed proxy source (72-element, 8,000-in^3 array) results in a significant overestimate of the actual potential for take to occur. NMFS' determination in reflection of the information discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales for this survey would result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5322, 5403; January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021; 85 FR 55645, September 9, 2020. For Anadarko's survey, use of the exposure modeling produces an estimate of three killer whale exposures. Given the foregoing discussion, it is unlikely that even one killer whale would be encountered during this 8-day survey, and accordingly, no take of killer whales is authorized through the LOA.

Based on the results of our analysis, NMFS has determined that the level of taking authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations for the affected species or stocks of marine mammals. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, determined as described above in the Summary of Request and Analysis section, are used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale	0	51	3.9
Sperm whale	210	2,207	4.3
Kogia spp	[3] 80	4,373	1.8
Beaked whales	929	3,768	24.6
Rough-toothed dolphin	160	4,853	3.3
Bottlenose dolphin	757	176,108	0.4
Clymene dolphin	449	11,895	3.8
Atlantic spotted dolphin	302	74,785	0.4
Pantropical spotted dolphin	2039	102,361	2.0
Spinner dolphin	546	25,114	2.2
Striped dolphin	176	5,229	3.4
Fraser's dolphin	50	1,665	3.9
Risso's dolphin	132	3,764	3.5
Melon-headed whale	295	7,003	4.2
Pygmy killer whale	69	2,126	3.3
False killer whale	111	3,204	3.5
Killer whale	0	267	n/a
Short-finned pilot whale	85	1,981	4.3

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available.
[3] Includes 4 takes by Level A harassment and 76 takes by Level B harassment.

Based on the analysis contained herein of Anadarko's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes and therefore is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Anadarko authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: September 27, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–21362 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open in-Person/virtual hybrid meeting: correction.

SUMMARY: On September 23, 2022, the Department of Energy published a notice of open meeting announcing an in-person/virtual hybrid meeting on October 19–20, 2022 of the Environmental Management Site-Specific Advisory Board, Hanford (87 FR 58079). This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Gary Younger, Federal Coordinator, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA 99354; Phone: (509) 372–0923; or Email: *gary.younger@rl.doe.gov.*

Corrections

In the **Federal Register** of September 23, 2022, in FR Doc. 2022–20647, on page 58079, please make the following correction:

In that notice under **ADDRESSES**, third column, third paragraph, the meeting address has been changed. The original address was Holiday Inn Richland on the River, 802 George Washington Way, Richland, WA 99352. The new address is Three Rivers Convention Center, 7016 W Grandridge Boulevard, Kennewick, WA 99336. The reason for the correction is the original venue can no longer host the meeting.

Signing Authority

This document of the Department of Energy was signed on September 27, 2022, by Shena Kennerly, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 27, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–21324 Filed 9–30–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
CP03–75–000	9–15–2022	Kelsey Crane.
CP03–75–002.		
CP03–75–003.		
CP03–75–004.		
CP05–361–000.		
CP05–361–001.		
CP12–509–000.		
CP12–29–000.		
Exempt:		
1. P–12514–000	9–19–2022	U.S. Senator Mike Braun.
2. P–14876–002	9–19–2022	FERC Staff.[1]

[1] Email communication dated 9/8/22 from Barbi Law.

Dated: September 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21385 Filed 9–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3511–024]

Lower Saranac Hydro, LLC; Notice of Waiver Period for Water Quality Certification Application

On September 6, 2022, Lower Saranac Hydro, LLC submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the New York State Department of Environmental Conservation (New York DEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify New York DEC of the following:

Date of Receipt of the Certification Request: September 6, 2022.

Reasonable Period of Time to Act on the Certification Request: One year (September 6, 2023).

If New York DEC fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

[1] 18 CFR 4.34(b)(5).

Dated: September 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21390 Filed 9–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF22–4–000]

Western Area Power Administration; Notice of Filing

Take notice that on September 27, 2022, Western Area Power Administration submitted tariff filing: 300.10: DSW_BCP_WAPA204–20220729 to be effective 10/1/2022.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5 p.m. eastern time on October 27, 2022.

Dated: September 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21389 Filed 9–30–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–126–000.

Applicants: BigBeau Solar, LLC, Desert Harvest, LLC, Desert Harvest II LLC, Milligan 1 Wind LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of BigBeau Solar LLC, et al.

Filed Date: 9/26/22.

Accession Number: 20220926–5168.

Comment Date: 5 p.m. ET 10/17/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–188–001; ER22–519–000; ER22–472–000;ER22–508–000; ER22–456–000; ER22–464–000;ER22–353–000; ER22–416–000; ER22–423–000;ER22–433–000; ER22–521–000; ER22–523–000.

Applicants: Indra Power Business TX LLC, Indra Power Business VA LLC, Indra Power Business PA, LLC, Columbia Utilities Power Business LLC, Indra Power Business NJ, LLC, Indra Power Business MI, LLC, Indra Power Business MD LLC, Indra Power Business MA LLC, Indra Power Business IL LLC, Indra Power Business DE LLC, Indra Power Business DC LLC, Indra Power Business CT, LLC.

Description: Supplement to September 16, 2022, Notice of Change in Status of Indra Power Business CT LLC et al.

Filed Date: 9/23/22.

Accession Number: 20220923–5216.

Comment Date: 5 p.m. ET 10/14/22.

Docket Numbers: ER22–2115–001.

Applicants: Timber Road Solar Park LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 8/14/2022.

Filed Date: 9/26/22.

Accession Number: 20220926–5143.

Comment Date: 5 p.m. ET 10/17/22.

Docket Numbers: ER22–2116–001.

Applicants: Blue Harvest Solar Park LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 8/14/2022.

Filed Date: 9/26/22.

Accession Number: 20220926–5141.

Comment Date: 5 p.m. ET 10/17/22.

Docket Numbers: ER22–2190–002.

Applicants: EDPR CA Solar Park LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 8/24/2022.

Filed Date: 9/26/22.

Accession Number: 20220926–5147.

Comment Date: 5 p.m. ET 10/17/22.

Docket Numbers: ER22–2191–002.

Applicants: EDPR CA Solar Park II LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 8/24/2022.

Filed Date: 9/26/22.

Accession Number: 20220926–5149.

Comment Date: 5 p.m. ET 10/17/22.

Docket Numbers: ER22–2192–002.

Applicants: EDPR Scarlet I LLC.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 8/24/2022.

Filed Date: 9/26/22.

Accession Number: 20220926–5153.

Comment Date: 5 p.m. ET 10/17/22.

Docket Numbers: ER22–2933–000.

Applicants: Nevada Power Company, Sierra Pacific Power Company.

Description: § 205(d) Rate Filing: Nevada Power Company submits tariff filing per 35.13(a)(2)(iii: NV Energy OATT Revisions (LGIP & Schedule 12) to be effective 12/1/2022.

Filed Date: 9/26/22.

Accession Number: 20220926–5134.

Comment Date: 5 p.m. ET 10/17/22.

Docket Numbers: ER22–2934–000.

Applicants: TAQA Gen X LLC.

Description: Tariff Amendment: Cancellation entire tariff to be effective 10/1/2022.

Filed Date: 9/27/22.

Accession Number: 20220927–5001.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER22–2935–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: 2022–09–27 SPS–GSEC–NPEC IA—Wildcat NDP–742–0.0.0 to be effective 11/26/2022.

Filed Date: 9/27/22.

Accession Number: 20220927–5020.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER22–2936–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Origis Holdings USA Subco (Choctaw I Solar) LGIA Termination Filing to be effective 9/27/2022.

Filed Date: 9/27/22.

Accession Number: 20220927–5075.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER22–2937–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Origis Holdings USA Subco (Choctaw II Solar) LGIA Termination Filing to be effective 9/27/2022.

Filed Date: 9/27/22.

Accession Number: 20220927–5080.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER22–2938–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL–DEF Transfer of Affected System Agreement eTariff Records to be effective 9/28/2022.

Filed Date: 9/27/22.

Accession Number: 20220927–5098.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER22–2939–000.

Applicants: Gulf Power Company.

Description: Tariff Amendment: Transfer of Affected System Agreement eTariff Records and Notice of Cancellation to be effective 9/28/2022.

Filed Date: 9/27/22.

Accession Number: 20220927–5099.

Comment Date: 5 p.m. ET 10/18/22.

Docket Numbers: ER22–2940–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL-PowerSouth Transfer of Affected System Agreement eTariff Records to be effective 9/28/2022.

Filed Date: 9/27/22.

Accession Number: 20220927–5100.

Comment Date: 5 p.m. ET 10/18/22.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR22–4–001.

Applicants: North American Electric Reliability Corporation.

Description: Amendment to August 23, 2022 request of NERC for acceptance of 2023 Business Plans and Budgets of NERC and Regional Entities and for Approval of Proposed Assessments to Fund Budgets.

Filed Date: 9/12/22.

Accession Number: 20220912–5209.

Comment Date: 5 p.m. ET 10/7/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 27, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–21386 Filed 9–30–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10226–01–OA]

Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the chartered Science Advisory Board. The chartered SAB will meet to: (1) receive briefings from two EPA offices on activities and research priorities for environmental justice considerations; (2) conduct a consultation with EPA's Office of Water on environmental justice impacts of lead service line removal in drinking water systems; (3) deliberate on the adequacy of the scientific and technical basis of the proposed rule titled *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards;* and (4) discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions.

DATES: The public meeting for the chartered Science Advisory Board will be held on Thursday, November 3, 2022, from 12:00 p.m. to 6:00 p.m. and Friday, November 4, 2022, from 12:00 p.m. to 6:00 p.m. All times listed are in Eastern Standard Time.

ADDRESSES: The meeting will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone (202) 564–2155, or email at *armitage.thomas@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the chartered Science Advisory will hold a public meeting to discuss and deliberate on the following topics.

The SAB will receive briefings from EPA's Office of Policy and Office of Research and Development on activities and research priorities for consideration of environmental justice. The chartered SAB will also conduct a consultation with the EPA's Office of Water on environmental justice impacts of lead service line removal in drinking water systems.

Under the SAB's authorizing statute, the SAB ''may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis'' of proposed rules. The SAB Work Group for Review of Science Supporting EPA Decisions is charged with identifying EPA planned actions that may warrant SAB review. The SAB will discuss the scientific and technical basis of the proposed rule titled *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards* (FR 87 17414) and also discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions with regard to SAB review of other EPA planned actions.

Availability of Meeting Materials: All meeting materials, including the agenda will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process

for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: Individuals or groups requesting an oral presentation during the public meeting will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above by October 25, 2022, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by October 25, 2022, for consideration at the public meeting on November 3, 2022, and November 4, 2022. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2022–21411 Filed 9–30–22; 8:45 am]

BILLING CODE P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board of Directors Meeting

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of article VI of the Bylaws of the FCSIC.

DATES: 10 a.m., Wednesday, October 12, 2022.

ADDRESSES: The public may only virtually attend the open portions of this meeting. If you would like to virtually attend, at least 24 hours in advance, visit *FCSIC.gov,* select ''News & Events,'' then select ''Board Meetings.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The following matters will be considered:

Portions Open to the Public

- Approval of June 8, 2022, Minutes
- Quarterly FCSIC Financial Reports
- Quarterly Report on Insured Obligations
- Quarterly Report on Annual Performance Plan
- Annual Performance Plan
- Budget 2023–2024

Portions Closed to the Public

- Quarterly Report on Insurance Risk

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–21351 Filed 9–30–22; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Lead Exposure and Prevention Advisory Committee (LEPAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Lead Exposure and Prevention Advisory Committee (LEPAC). This is a virtual meeting and is open to the public. Advance registration by November 23, 2022, is needed to receive the information to join the meeting. The registration link is provided in the addresses section below.

DATES: The meeting will be held on December 8, 2022, from 11 a.m. to 4 p.m., EST.

ADDRESSES: Register in advance at *https://www.zoomgov.com/webinar/register/WN_ym5vFX3dQVuh1spo5SWziQ* to receive information to join the meeting.

FOR FURTHER INFORMATION CONTACT: Paul Allwood, Ph.D., M.P.H., Designated Federal Officer, National Center for Environmental Health, CDC, 4770 Buford Highway, Atlanta, Georgia 30341, Telephone: 770–488–6774; Email: *LEPAC@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Lead Exposure and Prevention Advisory Committee was established under Section 2203 of Public Law 114–322, the Water Infrastructure Improvements for the Nation Act; 42 U.S.C. 300j–27, Registry for Lead Exposure and Prevention Advisory Committee.

Purpose: The LEPAC is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), and the Director, CDC and Administrator, ATSDR, on (1) reviewing Federal programs and services available to individual communities exposed to lead; (2) reviewing current research on lead exposure to identify additional research needs; (3) reviewing and identifying best practices, or the need for best practices regarding lead screening and the prevention of lead poisoning; (4) identifying effective services, including services relating to healthcare, education, and nutrition for individuals and communities affected by lead exposure and lead poisoning, including in consultation with, as appropriate, the lead exposure registry as established in section 2203 (b) of Public Law 114–322; and (5) undertaking any other review or activities that the Secretary determines to be appropriate.

Matters To Be Considered: The agenda will include presentations from school health organizations, healthy housing organizations, and U.S. Environmental Protection Agency (EPA) on lead in schools and discussions on these topics. Agenda items are subject to change as priorities dictate.

Public Participation

Oral Public Comment: The public comment period is scheduled on December 8, 2022, from 12 p.m. until 12:15 p.m., EST. Individuals wishing to make a comment during the public comment period, please email your name, organization, and phone number by November 23, 2022, to *LEPAC@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–21405 Filed 9–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1265; Docket No. CDC–2022–0121]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled the Chronic Disease Self-Management Questionnaire. The questionnaire used for this study will assess Chronic Disease Self-Management participant health behaviors and overall health before and after a six-week workshop.

DATES: CDC must receive written comments on or before December 2, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0121 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Evaluation of the Chronic Disease Self-Management Program in the US Affiliated Pacific Islands (OMB Control No. 0920–1265, Exp. 06/30/2021)—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NCCDPHP is evaluating the implementation of Stanford University's Chronic Disease Self-Management Program (CDSMP) in the U.S. Affiliated Pacific Islands (USAPI). These jurisdictions include American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

The purpose of the evaluation is: (1) to understand how CDSMP is being implemented in the region; (2) to identify barriers and facilitators to implementation; (3) to monitor fidelity to Stanford University's model and document adaptations to the curriculum; and (4) to understand the self-reported effects of CDSMP on program participants. Because this is the first time CDSMP is being implemented in the USAPI, we do not know if the intervention, which has proven to improve health outcomes in many ethnic groups within the United States, will lead to improved health outcomes for these communities. Collecting this data helps CDC to assess fidelity to and adaptations to the intervention, and to understand if CDSMP, an evidence-based intervention, has the same effect in the U.S. Affiliated Pacific Islands as it has in multiple ethnic groups within the United States.

CDC requests OMB approval for an estimated 95 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Program Participant	Chronic Disease Self-Management Workshop Evaluation.	190	1	10/60	32
Program Participant	Chronic Disease Self-Management Questionnaire (Pre-Post Test).	190	2	10/60	63
Total					95

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–21318 Filed 9–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Healthcare Infection Control Practices Advisory Committee (HICPAC). This virtual meeting is open to the public, limited only by the number of audio and web conference lines (500 audio and web conference lines are available). Time will be available for public comment. Registration is required.

DATES: The meeting will be held on November 3, 2022, from 12 p.m. to 2:30 p.m., EST.

ADDRESSES: To register for this web conference, please go to: *www.cdc.gov/hicpac.* All registered participants will receive the meeting link and instructions shortly before the meeting. Please click the link below to join the webinar: *https://cdc.zoomgov.com/j/1618328215?pwd=NWx1cGZGS3Y0THdzS1RraHBpZFNZZz09.*

Meeting ID: 161 832 8215.

Passcode: 76683972.

FOR FURTHER INFORMATION CONTACT: Sydnee Byrd, M.P.A., Program Analyst, HICPAC, Division of Healthcare Quality Promotion (DHQP), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), CDC, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329–4027, Telephone: (404) 718–8039; Email: *HICPAC@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Committee is charged with providing advice and guidance to the Director, DHQP; the Director, NCEZID; the Director, CDC; and the Secretary, Department of Health and Human Services, regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Considered: The agenda will include the following updates: The Healthcare Personnel Guideline Workgroup; Isolation Precautions Guideline Workgroup; Neonatal Intensive Care Unit Guideline Workgroup; Neonatal Pediatric Surveillance Workgroup; and Dental Unit Waterlines Guideline Update. Agenda items are subject to change as priorities dictate.

Public Participation

Oral Public Comment: Time will be available for public comment. Members of the public who wish to provide public comments should plan to attend the public comment session at the start time listed. Please note that the public comment period may end before the time indicated, following the last call for comments.

Written Public Comment: The public may submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed above. The deadline for receipt of written public comment is October 24, 2022. All requests must contain the submitter's name, address, and organizational affiliation, as well as the topic being addressed. Written comments should not exceed one single-spaced typed page in length. Written comments received in advance of the meeting will be included in the official record of the meeting.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–21406 Filed 9–30–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3424–CN]

Medicare and Medicaid Programs: Approval of Application From Det Norske Veritas for Continued Hospital Accreditation Program; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice; correction.

SUMMARY: This document corrects a technical error that appeared in the final notice published in the **Federal Register** on September 6, 2022, entitled ''Approval of Application From Det Norske Veritas for Continued Hospital Accreditation Program.''

Effective date: This correction is effective October 3, 2022.

Applicability date: The decision announced in the final notice is effective through September 26, 2026.

FOR FURTHER INFORMATION CONTACT: Joy Webb, (410) 786–1667 or Lillian Williams, (410) 786–8636.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2022–19099 of September 6, 2022 (87 FR 54510), there was a technical error that is identified and corrected in this correcting document. The provision in this correction document is effective as if it had been included in the document published September 6, 2022. Accordingly, the correction is effective through September 26, 2026.

II. Summary of Errors

On page 54512, we inadvertently listed the accrediting organization as ''TJC''. Therefore, we are replacing ''TJC's'' with ''DNV's''.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We believe that this final notice correction does not constitute a rule that would be subject to the notice and comment requirements. This document corrects a technical and typographical error in the final notice. This final notice correction is intended to ensure that the information in the final notice is accurate.

We find that there is good cause to waive such requirements as unnecessary, as we are not altering our decision to approve the application by DNV for its continued hospital accrediting program, but rather, we are simply making a technical correction. This final notice correction is intended solely to ensure that the final notice accurately reflects the correct information.

IV. Correction of Errors

In FR Doc. 2022–19099 of September 6, 2022 (87 FR 54510), make the following correction:

1. On page 54512, in the first column; in the first partial paragraph, line 4, correct ''TJC's'' to read ''DNV's''.

The Director, Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document on September 20, 2022, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 27, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–21344 Filed 9–28–22; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1776–N]

Medicare Program; Town Hall Meeting on the FY 2024 Applications for New Medical Services and Technologies Add-On Payments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting in accordance with the Social Security Act (the Act) to discuss fiscal year (FY) 2024 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this virtual meeting to present their comments, recommendations, and data regarding whether the FY 2024 new medical services and technologies applications meet the substantial clinical improvement criterion.

DATES:

Meeting Dates: The New Technology Town Hall meeting announced in this notice will be held virtually on Wednesday, December 14, 2022 and Thursday, December 15, 2022 (the number of new technology applications submitted will determine if a second day for the meeting is necessary; see the **SUPPLEMENTARY INFORMATION** section for details regarding the second day of the meeting and the posting of the final schedule). The New Technology Town Hall meeting will begin each day at 9 a.m. eastern standard time (EST) and check-in via online platform will begin at 8:30 a.m. EST

Deadline for Requesting Special Accommodations: The deadline to submit requests for special accommodations is 5 p.m., EST on Monday, November 21, 2022.

Deadline for Registration of Presenters at the New Technology Town Hall Meeting: The deadline to register to present at the New Technology Town Hall meeting is 5 p.m., EST on Monday, November 21, 2022.

Deadline for Submission of Agenda Item(s) or Written Comments for the New Technology Town Hall Meeting: Written comments and agenda items (public comments to be delivered at the New Technology Town Hall meeting) for discussion at the New Technology Town Hall meeting, including agenda items by presenters (presentation slide decks), must be received by 5 p.m. EST on Monday, November 28, 2022.

Deadline for Submission of Written Comments after the New Technology Town Hall Meeting for Consideration in the Fiscal Year (FY) 2024 Hospital Inpatient Prospective Payment System/Long Term Care PPS (IPPS/LTCH PPS) Proposed Rule: Individuals may submit written comments after the New Technology Town Hall meeting, as specified in the **ADDRESSES** section of this notice, on whether the service or technology represents a substantial clinical improvement. These comments must be received by 5 p.m. EST on Thursday, December 22, 2022, to ensure consideration in the FY 2024 IPPS/LTCH PPS proposed rule.

ADDRESSES:

Meeting Location: The New Technology Town Hall meeting will be held virtually via live stream technology or webinar and listen-only via toll-free teleconference. Live stream or webinar and teleconference dial-in information will be provided through an upcoming listserv/email notice and will appear on the final meeting agenda, which will be posted on the New Technology website when available at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Continue to check the website for updates.

Registration and Special Accommodations: Individuals wishing to present at the meeting must follow the instructions located in section III. of this notice. Individuals who need special accommodations should send an email to *newtech@cms.hhs.gov.*

Submission of Agenda Item(s) or Written Comments for the New Technology Town Hall Meeting: Each presenter must submit an agenda item(s) regarding whether a FY 2024 application meets the substantial clinical improvement criterion. Agenda items, written comments, questions or other statements must not exceed three single-spaced typed pages and may be sent via email to *newtech@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT:

Drew Kasper, (410) 786–8926, *drew.kasper@cms.hhs.gov* and *newtech@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Add-On Payments for New Medical Services and Technologies Under the IPPS

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments to acute care hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the hospital inpatient prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the fiscal year (FY) 2002 IPPS proposed rule (66 FR 22693, May 4, 2001) and final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.)

As finalized in the FY 2020 IPPS/LTCH PPS final rule, technologies which are eligible for the alternative new technology pathway for transformative new devices or the alternative new technology pathway for Qualified Infectious Disease Products (QIDPs) do not need to meet the requirement under 42 CFR 412.87(b)(1) that the technology represent an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries. These medical devices or products will also be considered not substantially similar to an existing technology for purposes of new technology add-on payment under the IPPS. (See the FY 2020 IPPS/LTCH PPS final rule (84 FR 42292 through 42297) for additional information.)

As finalized in the FY 2021 IPPS/LTCH final rule, we expanded our alternative new technology add-on payment pathway to include products approved through FDA's Limited Population Pathway for Antibacterial and Antifungal Drugs (LPAD pathway). Under this policy, for applications received for consideration of new technology add-on payments for FY 2022 and subsequent fiscal years, if an antimicrobial product is approved through FDA's LPAD pathway, it will be considered not substantially similar to an existing technology for purposes of the new technology add-on payment under the IPPS, and will not need to meet the requirement that it represent an advance that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries.

In the FY 2020 IPPS/LTCH PPS final rule (84 FR 42289 through 42292), we codified in our regulations at § 412.87 the following aspects of how we evaluate substantial clinical improvement for purposes of new technology add-on payments under the IPPS in order to determine if a new technology meets the substantial clinical improvement requirement:

- The totality of the circumstances is considered when making a determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries.
- A determination that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries means—

++ The new medical service or technology offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments;

++ The new medical service or technology offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods, and there must also be evidence that use of the new medical service or technology to make a diagnosis affects the management of the patient; or

++ The use of the new medical service or technology significantly improves clinical outcomes relative to services or technologies previously available as demonstrated by one or more of the following:

—A reduction in at least one clinically significant adverse event, including a reduction in mortality or a clinically significant complication.

—A decreased rate of at least one subsequent diagnostic or therapeutic intervention (for example, due to reduced rate of recurrence of the disease process).

—A decreased number of future hospitalizations or physician visits.

—A more rapid beneficial resolution of the disease process treatment including, but not limited to, a reduced length of stay or recovery time; an improvement in one or more activities of daily living; an improved quality of life; or, a demonstrated greater medication adherence or compliance.

++ The totality of the circumstances otherwise demonstrates that the new medical service or technology substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries.

- Evidence from the following published or unpublished information sources from within the United States or elsewhere may be sufficient to establish that a new medical service or technology represents an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of Medicare beneficiaries: Clinical trials, peer reviewed journal articles; study results; meta-analyses; consensus statements; white papers; patient surveys; case studies; reports; systematic literature reviews; letters from major healthcare associations; editorials and letters to the editor; and public comments. Other appropriate information sources may be considered.
- The medical condition diagnosed or treated by the new medical service or technology may have a low prevalence among Medicare beneficiaries.
- The new medical service or technology may represent an advance that substantially improves, relative to services or technologies previously available, the diagnosis or treatment of a subpopulation of patients with the medical condition diagnosed or treated by the new medical service or technology.

Section 1886(d)(5)(K)(viii) of the Act requires that as part of the process for evaluating new medical services and technology applications, the Secretary shall do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.
- Make public and periodically update a list of all the services and technologies for which an application is pending.
- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.
- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any

other interested party may present comments, recommendations, and data to the clinical staff of CMS as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and presentations provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2024. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2024 IPPS proposed rule.

II. New Technology Town Hall Meeting Format and Conference Call Information

A. Format of the Town Hall Meeting

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial clinical improvement. This meeting will allow for a discussion of the substantial clinical improvement criterion for the FY 2024 applications for new technology add-on payments. Information regarding the applications can be found on our website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.*

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 minutes, with additional time reserved for questions, and will be based on the number of registered presenters. Individuals who would like to present must register and submit their agenda item(s) via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

Depending on the number of applications received, we will determine if a second meeting day is necessary. The final schedule for the New Technology Town Hall meeting will be posted on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html* by November 22, 2022 to inform the public of the number of days of the meeting.

In addition, written comments will also be accepted and presented at the meeting if they are received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for our consideration. If the comments are to be considered before the publication of the FY 2024 IPPS proposed rule, the comments must be received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

B. Conference Call and Webinar Information

As noted previously, the New Technology Town Hall meeting will be held virtually. There will be an option to participate in the New Technology Town Hall Meeting via webinar and a toll-free teleconference phone line. Information on the option to participate via webinar and a teleconference dial-in will be provided through an upcoming listserv/email notice and will appear on the final meeting agenda, which will be posted on the New Technology website at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Continue to check the website for updates.

C. Disclaimer

We cannot guarantee reliability for a webinar.

III. Registration Instructions

The Division of New Technology in CMS is coordinating the meeting registration for the New Technology Town Hall meeting on substantial clinical improvement. While there is no registration fee, individuals planning to present at the New Technology Town Hall meeting must register to present.

Registration for presenters may be completed by sending an email to *newtech@cms.hhs.gov.* Please include the name and email address of the presenter, as well as address, telephone number, and the name of the technology for which they will be presenting.

Registration for attendees not presenting at the meeting is not required.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: September 28, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–21399 Filed 9–30–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10595]

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 (the 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 December 2, 2022.

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–10595—Third Party Payment of QHP Premiums and Additional Notices for QHP Issuers Data Collection

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:* Extension of a currently approved collection; *Title of Information Collection:* Third Party Payment of QHP Premiums and Additional Notices for QHP Issuers Data Collection; *Use:* The Patient Protection and Affordable Care Act (Pub. L. 111–148) and Health Care and Reconciliation Act of 2010 (Pub. L. 111–152), collectively referred to as PPACA, established new competitive private health insurance markets called Marketplaces, or Exchanges, which gave millions of Americans and small businesses access to qualified health plans (QHPs), including stand-alone dental plans (SADPs)-private health and private health and dental insurance plans that have been certified as meeting certain standards.

In the final rule, the Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2017 (CMS–9937–F), we finalized 45 CFR 156.1256, which requires QHP issuers, in the case of a material plan or benefit display error included in 45 CFR 155.420(d)(12), to notify their enrollees of the error and the enrollees' eligibility for a special enrollment period (SEP) within 30 calendar days after the issuer is informed by an Federally-facilitated Exchange (FFE) that the error is corrected, if directed to do so by the FFE. This requirement provides notification to QHP enrollees of errors that may have impacted their QHP selection and enrollment and any associated monthly or annual costs, as well as the availability of an SEP under 155.420(d)(12) for the enrollee to select a different QHP, if desired. The Centers for Medicare and Medicaid Services (CMS) is formally submitting this renewal information collection request (ICR) to OMB for 3-year approval in connection with standards regarding Plan or Display Errors and SEPs. The portion of the ICR related to Third Party Payments has been removed. The burden estimate fir the ICR included in this package reflects the time and effort for QHP issuers to provide notifications to enrollees on the ICRs regarding Plan or Display Errors and SEPs. *Form number:* CMS–10595 (OMB control number: 0938–1301); *Frequency:* Annually; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 374; *Number of Responses:* 374; *Total Burden Hours:* 293. (For questions regarding this collection contact Samantha Nguyen Kella at 816–426–6339).

Dated: September 28, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–21380 Filed 9–30–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that

may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on August 1, 2022, through August 31, 2022. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Kimberly DeVaughn, Maryville, Tennessee, Court of Federal Claims No: 22–0832V
2. Nathaniel Shipp on behalf of The Estate of Robert Thaner, Deceased, Trumbull, Connecticut, Court of Federal Claims No: 22–0833V
3. Antoinette Liss, Boston, Massachusetts, Court of Federal Claims No: 22–0837V
4. Barbara J. Reyelts, Duluth, Minnesota, Court of Federal Claims No: 22–0838V
5. Betty Moreland, Albany, Kentucky, Court of Federal Claims No: 22–0839V
6. Janine Etchebarren-Scholes, Ontario, California, Court of Federal Claims No: 22–0840V
7. Jennifer Smith on behalf of A. P., Phoenix, Arizona, Court of Federal Claims No: 22–0841V
8. Candy Flores Arzate, Tampa, Florida, Court of Federal Claims No: 22–0842V
9. Christine Ragsdale, Lyles, Tennessee, Court of Federal Claims No: 22–0843V
10. Nina McDaniel, Evansville, Indiana, Court of Federal Claims No: 22–0844V
11. Melissa J. Teichner, Richmond, Virginia, Court of Federal Claims No: 22–0845V
12. Sara Portner, Chicago, Illinois, Court of Federal Claims No: 22–0847V
13. Cynthia Hebert, West Springfield, Massachusetts, Court of Federal Claims No: 22–0849V
14. William Jones, Boscobel, Wisconsin, Court of Federal Claims No: 22–0850V
15. Melinda McDonald, Pearland, Texas, Court of Federal Claims No: 22–0851V
16. Heidemarie Johnston, Stafford, Virginia, Court of Federal Claims No: 22–0852V
17. Ricky Blake Norville, Greenville, North Carolina, Court of Federal Claims No: 22–0854V
18. Nancy Hughes, Columbia, Maryland, Court of Federal Claims No: 22–0855V
19. James Jennings, Hendersonville, Tennessee, Court of Federal Claims No: 22–0856V
20. Ilana Rochelle Smith, East Point, Georgia, Court of Federal Claims No: 22–0857V
21. Sharon Chung, Lawrenceville, Georgia, Court of Federal Claims No: 22–0858V
22. Ashley Perez, Dartmouth, New Hampshire, Court of Federal Claims No: 22–0859V
23. Kimberly W. Center, Carrollton, Virginia, Court of Federal Claims No: 22–0861V
24. Gwen Twiehaus on behalf of Q. W., Burleson, Texas, Court of Federal Claims No: 22–0862V
25. Amy Vargas-Stellon and Albert Stellon on behalf of J. S., Boston, Massachusetts, Court of Federal Claims No: 22–0863V
26. William Eddy, Worcester, Massachusetts, Court of Federal Claims No: 22–0864V
27. Jamie Nardulli on behalf of A. N., Phoenix, Arizona, Court of Federal Claims No: 22–0865V
28. Roxanne Adkins, Boston, Massachusetts, Court of Federal Claims No: 22–0869V
29. Todd Palmer, Aventura, Florida, Court of Federal Claims No: 22–0870V
30. Erin Mordecai, Queen Creek, Arizona, Court of Federal Claims No: 22–0872V
31. Erla Wise, Columbus, Ohio, Court of Federal Claims No: 22–0876V
32. Julie Fisher, San Diego, California, Court of Federal Claims No: 22–0877V
33. Lisa Riley, Bend, Oregon, Court of Federal Claims No: 22–0878V
34. Jerry Smith, Washington, District of Columbia, Court of Federal Claims No: 22–0879V
35. Tyrone William Mahan, Jackson, Michigan, Court of Federal Claims No: 22–0880V
36. Frances Thomas, Washington Twp., New Jersey, Court of Federal Claims No: 22–0882V
37. Debora Reabe, Charleroi, Pennsylvania, Court of Federal Claims No: 22–0883V
38. Karen Eberly, Medford, Oregon, Court of Federal Claims No: 22–0884V
39. Juan Carlos Lopez, Phoenix, Arizona, Court of Federal Claims No: 22–0886V
40. Kristin Homovich on behalf of K. B., Phoenix, Arizona, Court of Federal Claims No: 22–0889V

41. Lee Ann Carey, Dallas, Pennsylvania, Court of Federal Claims No: 22–0890V
42. Jill Professori, Southeastern, Pennsylvania, Court of Federal Claims No: 22–0891V
43. Jesina Settlemier, Grapevine, Texas, Court of Federal Claims No: 22–0892V
44. Wendy Balser, New Orleans, Louisiana, Court of Federal Claims No: 22–0893V
45. Jasmin Augustine on behalf of S. A., Irvine, California, Court of Federal Claims No: 22–0894V
46. Kimberly Gonzales on behalf of L. G., Phoenix, Arizona, Court of Federal Claims No: 22–0895V
47. John Schoonveld, Boston, Massachusetts, Court of Federal Claims No: 22–0897V
48. Jake Blalock, Fort Worth, Texas, Court of Federal Claims No: 22–0900V
49. Debra McFarland, Phenix City, Alabama, Court of Federal Claims No: 22–0901V
50. Kelly Justice, Pataskala, Ohio, Court of Federal Claims No: 22–0903V
51. Michelle Delaney, New York, New York, Court of Federal Claims No: 22–0904V
52. Amanda Flores on behalf of J. F., Phoenix, Arizona, Court of Federal Claims No: 22–0905V
53. Alyssa Adamson, Denver, Colorado, Court of Federal Claims No: 22–0906V
54. Austin DeGrange, Phoenix, Arizona, Court of Federal Claims No: 22–0907V
55. Timothy Redman, Ellenville, New York, Court of Federal Claims No: 22–0910V
56. Khalia Jones, New Rochelle, New York, Court of Federal Claims No: 22–0911V
57. Margaret Reagan, Hamburg, New York, Court of Federal Claims No: 22–0912V
58. Matthew Ziegler, Kew Gardens, New York, Court of Federal Claims No: 22–0913V
59. James Conley, Cleveland, Ohio, Court of Federal Claims No: 22–0914V
60. Aaron Lindh, Waupun, Wisconsin, Court of Federal Claims No: 22–0915V
61. Abbey E. Rayner-Russell, Hartford, Connecticut, Court of Federal Claims No: 22–0916V
62. Shirley Rumph, Philadelphia, Pennsylvania, Court of Federal Claims No: 22–0918V
63. Nona Kay Rasmussen Edwards, Bountiful, Utah, Court of Federal Claims No: 22–0919V
64. Marie Gonzalez and Pedro Quiles on behalf of L. Q. G., Phoenix, Arizona, Court of Federal Claims No: 22–0929V
65. Amanda Wilkes, Marietta, Georgia, Court of Federal Claims No: 22–0930V
66. Corinne Gence, San Rafael, California, Court of Federal Claims No: 22–0937V
67. Chandra Guzman, Boston, Massachusetts, Court of Federal Claims No: 22–0957V
68. Ashley B. Johns, Phoenix, Arizona, Court of Federal Claims No: 22–0976V
69. Megin Meyer, Danbury, Connecticut, Court of Federal Claims No: 22–0981V
70. Edward Wright, Minneapolis, Minnesota, Court of Federal Claims No: 22–0986V
71. Pamela Flaggs, Locust Grove, Georgia, Court of Federal Claims No: 22–0988V
72. Soriely Flores, Phoenix, Arizona, Court of Federal Claims No: 22–0989V
73. Matthew Valentine, Williamstown, New Jersey, Court of Federal Claims No: 22–0994V
74. Michelle Moises, Seattle, Washington, Court of Federal Claims No: 22–0995V
75. Hien Thai on behalf of Estate of Ho Cam Thai, Greensboro, North Carolina, Court of Federal Claims No: 22–1011V
76. Chris L. Strout on behalf of Estate of Diane M. Strout, Deceased, Rumford, Maine, Court of Federal Claims No: 22–1013V
77. Tin Ying, Englewood Cliffs, New Jersey, Court of Federal Claims No: 22–1014V
78. Stevie Honaker, Richmond, Virginia, Court of Federal Claims No: 22–1015V
79. David Lind, Arden Hills, Minnesota, Court of Federal Claims No: 22–1016V
80. John Hardy, Brooklyn Center, Minnesota, Court of Federal Claims No: 22–1017V
81. Rhonda Angerosa, New Hartford, New York, Court of Federal Claims No: 22–1022V
82. Eric Doenlen, Abington, Pennsylvania, Court of Federal Claims No: 22–1025V
83. Juan Carlos Lopez, Phoenix, Arizona, Court of Federal Claims No: 22–1032V
84. Valeria Betancourt, Phoenix, Arizona, Court of Federal Claims No: 22–1033V
85. Frankie Hicks, Savannah, Georgia, Court of Federal Claims No: 22–1034V
86. Alona Sheynin Albert, Boston, Massachusetts, Court of Federal Claims No: 22–1035V
87. Andrea Votta on behalf of A. V., Phoenix, Arizona, Court of Federal Claims No: 22–1050V
88. Mark Densmore on behalf of E. D., Phoenix, Arizona, Court of Federal Claims No: 22–1052V
89. Terralee Patko, Phoenix, Arizona, Court of Federal Claims No: 22–1059V
90. Nelva Ventresca, Champaign, Illinois, Court of Federal Claims No: 22–1060V
91. Nicole Jackson, Detroit, Michigan, Court of Federal Claims No: 22–1061V
92. Vijay Velu, Morrisville, North Carolina, Court of Federal Claims No: 22–1062V
93. Batholomew Gold, Los Angeles, California, Court of Federal Claims No: 22–1063V
94. Denise Baptiste, Waterbury, Connecticut, Court of Federal Claims No: 22–1065V
95. Ronald V. Blair, Los Angeles, California, Court of Federal Claims No: 22–1092V
96. Li Ha, Austell, Georgia, Court of Federal Claims No: 22–1093V
97. Michelle Leon, Oviedo, Florida, Court of Federal Claims No: 22–1094V
98. Jerry Lee Cooper, Atlanta, Georgia, Court of Federal Claims No: 22–1095V
99. Ashley MacAlister, Missoula, Montana, Court of Federal Claims No: 22–1096V
100. Joyce Clause, Murray, Kentucky, Court of Federal Claims No: 22–1097V
101. JoAnne S. Taylor, Dahlonega, Georgia, Court of Federal Claims No: 22–1098V
102. Maureen Murray, Minooka, Illinois, Court of Federal Claims No: 22–1099V
103. Robert Peacock and Therese Wehby on behalf of C. P., Phoenix, Arizona, Court of Federal Claims No: 22–1117V
104. Melanie Bostic on behalf of K. T., Jacksonville, Florida, Court of Federal Claims No: 22–1118V
105. Richard Pendergraft, Evansville, Indiana, Court of Federal Claims No: 22–1119V
106. Betty Jean Jean Wegener, Fenton, Michigan, Court of Federal Claims No: 22–1120V
107. Erika Grove, Dresher, Pennsylvania, Court of Federal Claims No: 22–1121V
108. Eric Conway, Phoenix, Arizona, Court of Federal Claims No: 22–1122V
109. Matthew Laurenzi, Phoenix, Arizona, Court of Federal Claims No: 22–1123V

110. Christopher Reams, Auburn, California, Court of Federal Claims No: 22–1124V

111. Rita Evans, Washington, District of Columbia, Court of Federal Claims No: 22–1125V

112. Sandra Panovich Craft, Chagrin Falls, Ohio, Court of Federal Claims No: 22–1126V

113. Carolyn Olivares on behalf of G. F., Phoenix, Arizona, Court of Federal Claims No: 22–1127V

114. Michelle Smith on behalf of J. S., Phoenix, Arizona, Court of Federal Claims No: 22–1128V

115. Michael Otero, Miami Shores, Florida, Court of Federal Claims No: 22–1129V

116. Tony Campbell, Sarasota, Florida, Court of Federal Claims No: 22–1130V

117. John Theisen, Dresher, Pennsylvania, Court of Federal Claims No: 22–1131V

118. Robert Rose, Boston, Massachusetts, Court of Federal Claims No: 22–1132V

119. Adonnis Conner, Waupun, Wisconsin, Court of Federal Claims No: 22–1133V

120. Allen Moure, Norwich, Connecticut, Court of Federal Claims No: 22–1134V

121. Jill Popejoy, Pittsburg, Kansas, Court of Federal Claims No: 22–1136V

122. Elizabeth Walter, Sarasota, Florida, Court of Federal Claims No: 22–1148V

123. Tammy Musselman, Kenney, Illinois, Court of Federal Claims No: 22–1149V

124. Ashley Stevens and Nicholas Stevens on behalf of G. S., Phoenix, Arizona, Court of Federal Claims No: 22–1150V

125. Virginia Dowling, Crestview, Florida, Court of Federal Claims No: 22–1151V

126. John Patton, Boston, Massachusetts, Court of Federal Claims No: 22–1152V

127. Joanna King, East Longmeadow, Massachusetts, Court of Federal Claims No: 22–1153V

[FR Doc. 2022–21349 Filed 9–30–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recharter for the Council on Graduate Medical Education

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, HHS is hereby giving notice that the Council on Graduate Medical Education (COGME or Council) has been rechartered. The effective date of the renewed charter is September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Curi Kim, Designated Federal Official (DFO), Division of Medicine and Dentistry, Bureau of Health Workforce, HRSA. Anyone requesting information may reach Dr. Kim by mail at 5600 Fishers Lane, 15N35, Rockville, Maryland 20857; by phone at 301–945–5827; or by email at *ckim@hrsa.gov.*

SUPPLEMENTARY INFORMATION: COGME makes recommendations to the Secretary of HHS (Secretary) and Congress on matters specified by section 762 of Title VII of the Public Health Service Act. Issues addressed by COGME include: (1) the supply and distribution of physicians in the United States; (2) current and future shortages or excesses of physicians in medical and surgical specialties and subspecialties; (3) issues relating to foreign medical school graduates; (4) appropriate federal policies with respect to the matters specified in (1), (2), and (3) above, including policies concerning changes in the financing of undergraduate and graduate medical education programs and changes in the types of medical education training in graduate medical education programs; (5) appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathic medicine, and accrediting bodies with respect to the matters specified in (1), (2), and (3) above, including efforts for changes in undergraduate and graduate medical education programs; and (6) deficiencies in, and needs for improvements in, existing databases concerning the supply and distribution of, and postgraduate training programs for, physicians in the United States and steps that should be taken to eliminate those deficiencies. Not later than September 30, 2023, and not less than every 5 years thereafter, COGME shall submit a report on the recommendations made by the committee to the Secretary, and to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives. Additionally, COGME encourages entities providing graduate medical education to conduct activities to voluntarily achieve the recommendations of the Council; and develops, publishes, and implements performance measures, develops and publishes guidelines for longitudinal evaluations, and recommends appropriation levels for certain programs under Title VII of the Public Health Service Act.

The renewed charter for COGME was approved on September 23, 2022. The filing date is September 30, 2022. The recharter of COGME gives authorization for the Council to operate until September 30, 2024.

A copy of the COGME charter is available on the COGME website at *https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/graduate-medical-edu/cogme-charter.pdf.* A copy of the charter also can be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–21352 Filed 9–30–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Amendment to the January 1, 2016 Republished Declaration Under the Public Readiness and Emergency Preparedness Act

ACTION: Notice of amendment.

SUMMARY: The Secretary is amending the declaration first issued on October 10, 2008, and amended and republished effective January 1, 2016 for Smallpox countermeasures and countermeasures against other orthopoxviruses pursuant to section 319F–3 of the Public Health Service Act to emphasize that the declaration applies to monkeypox virus, to expand the categories of providers authorized to administer vaccines and therapeutics against smallpox (variola virus), monkeypox virus, and other orthopoxviruses in a declared emergency, and to extend the duration of the declaration.

DATES: This amendment of the January 1, 2016 republished declaration is effective September 28, 2022.

FOR FURTHER INFORMATION CONTACT: L. Paige Ezernack, Administration for Strategic Preparedness and Response, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201;

202–260–0365, *paige.ezernack@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of Health and Human Services (the Secretary) to issue a declaration to provide liability immunity to certain individuals and entities (Covered Persons) against any claim of loss caused by, arising out of, relating to, or resulting from the administration or use of medical countermeasures (Covered Countermeasures), except for claims that meet the PREP Act's definition of willful misconduct. The Secretary may, though publication in the **Federal Register**, amend any portion of a declaration. Using this authority, the Secretary issued a declaration for smallpox countermeasures against variola virus or other orthopoxviruses on October 10, 2008, amended the declaration effective January 1, 2016, and is further amending this declaration.

The PREP Act was enacted on December 30, 2005, as Public Law 109–148, Division C, Section 2. It amended the Public Health Service (PHS) Act, adding section 319F–3, which addresses liability immunity, and section 319F–4, which creates a compensation program. These sections are codified in the U.S. Code as 42 U.S.C. 247d–6d and 42 U.S.C. 247d–6e, respectively. Section 319F–3 of the PHS Act has been amended by the Pandemic and All-Hazards Preparedness Reauthorization Act, Public Law 113–5, enacted on March 13, 2013, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, enacted on March 27, 2020, to expand Covered Countermeasures under the PREP Act.

On August 4, 2022, the Secretary determined pursuant to section 319 of the PHS Act, 42 U.S.C. 247d, that a public health emergency exists nationwide as a result of the consequences of an outbreak of monkeypox cases across multiple states. Monkeypox is a rare disease caused by infection with the monkeypox virus. Monkeypox virus is an orthopoxvirus, part of the same family of viruses as variola virus, the virus that causes smallpox.

The Secretary is now amending this PREP Act declaration to: amend the title of the declaration to emphasize that it covers monkeypox virus; add to Section I his determination that the 2022 outbreak of monkeypox cases in the United States caused by the monkeypox virus presents a public health emergency for the purposes of the PREP Act; make more explicit in Section I that the declaration applies to public health threats arising from smallpox (variola virus), monkeypox virus, and other orthopoxviruses; authorize in section V additional qualified persons to administer vaccines and therapeutics to address the current public health emergency caused by the 2022 outbreak of monkeypox cases and the risk of future public health threats arising from smallpox (variola virus), monkeypox virus, or other orthopoxviruses; update in Section VI the definition of Covered Countermeasures to reflect amendments to the PREP Act and to refer explicitly to monkeypox; update section VIII to refer explicitly to monkeypox; extend in Section XII the effective time period of the declaration; and republish the declaration in its entirety, as amended.

Unless otherwise noted, all statutory citations below are to the U.S. Code.

Description of Amendments by Section

The Secretary is amending the title of the declaration to ''Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Countermeasures against Smallpox, Monkeypox, and other Orthopoxviruses.''

Section I, Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

Before issuing a declaration under the PREP Act, the Secretary is required to determine that a disease or other health condition or threat to health constitutes a public health emergency or that there is a credible risk that the disease, condition, or threat may in the future constitute such an emergency. This determination is separate and apart from a declaration issued by the Secretary under section 319 of the PHS Act that a disease or disorder presents a public health emergency or that a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists, or other declarations or determinations made under other authorities of the Secretary.

The Secretary is amending this determination to clarify that a risk of future public health threats is posed by smallpox (variola virus), monkeypox virus, or other orthopoxviruses, and to state that the 2022 outbreak of monkeypox cases in the United States presents a public health emergency for purposes of the PREP Act.

Section V, Covered Persons

The PREP Act's liability immunity applies to ''Covered Persons'' with respect to administration or use of a Covered Countermeasure. The term ''Covered Persons'' has a specific meaning and is defined in the PREP Act to include manufacturers, distributors, program planners, and qualified persons, and their officials, agents, and employees, and the United States.

A ''qualified person'' is one category of ''covered person.'' A qualified person means a licensed health professional or other individual who is authorized to prescribe, administer, or dispense Covered Countermeasures under the law of the state in which the countermeasure was prescribed, administered, or dispensed; or a person within a category of persons identified as qualified in the Secretary's declaration. Under this definition, the Secretary can describe in the declaration other qualified persons, who are Covered Persons.

Subject to certain limitations, a covered person is immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration or use of a Covered Countermeasure if a declaration under the PREP Act has been issued with respect to such countermeasure. To the extent that any State law that would otherwise prohibit a ''qualified person'' from prescribing, dispensing, or administering Covered Countermeasures, such law is preempted.[1] A State remains free to expand the universe of individuals authorized to administer Covered Countermeasures within its jurisdiction under State law.

The Secretary anticipates that there will be a need to increase the available pool of providers should a large-scale vaccination or therapeutic administration effort be required for the current monkeypox outbreak or future public health threats arising from smallpox (variola virus), monkeypox virus, or other orthopoxviruses. Variola virus, monkeypox virus, and other orthopoxviruses have the potential to

[1] See, ''Preemption of State and Local Requirements Under a PREP Act Declaration,'' Memorandum Opinion for the General Counsel Department of Health and Human Services, January 19, 2021, available at: *https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/19/2021-01-19-prep-act-preemption.pdf.*

inflict significant burden and strain on the U.S. healthcare system in their own right; and in conjunction with the ongoing COVID–19 pandemic, a spike in current monkeypox cases could overwhelm healthcare providers. The health care system capacity and the healthcare workforce are likely to become increasingly strained throughout the nation. Allowing additional healthcare providers to administer smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics in accordance with applicable Federal Food and Drug Administration (FDA) licenses, approvals, or authorizations during a declared emergency allows states maximum flexibility in limiting potential impacts of illness.

By this amendment to the declaration, the Secretary identifies additional categories of persons who are qualified persons covered by the PREP Act.

Section VI, Covered Countermeasures

The Secretary is amending Section VI to update the definition as amended by the CARES Act.

Section VIII, Category of Disease, Health Condition, or Threat

The Secretary is amending the category of disease, health condition, or threat for which he recommends the administration or use of the Covered Countermeasures to include explicitly disease and disease threat resulting from exposure to monkeypox virus.

Section XII, Effective Time Period

The Secretary must identify, for each Covered Countermeasure, the period or periods during which liability immunity is in effect, designated by dates, milestones, or other description of events, including factors specified in the PREP Act.

The Secretary is amending the declaration to extend the period for which liability immunity is in effect. The previous amended declaration was in effect through December 31, 2022. We have extended the effective time period to December 31, 2032.

Declaration, as Amended, for Public Readiness and Emergency Preparedness Act Coverage for Countermeasures Against Smallpox, Monkeypox, and Other Orthopoxviruses

This declaration amends and republishes the January 1, 2016 Amended Declaration Under the Public Readiness and Emergency Preparedness Act (''PREP Act'') for smallpox and other orthopoxvirus countermeasures. To the extent any term of the January 1, 2016 declaration is inconsistent with any provision of this republished declaration, the terms of this republished declaration are controlling.

I. Determination of Public Health Emergency or Credible Risk of Future Public Health Emergency

42 U.S.C. 247d–6d(b)(1)

I have determined that there is a credible risk that smallpox (variola virus), monkeypox virus, or other orthopoxviruses and the resulting disease or conditions may in the future constitute a public health emergency and that the 2022 outbreak of monkeypox cases in the United States presents a public health emergency.

II. Factors Considered

42 U.S.C. 247d–6d(b)(6)

I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of the Covered Countermeasures.

III. Recommended Activities

42 U.S.C. 247d–6d(b)(1)

I recommend, under the conditions stated in this declaration, the manufacture, testing, development, distribution, administration, or use of the Covered Countermeasures.

IV. Liability Immunity

42 U.S.C. 247d–6d(a), 247d–6d(b)(1)

Liability immunity as prescribed in the PREP Act and conditions stated in this declaration is in effect for the Recommended Activities described in section III.

V. Covered Persons

42 U.S.C. 247d–6d(i)(2),(3),(4),(6),(8)(A) and (B)

Covered Persons who are afforded liability immunity under this declaration are ''manufacturers,'' distributors, program planners, qualified persons, and their officials, agents, and employees, as those terms are defined in the PREP Act, and the United States. In addition, I have determined that the following additional persons are qualified persons:

(a) Any person authorized in accordance with the public health and medical emergency response of the Authority Having Jurisdiction, as described in section VII below, to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures, and their officials, agents, employees, contractors, and volunteers, following a declaration of an emergency, subject to the requirements of this paragraph:

The person so authorized must have documentation of completion of the Centers for Disease Control and Prevention (CDC)-provided or -recommended training for the countermeasure and any additional training required in the FDA license, approval, or authorization. In the absence of training requirements or recommendations from the CDC, other training(s) may be substituted if:

(i) it is approved or accredited training from a national or state recognized accrediting body or association, the FDA, or equivalent organization for the administration route of the medical countermeasure,

(ii) it includes hands-on instruction for the administration route as appropriate for the countermeasure, supervised by someone that administers within their normal scope of practice,

(iii) it includes clinical evaluations of indications or contraindications of smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures, and

(iv) it includes the recognition and treatment of emergency reactions to smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures;

If applicable, such additional training as may be required by the State, territory, locality, or Tribal area in which they are prescribing, dispensing, or administering smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics.

(b) Any person authorized to prescribe, administer, or dispense the Covered Countermeasures or who is otherwise authorized to perform an activity under an Emergency Use Authorization in accordance with section 564 of the Food, Drug, and Cosmetic (FD&C) Act.

(c) any person authorized to prescribe, administer, or dispense Covered Countermeasures in accordance with Section 564A of the FD&C Act.

(d) The following healthcare professionals and students in a healthcare profession training program following a declaration of an emergency as defined in section VII of this declaration, subject to the requirements of this paragraph:

1. To the extent not already licensed or authorized under state law, any dentist, advanced or intermediate emergency medical technician, licensed or certified professional midwife, nurse, advanced practice registered nurse,

registered nurse, licensed practical nurse, optometrist, paramedic, pharmacist, pharmacy intern, pharmacy technician, physician, physician assistant, podiatrist, respiratory therapist, or veterinarian who is licensed or certified to practice under the law of any state who prescribes, dispenses, or administers smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics by the route of administration and to the population specified in the relevant FDA license, approval, or authorization, including intramuscular, intradermal, or subcutaneous injection, dermal/percutaneous scarification, intranasal or oral administration, that are Covered Countermeasures under section VI of this declaration in any jurisdiction where the PREP Act applies in association with a smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccination or therapeutics effort by a State, local, Tribal or territorial authority or by an institution in which the smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccine or therapeutic is administered;

2. Any dentist, advanced or intermediate emergency medical technician, licensed or certified professional midwife, nurse, advanced practice registered nurse, registered nurse, licensed practical nurse, optometrist, paramedic, pharmacist, pharmacy intern, physician, physician assistant, podiatrist, respiratory therapist, or veterinarian who has held an active license or certification under the law of any State within the last five years, which is inactive, expired or lapsed, who prescribes, dispenses, or administers smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics by the route of administration and to the population specified in the relevant FDA license, approval or authorization, including intramuscular, intradermal, or subcutaneous injection, dermal/percutaneous scarification, intranasal or oral administration, that are Covered Countermeasures under section VI of this declaration in any jurisdiction where the PREP Act applies in association with a smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccination or therapeutics effort by a State, local, Tribal or territorial authority or by an institution in which the smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccine or therapeutic is administered, so long as the license or certification was active and in good standing prior to the date it went inactive, expired or lapsed and was not revoked by the licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General;

3. Any dental, advanced or intermediate emergency medical technician, medical, licensed or certified professional midwife, nursing, optometry, paramedic, pharmacy, pharmacy intern, physician assistant, podiatry, respiratory therapist, or veterinary student with appropriate training in administering vaccines or therapeutics as determined by their school or training program and supervision by a currently practicing healthcare professional, experienced in the route of administration and to the population specified in the relevant FDA license, approval, or authorization, who administers smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics by the route of administration and to the population specified in the relevant FDA license, approval, or authorization, including intramuscular, intradermal, or subcutaneous injection, dermal/percutaneous scarification, intranasal or oral administration that are Covered Countermeasures under section VI of this declaration in any jurisdiction where the PREP Act applies in association with a smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccination or therapeutics effort by a State, local, Tribal or territorial authority or by an institution in which the smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccine or therapeutic is administered;

Subject to the following requirements:

(i) The vaccine or therapeutic must be authorized, approved, or licensed by the FDA;

(ii) Vaccination must be ordered and administered according to CDC's/ACIP's smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccine recommendation(s);

(iii) The healthcare professionals and students must have documentation of completion of the CDC-provided or -recommended training for the countermeasure and any additional training required in the FDA licensing, approval, authorization. In the absence of training requirements or recommendations from the CDC, other training(s) may be substituted if:

(1) it is approved or accredited training from a national or state recognized accrediting body or association, the FDA, or equivalent organization for the administration route of the medical countermeasure,

(2) it includes hands-on instruction for the administration route as appropriate for the countermeasure, supervised by someone that administers within their normal scope of practice,

(3) it includes clinical evaluations of indications or contraindications of smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures, and

(4) it includes the recognition and treatment of emergency reactions to smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures;

If applicable, such additional training as may be required by the State, territory, locality, or Tribal area in which they are prescribing, dispensing, or administering smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics;

(iv) The healthcare professionals and students must have documentation of an observation period by a currently practicing healthcare professional experienced in the appropriate route of intradermal, subcutaneous, or intramuscular injections, dermal/percutaneous scarification, intranasal or oral administration and for whom the appropriate route of intradermal, subcutaneous, or intramuscular injections, dermal/percutaneous scarification, intranasal or oral administration is in their ordinary scope of practice, who confirms competency of the healthcare provider or student in preparation and administration of the smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics to be administered and, if applicable, such additional training as may be required by the State, territory, locality, or Tribal area in which they are prescribing, dispensing, or administering smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics;

(v) The healthcare professionals and students must have a current certificate in basic cardiopulmonary resuscitation;

(vi) The healthcare professionals and students must comply with recordkeeping and reporting

requirements of the jurisdiction in which they administer vaccines or therapeutics, including informing the patient's primary-care provider when available, submitting the required immunization information to the State or local immunization information system (vaccine registry), complying with requirements with respect to reporting adverse events, and complying

with requirements whereby the person administering a vaccine must review the vaccine registry or other vaccination records prior to administering a vaccine; and

(viii) The healthcare professionals and students comply with any applicable requirements (or conditions of use) as set forth in the CDC provider agreement and any other federal requirements that apply to the administration of smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics.

(e) Any healthcare professional or other individual who holds an active license or certification permitting the person to prescribe, dispense, or administer vaccines or therapeutics under the law of any State as of the effective date of this amendment, or healthcare professional as authorized under the sections V(d)(1) and (2) of this declaration, who, following a declared emergency as defined in section VII of this declaration, prescribes, dispenses, or administers smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics by the route of administration and to the population specified in the relevant FDA license, approval, or authorization, including intramuscular, intradermal, or subcutaneous injection, dermal/percutaneous scarification, intranasal or oral administration that are Covered Countermeasures under section VI of this declaration in any jurisdiction where the PREP Act applies, other than the State in which the license or certification is held, in association with a smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccination or therapeutics effort by a federal, State, local Tribal or territorial authority or by an institution in the State in which the smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccine or therapeutic is administered, so long as the license or certification of the healthcare professional has not been suspended or restricted by any licensing authority, surrendered while under suspension, discipline or investigation by a licensing authority or surrendered following an arrest, and the individual is not on the List of Excluded Individuals/Entities maintained by the Office of Inspector General, subject to:

(i) documentation of completion of the appropriate training; CDC provided or recommended training for the countermeasure and any additional training required in the FDA license, approval, or authorization. In the absence of training requirements or recommendations from the CDC, other training(s) may be substituted if:

(1) it is approved or accredited training from a national or state recognized accrediting body or association, the FDA, or equivalent organization for the administration route of the medical countermeasure,

(2) it includes hands-on instruction for the administration route as appropriate for the countermeasure, supervised by someone that administers within their normal scope of practice,

(3) it includes clinical evaluations of indications or contraindications of smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures, and

(4) it includes the recognition and treatment of emergency reactions to smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures;

If applicable, such additional training as may be required by the State, territory, locality, or Tribal area in which they are prescribing, dispensing, or administering smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics; and

(ii) for healthcare providers who are not currently practicing, documentation of an observation period by a currently practicing healthcare in experienced in the appropriate route of intradermal, subcutaneous, or intramuscular injections, dermal/percutaneous scarification, intranasal or oral administration, and for whom the appropriate route of intradermal, subcutaneous, or intramuscular injections, dermal/percutaneous scarification, intranasal or oral administration is in their ordinary scope of practice, who confirms competency of the healthcare provider in preparation and administration of the smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics to be administered.

(f) Any member of a uniformed service (including members of the National Guard in a Title 32 duty status) (hereafter in this paragraph ''service member'') or Federal government employee, contractor, or volunteer who prescribes, administers, delivers, distributes, or dispenses smallpox (variola virus), monkeypox virus, or other orthopoxvirus Covered Countermeasures. Such Federal government service members, employees, contractors, or volunteers are qualified persons if the following requirements are met:

(i) The executive department or agency by or for which the Federal service member, employee, contractor, or volunteer is employed, contracts, or volunteers has authorized or could authorize that service member, employee, contractor, or volunteer to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasure as any part of the duties or responsibilities of that service member, employee, contractor, or volunteer, even if those authorized duties or responsibilities ordinarily would not extend to members of the public or otherwise would be more limited in scope than the activities such service member, employees, contractors, or volunteers are authorized to carry out under this declaration;

(ii) The Federal service member or Federal government, employee, contractor, or volunteer must have documentation of completion of the CDC provided or recommended training for the countermeasure and any additional training required in the FDA license, approval, or authorization. In the absence of training requirements or recommendations from the CDC, other training(s) may be substituted if:

(1) it is approved or accredited training from a national or state recognized accrediting body or association, the FDA, or equivalent organization for the administration route of the medical countermeasure,

(2) it includes hands-on instruction for the administration route as appropriate for the countermeasure, supervised by someone that administers within their normal scope of practice,

(3) it includes clinical evaluations of indications or contraindications of smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures, and

(4) it includes the recognition and treatment of emergency reactions to smallpox (variola virus), monkeypox virus, or other orthopoxvirus countermeasures;

If applicable, such additional training as may be required by the State, territory, locality, or Tribal area in which they are prescribing, dispensing, or administering smallpox (variola virus), monkeypox virus, or other orthopoxvirus vaccines or therapeutics.

VI. Covered Countermeasures

42 U.S.C. 247d–6b(c)(1)(B), 42 U.S.C. 247d–6d(i)(1) and (7)

Covered Countermeasures are any vaccine, including all components and constituent materials of these vaccines, and all devices and their constituent components used in the administration of these vaccines; any antiviral; any other drug; any biologic; or any diagnostic or other device to identify, or any respiratory protective device to prevent or treat smallpox (variola virus),

monkeypox virus, or other orthopoxvirus or adverse events from such countermeasures. Covered Countermeasures must be ''qualified pandemic or epidemic products,'' or ''security countermeasures,'' or drugs, biological products, or devices authorized for investigational or emergency use, or a respiratory protective device as those terms are defined in the PREP Act, the FD&C Act, and the Public Health Service Act.

VII. Limitations on Distribution

42 U.S.C. 247d–6d(a)(5) and (b)(2)(E)

I have determined that liability immunity is afforded to Covered Persons only for Recommended Activities involving Covered Countermeasures that are related to:

(a) Present or future federal contracts, cooperative agreements, grants, other transactions, interagency agreements, memoranda of understanding, or other federal agreements, or activities directly conducted by the federal government; or

(b) Activities authorized in accordance with the public health and medical response of the Authority Having Jurisdiction to prescribe, administer, deliver, distribute, or dispense the Covered Countermeasures following a declaration of an emergency.

i. The Authority Having Jurisdiction means the public agency or its delegate that has legal responsibility and authority for responding to an incident, based on political or geographical (*e.g.,* city, county, tribal, state, or federal boundary lines) or functional (*e.g.,* law enforcement, public health) range or sphere of authority.

ii. A declaration of emergency means any declaration by any authorized local, regional, state, or federal official of an emergency specific to events that indicate an immediate need to administer and use the Covered Countermeasures, with the exception of a federal declaration in support of an Emergency Use Authorization under section 564 of the FD&C Act unless such declaration specifies otherwise.

I have also determined that for governmental program planners only, liability immunity is afforded only to the extent such program planners obtain Covered Countermeasures through voluntary means, such as (1) donation; (2) commercial sale; (3) deployment of Covered Countermeasures from federal stockpiles; or (4) deployment of donated, purchased, or otherwise voluntarily obtained Covered Countermeasures from State, local, or private stockpiles.

VIII. Category of Disease, Health Condition, or Threat

42 U.S.C. 247d–6d(b)(2)(A)

The category of disease, health condition, or threat for which I recommend the administration or use of the Covered Countermeasures is smallpox resulting from exposure to variola virus, monkeypox resulting from exposure to monkeypox virus, or other infectious disease resulting from exposure to other orthopoxviruses, and the threat of disease resulting from exposure to any of these viruses.

IX. Administration of Covered Countermeasures

42 U.S.C. 247d–6d(a)(2)(B)

Administration of the Covered Countermeasure means physical provision of the countermeasures to recipients, or activities and decisions directly relating to public and private delivery, distribution and dispensing of the countermeasures to recipients, management and operation of countermeasure programs, or management and operation of locations for purpose of distributing and dispensing countermeasures.

X. Population

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(C)

The populations of individuals include any individual who uses or is administered the Covered Countermeasures in accordance with this declaration.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered to this population; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered to this population or the program planner or qualified person reasonably could have believed the recipient was in this population.

XI. Geographic Area

42 U.S.C. 247d–6d(a)(4), 247d–6d(b)(2)(D)

Liability immunity is afforded for the administration or use of a Covered Countermeasure without geographic limitation.

Liability immunity is afforded to manufacturers and distributors without regard to whether the countermeasure is used by or administered in these geographic areas; liability immunity is afforded to program planners and qualified persons when the countermeasure is used by or administered in these geographic areas, or the program planner or qualified person reasonably could have believed the recipient was in these geographic areas.

XII. Effective Time Period

42 U.S.C. 247d–6d(b)(2)(B)

Liability immunity for Covered Countermeasures obtained through means of distribution other than in accordance with the public health and medical response of the Authority Having Jurisdiction extends through December 31, 2032.

Liability immunity for Covered Countermeasures administered and used in accordance with the public health and medical response of the Authority Having Jurisdiction begins with a declaration and lasts through (1) the final day the emergency declaration is in effect or (2) December 31, 2032, whichever occurs first.

Liability immunity for Covered Countermeasures administered and used by additional qualified persons in sections V(d) and V(e) begins with a declaration and lasts through (1) the final day the emergency declaration is in effect or (2) December 31, 2032, whichever occurs first.

Covered Countermeasures obtained for the Strategic National Stockpile (SNS) during the effective period of this declaration for Covered Countermeasures are covered through the date of administration or use pursuant to a distribution or release from the SNS.

XIII. Additional Time Period of Coverage

42 U.S.C. 247d–6d(b)(3)(A), (B) and (C)

I have determined that an additional twelve (12) months of liability protection is reasonable to allow for the manufacturer(s) to arrange for disposition of the Covered Countermeasure, including return of the Covered Countermeasures to the manufacturer, and for Covered Persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasures.

XIV. Countermeasures Injury Compensation Program

42 U.S.C. 247d–6e

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide benefits to certain individuals or estates of individuals who sustain a serious physical covered injury as the direct result of the administration or use of the Covered Countermeasures and/or

benefits to certain survivors of individuals who die as a direct result of the administration or use of the Covered Countermeasures. The causal connection between the countermeasure and the serious physical injury must be supported by compelling, reliable, valid, medical and scientific evidence in order for the individual to be considered for compensation. The CICP is administered by the Health Resources and Services Administration, within the Department of Health and Human Services. Information about the CICP is available at 855–266–2427 (toll-free) or *http://www.hrsa.gov/cicp/.*

XV. Amendments

42 U.S.C. 247d–6d(b)(4)

The October 10, 2008 declaration under the PREP Act for smallpox countermeasures was first published on October 17, 2008 and amended and republished on January 1, 2016. This is the second amendment to and republication of the declaration.

Any further amendments to this declaration will be published in the **Federal Register**.

(Authority: 42 U.S.C. 247d–6d)

Xavier Becerra,

Secretary.

[FR Doc. 2022–21412 Filed 9–30–22; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias (ADRD) on people with the disease and their caregivers. During the October 24, 2022 meeting the Advisory Council will hear presentations on access to long-term services and supports as well as end-of-life challenges for people living with ADRD. Federal agencies will provide updates including a presentation from the Administration for Community Living on the new National Strategy to Support Family Caregivers.

DATES: The meeting will be held on October 24, 2022 from 9:00 a.m. to 4:30 p.m. EST.

ADDRESSES: The meeting will be a hybrid of in-person and virtual. The meeting will be held in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. It will also stream live at *www.hhs.gov/live*.

Comments: Time is allocated on the agenda to hear public comments from 4:00 p.m. to 4:30 p.m. The time for oral comments will be limited to two (2) minutes per individual. In order to provide a public comment, please register by emailing your name to *napa@hhs.gov* by Thursday, October 20. Registered commenters may provide their comments either in-person or virtually on Friday, October 21. Registered commenters attending virtually will receive both a dial-in number and a link to join the meeting virtually; individuals will have the choice to either join virtually via the link, or to call in only by using the dial-in number. *Note:* There may be a 30–45 second delay in the livestream video presentation of the conference. For this reason, if you have pre-registered to submit a public comment, it is important to connect to the meeting by 3:45 p.m. to ensure that you do not miss your name and allotted time when called. If you miss your name and allotted time to speak, you may not be able to make your public comment. All participant audio lines will be muted for the duration of the meeting and only unmuted by the Host at the time of the participant's public comment. Should you have questions during the session email *napa@hhs.gov* and someone will respond to your message as quickly as possible.

In order to ensure accuracy, please submit a written copy of oral comments for the record by emailing *napa@hhs.gov* by Tuesday, October 25. These comments will be shared on the website and reflected in the meeting minutes.

In lieu of oral comments, formal written comments may be submitted for the record by Tuesday, October 25 to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov.* Note: The meeting will be available to the public live at *www.hhs.gov/live*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. app. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: Aducanumab, dementia risk reduction, recommendations.

Procedure and Agenda: The meeting will be webcast at *www.hhs.gov/live* and video recordings will be added to the National Alzheimer's Project Act website when available, after the meeting.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 28, 2022.

Benjamin Sommers,

Senior Official Performing the Duties of the Assistant Secretary for Planning and Evaluation, Deputy Assistant Secretary for Health Policy.

[FR Doc. 2022–21396 Filed 9–30–22; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 2, 2022.

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

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the

following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Teen Pregnancy Prevention Fiscal Year 2020/2021 Tier 1 and Tier 2 Implementation Study.

Type of Collection: New.

OMB No. 0990–NEW-Office of Population Affairs.

Abstract: The Office of Population Affairs (OPA), U.S. Department of Health and Human Services (HHS) is requesting 2 years of approval by OMB on a new collection. The Teen Pregnancy Prevention (TPP) Tier 1 and Tier 2 Implementation Study will document how 75 grantees funded in 2020 and 2021 are implementing their grant strategies to reduce rates of teen pregnancy and sexually transmitted infections in their selected communities or priority areas. OPA anticipates that grantees will employ diverse strategies working with partner organizations within communities to implement their teen pregnancy prevention projects. To document approaches and experiences of each grantee, a lead staff member in each grantee organization and up to one other staff member will be interviewed during an in-person or virtual site visit.

Up to two staff members from key grantee partner organizations will be interviewed for 31 of the 62 Tier 1 grantees and all 13 Tier 2 grantees. Interview participants will include up to 124 Tier 1 grantee staff members, 62 Tier 1 grantee partner organization staff members, 26 Tier 2 grantee staff members and 26 Tier 2 grantee partner organization staff members. The data collection effort will occur once and will primarily affect public and private businesses.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Tier 1 grantee director and other staff	124	1	2	248
Tier 1 grantee partner staff	62	1	1	62
Tier 2 grantee director and other staff	26	1	2	52
Tier 2 grantee partner staff	26	1	1	26
Total	238			388

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–21368 Filed 9–30–22; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group Lifestyle and Health Behaviors Study Section.

Date: October 27–28, 2022.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Lisa T Wigfall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–5622, *wigfalllt@mail.nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group Vaccines Against Microbial Diseases Study Section.

Date: October 27–28, 2022.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hilton Garden Inn Washington DC/Georgetown, 2201 M Street NW, Washington, DC 20037.

Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group Digestive System Host Defense, Microbial Interactions and Immune and Inflammatory Disease Study Section.

Date: October 27–28, 2022.

Time: 9 a.m. to 8 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: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group Respiratory Integrative Biology and Translational Research Study Section.

Date: October 27–28, 2022.

Time: 9 a.m. to 7 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: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, (301) 451–8754, *nussb@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group Imaging Technology Development Study Section.

Date: October 27–28, 2022.

Time: 9 a.m. to 7 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: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: October 27–28, 2022.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Xinrui Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2084, *xinrui.li@nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group Virology—A Study Section.

Date: October 27–28, 2022.

Time: 9:30 a.m. to 7 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: Kenneth M Izumi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892, (301) 496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group Cellular Mechanisms in Aging and Development Study Section.

Date: October 27–28, 2022.

Time: 10 a.m. to 7 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: Tami Jo Kingsbury, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (410) 274–1352, *tami.kingsbury@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel BRAIN Initiative: Targeted BRAIN Circuits.

Date: October 27–28, 2022.

Time: 10 a.m. to 7 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: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, (301) 435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group Pregnancy and Neonatology Study Section.

Date: October 27–28, 2022.

Time: 10 a.m. to 9 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: Andrew Maxwell Wolfe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, (301) 402–3019, *andrew.wolfe@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–RM–22–006: Expert-Driven Small Projects to Strengthen Gabriella Miller Kids First Discovery (R03).

Date: October 28, 2022.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Harold Laity, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8254, *john.laity@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: September 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21328 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Neurological Sciences and Disorders (NSD)—B, Member Conflict.

Date: October 21, 2022.

Time: 10 a.m. to 11:59 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Bethesda, MD 20892, 301–496–5720, *mirela.milescu@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Initial Translation Efforts for Non-addictive Analgesic Therapeutics Development (HEAL U19).

Date: October 26, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Bethesda, MD 20892, 301–496–9223, *abhi.subedi@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A Study Section.

Date: October 27–28, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Natalia Strunnikova, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research NINDS/NIH, NSC, 6001 Executive Blvd., Bethesda, MD 20892, 301–402–0288, *natalia.strunnikova@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Discovery and Functional Evaluation of Human Pain-associated Genes and Cells (U19) Review Meeting.

Date: October 28, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6100 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research NINDS/NIH, NSC, 6001 Executive Blvd., Bethesda, MD 20892, 301–827–0799, *eric.tucker@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Institutional Training Grants.

Date: October 31–November 1, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, NSC, 6001 Executive Blvd., Bethesda, MD 20892, 301–496–9223, *abhi.subedi@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health.)

Dated: September 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21332 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; ESTEEMED Research Education Experiences (R25) Review.

Date: November 1, 2022.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Songtao Liu, MD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20817, (301) 827–3025, *songtao@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: September 28, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21423 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 24, 2022.

Time: 9 a.m. to 12 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: Michael M. Opata, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20852, 240–627–3319, *michael.opata@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: September 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21327 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Collaborative Applications: Clinical Studies of Mental Illness.

Date: October 17–18, 2022.

Time: 9 a.m. to 8 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: Gianina Ramona Dumitrescu, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4193–C, Bethesda, MD 28092, (301) 827–0696, *dumitrescurg@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: September 27, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21329 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; Innovative Multi-Level Approaches and Strategies to Prevent, Test, and Treat HIV in HDP.

Date: November 14, 2022.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Plaza, 7201 Wisconsin Ave., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–827–2061, *ivan.navarro@nih.gov.*

Dated: September 27, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21358 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploiting in Vivo or in Situ Imaging Approaches to Understand HIV-relevant Processes in the Context of Substance Use Disorders.

Date: October 24, 2022.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jenny Raye Browning, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443–4577, *jenny.browning@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA K Conflict SEP.

Date: November 2, 2022.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Avant-Garde Award Program and Avenir Award Program for Research on Substance Use Disorders and HIV/AIDS.

Date: December 2, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sheila Pirooznia, Ph.D., Scientific Review Officer, Division of Extramural Review, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 496–9350, *sheila.pirooznia@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21326 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: November 1–2, 2022.

Time: 8:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Tysons, 1960 Chain Bridge Road, McLean, VA 22101.

Contact Person: Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20894, (301) 435–0000, *bidyottam.mittra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology and Bioengineering.

Date: November 1–2, 2022.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Disease Management, Risk Prevention, and Health Behavior Change.

Date: November 1–2, 2022.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jennifer Di Noia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000E,

Bethesda, MD 20892, (301) 594–0288, *dinoiaj2@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Analytics and Statistics for Population Research Panel A Study Section.

Date: November 1–2, 2022.

Time: 10 a.m. to 8 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: Victoriya Volkova, Ph.D., D.V.M., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 594–7781, *volkovav2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–367: Maximizing Investigators' Research Award.

Date: November 1–2, 2022.

Time: 10 a.m. to 8 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: Brian Paul Chadwick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3586, *chadwickbp@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Healthcare and Health Disparities Study Section.

Date: November 2–3, 2022.

Time: 9 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tara Roshell Earl, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007C, Bethesda, MD 20892, (301) 402–6857, *earltr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–22–008: NIH Faculty Institutional Recruitment for Sustainable Transformation (FIRST) Program: FIRST Cohort (U54).

Date: November 2–3, 2022.

Time: 10 a.m. to 8 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: Jessica Bellinger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, (301) 827–4446, *bellingerjd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; High-End and Shared Instrumentation Grants.

Date: November 2–3, 2022.

Time: 10 a.m. to 7 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: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Behavioral Neuroscience.

Date: November 2–3, 2022.

Time: 10 a.m. to 8 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: Simone Chebabo Weiner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011K, Bethesda, MD 20892, (301) 435–1042, *weinersc@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: November 2–3, 2022.

Time: 10 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, (301) 408–9866, *manospa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Imaging, Surgery and Bioengineering.

Date: November 2, 2022.

Time: 11 a.m. to 7 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: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, (301) 379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dental and Craniofacial Biology.

Date: November 2, 2022.

Time: 1 p.m. to 7 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: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, (301) 435–1787, *srikanth.ranganathan@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: September 28, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21384 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, And Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Contract Review Meeting 1.

Date: November 1, 2022.

Time: 9 a.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Zhihong Shan, Ph.D., M.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, *zhihong.shan@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Scientific Opportunities for Exploratory Research (R21).

Date: November 1, 2022.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 7605 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kazuyo Kegan, Ph.D., Scientific Review Officer, Office of Scientific

Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892, (301) 402–1334, *kazuyo.kegan@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Contract Review Meeting 2.

Date: November 1, 2022.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zhihong Shan, Ph.D., M.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, *zhihong.shan@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Education Program to Enhance Diversity.

Date: November 2, 2022.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Shelley Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208–T, Bethesda, MD 20817, (301) 827–7984, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Contract Review.

Date: November 7, 2022.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manoj Kumar Valiyaveettil, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze: Product Definition.

Date: November 9, 2022.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; ARDS, Pneumonia, and Sepsis Phenotyping Consortium.

Date: November 14–15, 2022.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, (301) 827–7987, *susan.sunnarborg@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze: Product Definition.

Date: November 15, 2022.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Manoj K. Valiyaveettil, Ph.D., Scientific Review Officer, Blood & Vascular Branch, Office Scientific Review, Division of Extramural Research Activities (DERA), National Institute of Health, National Heart, Lung, and Blood Institute, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 27, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21330 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

Name of Committee: Office of AIDS Research Advisory Council.

Date: October 27, 2022.

Time: 12 p.m. to 4:30 p.m.

Agenda: The sixty-first meeting of the Office of AIDS Research Advisory Council (OARAC) will include the OAR Director's Report; presentation and discussions from PEPFAR, the U.S. Military HIV Research Program, NIH-wide programs and initiatives; updates from the Clinical Guidelines Working Groups of OARAC; updates from NIH HIV-related advisory councils; and public comment.

Place: Office of AIDS Research, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: CAPT Mary Glenshaw, Ph.D., MPH, Corette Byrd, BSN, RN, Office of AIDS Research, Office of the Director, National Institutes of Health, 5601 Fisher's Lane, Room 2E61, Rockville, MD 20892, (301) 496–0357, *OARACinfo@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 27, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–21331 Filed 9–30–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing:

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens: At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing:

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostic Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2022–21372 Filed 9–30–22; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0345]

Announcing Two Virtual Public Outreach Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of outreach events.

SUMMARY: The Coast Guard announces two virtual public outreach events to discuss the Draft Pacific Coast Port Access Route Study (PAC–PARS) and its recommendations to establish voluntary fairways along the Pacific Coast. Both events will cover the same material.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LCDR Sara Conrad, Coast Guard Pacific Area (PAC–54), U.S. Coast Guard; telephone (510) 437–3813, email *Sara.E.Conrad@uscg.mil.*

Public Meeting

We plan to hold two public meetings to discuss the Draft PAC–PARS. The first event will be held on Tuesday, October 4th at 11:00 a.m. PST.

Please use the link below to register in advance for the October 4th event: *https://www.zoomgov.com/meeting/register/vJIsfuiqrjsvGeH7UpQC8jjrJUTR9VjyBlE.*

The second event will be held on Tuesday, October 11th at 11:00 a.m. PST.

Please use the link below to register in advance for the October 11th event: *https://www.zoomgov.com/meeting/register/vJIscu-trTIsHkwYjco9eFeVUeIqbGSHxB0.*

This notice is issued under authority of 46 U.S.C. 70003(c)(1).

Dated: September 27, 2022.

L. Hannah,

Captain, U.S. Coast Guard, Chief, Pacific Area Preparedness Division.

[FR Doc. 2022–21353 Filed 9–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0346]

Cooperative Research and Development Agreement—Evaluation of RADA's Air Surveillance Radar System

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a cooperative research and development agreement (CRADA) to evaluate track classification and discrimination technology and address its ability to perform for specific USCG needs supporting operations. The Coast Guard is currently considering partnering with RADA Technologies LLC and solicits public comment on the possible participation of other parties in the proposed CRADA, and the nature of that participation. The Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

DATES: Comments must reach the Coast Guard on or before November 2, 2022. Synopses of proposals regarding future CRADAs must also reach the Coast Guard on or before November 2, 2022.

ADDRESSES: Submit comments online at *http://www.regulations.gov* following website instructions. Submit synopses of proposals regarding future CRADAs to Mr. Robert Taylor at his address listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact Mr. Robert Taylor, Project Official, C5I Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2883, email *smb-rdc-c5i@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to publish responses to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2022–xxxx and should provide a reason for each

suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.* We do accept anonymous comments.

We encourage you to submit comments through the Federal Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

Do not submit detailed proposals for future CRADAs to *http://www.regulations.gov.* Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the Coast Guard's Research and Development Center (R&DC) will collaborate with one or more non-Federal participants. Together, the R&DC and the non-Federal participants will identify the capabilities, benefits, risks, and technical limitations of enhancing air surveillance radar systems.

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Provide end user input on operational needs and assessment of system performance;

(2) In conjunction with the non-Federal participant(s), assist in developing the evaluation test plan to be executed to meet the objectives of the CRADA;

(3) Provide qualified UAS operators for operation of UAS, as required under the CRADA;

(4) Provide the test range, test range support, facilities, and all approvals for operation of UAS as required under the CRADA;

(5) In conjunction with the non-Federal participant(s), assist with the development of a final report or brief that documents the methodologies, findings, conclusions, and recommendations under this CRADA.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide the air surveillance radar system and all other equipment required to conduct the evaluation as described in the test plan developed under this CRADA;

(2) Provide operators, as required, to operate and maintain the equipment to conduct the evaluation as described in the test plan;

(3) Provide shipment and delivery of all equipment for this evaluation;

(4) Provide personnel, travel, and other associated expenses as required;

(5) Collect and analyze evaluation test plan data; and

(6) Collaboratively develop a final report documenting the methodologies, findings, conclusions, and recommendations of this CRADA work.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, RADA Technologies LLC is being considered for participation in this CRADA because they have an air surveillance radar system solution in place for providing track classification and discrimination. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

The goal of this CRADA is to evaluate track classification and discrimination technology and address its ability to perform specific operations. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

This notice is issued under the authority of 5 U.S.C. 552(a) and 15 U.S.C. 3710(a).

Dated: September 22, 2022.

Daniel P. Keane,

Captain, Commanding Officer, U.S. Coast Guard Research and Development Center, USCG.

[FR Doc. 2022–21388 Filed 9–30–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2022–0011]

Agency Information Collection Activities: Nationwide Cyber Security Review (NCSR) Assessment

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; existing collection, 1670–0040

SUMMARY: CISA will submit the following renewal information for an existing collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until December 2, 2022.

ADDRESSES: You may submit comments, identified by docket number CISA–1670–0040, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and docket number CISA–2022–0011.

Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Nicewick at 703–203–0634 or at *CISA.CSD.JCDC_MS-ISAC@cisa.dhs.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: The Homeland Security Act of 2002, as amended, established ''a national cybersecurity and communications integration center [''the Center,'' now constituted as CSD] . . . to carry out certain responsibilities of the Under Secretary,'' including the provision of assessments. 6 U.S.C. 659(b). The Act also directs the composition of the Center to include an entity that collaborates with State and local governments on cybersecurity risks and incidents and has entered into a voluntary information sharing relationship with the Center. 6 U.S.C. 659(d)(1)(E). The Multistate Information Sharing and Analysis Center (MS–ISAC) currently fulfills this function. CSD funds the MS–ISAC through a Cooperative Agreement and maintains a close relationship with this entity. As part of the Cooperative Agreement, CISA directs the MS–ISAC to produce the NCSR as contemplated by Congress.

Generally, CSD has authority to perform risk and vulnerability assessments for Federal and non-Federal entities, with consent and upon request. CSD performs these assessments in accordance with its authority to provide voluntary technical assistance to Federal and non-Federal entities. See 6 U.S.C. 659(c)(6). This authority is consistent with the Department's responsibility to ''[c]onduct comprehensive assessments of the vulnerabilities of the Nation's critical infrastructure in coordination with the SSAs [Sector-Specific Agencies] and in collaboration with SLTT [State, Local, Tribal, and Territorial] entities and critical infrastructure owners and operators.'' Presidential Policy Directive (PPD)–21, at 3. A private sector entity or state and local government agency also has discretion to use a self-assessment tool offered by CSD or request CSD to perform an on-site risk and vulnerability assessment. See 6 U.S.C. 659(c)(6). The NCSR is a voluntary annual self-assessment.

In its reports to the Department of Homeland Security Appropriations Act, 2010, Congress requested a Nationwide Cyber Security Review (NCSR) from the National Cyber Security Division (NCSD), the predecessor organization of the Cybersecurity Division (CSD). S. Rep. No. 111–31, at 91 (2009), H.R. Rep. No. 111–298, at 96 (2009). The House Conference Report accompanying the Department of Homeland Security Appropriations Act, 2010 ''note[d] the importance of a comprehensive effort to assess the security level of cyberspace at all levels of government'' and directed DHS to ''develop the necessary tools for all levels of government to complete a cyber network security assessment so that a full measure of gaps and capabilities can be completed in the near future.'' H.R. Rep. No. 111–298, at 96 (2009). Concurrently, in its report accompanying the Department of Homeland Security Appropriations Bill, 2010, the Senate Committee on Appropriations recommended that DHS ''report on the status of cyber security measures in place, and gaps in all 50 States and the largest urban areas.'' S. Rep. No. 111–31, at 91 (2009).

Upon submission of the first NCSR report in March 2012, Congress further clarified its expectation ''that this survey will be updated every other year so that progress may be charted and further areas of concern may be identified.'' S. Rep. No. 112–169, at 100 (2012). In each subsequent year, Congress has referenced this NCSR in its explanatory comments and recommendations accompanying the Department of Homeland Security Appropriations. Consistent with Congressional mandates, CSD developed the NCSR to measure the gaps and capabilities of cybersecurity programs within SLTT governments. Using the anonymous results of the NCSR, CISA delivers a bi-annual summary report to Congress that provides a broad picture of the current cybersecurity gaps & capabilities of SLTT governments across the nation.

The assessment allows SLTT governments to manage cybersecurity related risks through the NIST Cybersecurity Framework (CSF) which consists of best practices, standards, and guidelines. In efforts of continuously providing Congress with an accurate representation of the SLTT gaps and capabilities the NCSR question set may slightly change from year-to-year.

The NCSR is an annual voluntary self-assessment that is hosted on LogicManager, which is a technology platform that provides a foundation for managing policies, controls, risks, assessments, and deficiencies across organizational lines of business. The NCSR self-assessment runs every year from October–February. In efforts to increase participation, the deadline is sometimes extended. The target audience for the NCSR are personnel within the SLTT community who are responsible for the cybersecurity management within their organization.

Through the NCSR, CISA and MS–ISAC will examine relationships, interactions, and processes governing IT management and the ability to effectively manage operational risk. Using the anonymous results of the NCSR, CISA delivers a biannual summary report to Congress that provides a broad picture of the cybersecurity gaps and capabilities of SLTT governments across the nation. The bi-annual summary report is shared with MS–ISAC members, NCSR End Users, and Congress. The report is also available on the MS–ISAC website, *https://www.cisecurity.org/ms-isac/services/ncsr/.*

Upon submission of the NCSR self-assessment, participants will immediately receive access to several reports specific to their organization and their cybersecurity posture. Additionally, after the annual NCSR survey closes, there will be a brief NCSR End User Survey offered to everyone who completed the NSCR assessment. The survey will provide feedback on participants' experiences, such as how they heard about the NCSR, what they found or did not find useful, how they will utilize the results of their assessment, and other information about their current and future interactions with the NCSR.

The NCSR assessment requires approximately two hours for completion and is located on the LogicManager Platform. During the assessment period, participants can respond at their own pace with the ability to save their progress during each session. If additional support is needed, participants can contact the NCSR helpdesk via phone and email.

The NCSR End User survey will be fully electronic. It contains less than 30 multiple choice and fill-in-the-blank answers and takes approximately 10

minutes to complete. The feedback survey will be administered via Survey Monkey and settings will be updated to opt out of collecting participants' IP addresses. There are no recordkeeping, capital, start-up, or maintenance costs associated with this information collection. There is no submission or filing fee associated with this collection. As all forms are completed via the LogicManager platform and SurveyMonkey, there are no associated collection, printing, or mailing costs. This is a renewal for an existing information collection not a new collection. OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Nationwide Cyber Security Review Assessment.

OMB Control Number: CISA–1670–0040.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial entities.

Number of Respondents for NCSR Assessment: 3,112.

Estimated Time per Respondent Respondents for NCSR Assessment: 2 hours.

Number of Respondents for NCSR End User Survey: 215.

Estimated Time per Respondent for NCSR End User Survey: 0.17 hours (10 minutes).

Total Burden Hours: 6,260.

Total Burden Cost (Capital/Startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (Operating/Maintaining): $0

Total Hourly Burden Cost: $389,427.

Robert Costello,

Chief Information Officer, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2022–21407 Filed 9–30–22; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request an Extension From OMB of One Current Public Collection of Information: Pipeline Corporate Security Review Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently-approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0056, abstracted below, that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). On July 29, 2022, OMB approved TSA's request for an emergency revision of this collection to address the ongoing cybersecurity threat to pipeline systems and associated infrastructure. TSA is now seeking to renew the collection, which expires on January 31, 2023, with incorporation of the subject of the emergency revision. The ICR describes the nature of the information collection and its expected burden. The collection allows TSA to assess the current security practices in the pipeline industry through TSA's Pipeline Corporate Security Review (PCSR) program and allows for the continued institution of mandatory cybersecurity requirements under the TSA Security Directive (SD) Pipeline 2021–02 series. The PCSR program is part of the larger domain awareness, prevention, and protection program supporting TSA's and the Department of Homeland Security's missions. The updated ICR reflects changes to collection requirements based on TSA's update to the TSA SD 2021–02 series, released on July 21, 2022.

DATES: Send your comments by December 2, 2022.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0056; Pipeline Corporate Security Review (PCSR) Program. Under the Aviation and Transportation Security Act [1] and delegated authority from the Secretary of Homeland Security, TSA has broad responsibility and authority for ''security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of Transportation.'' [2] TSA is specifically empowered to assess threats to transportation; [3] develop policies, strategies, and plans for dealing with

[1] Public Law 107–71 (115 Stat. 597; Nov. 19, 2001), codified at 49 U.S.C. 114.

[2] *See* 49 U.S.C. 114(d). The TSA Administrator's current authorities under the Aviation and Transportation Security Act have been delegated to him by the Secretary of Homeland Security. Section 403(2) of the Homeland Security Act (HSA) of 2002, Public Law 107–296 (116 Stat. 2135, Nov. 25, 2002), transferred all functions of TSA, including those of the Secretary of Transportation and the Under Secretary of Transportation of Security related to TSA, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator of TSA, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to TSA, including that in section 403(2) of the HSA.

[3] 49 U.S.C. 114(f)(2).

threats to transportation;[4] oversee the implementation and adequacy of security measures at transportation facilities;[5] and carry out other appropriate duties relating to transportation security.[6] The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) included a specific requirement for TSA to conduct assessments of critical pipeline facilities.[7]

Pursuant to its authority, TSA may, at the discretion of the Administrator, assist another Federal agency, such as the Cybersecurity and Infrastructure Security Agency, in carrying out its authority in order to address a threat to transportation.[8] As noted above, TSA issued the SD Pipeline 2021–02 series in order to protect transportation security and critical infrastructure. *See* 49 U.S.C. 114(*l*)(2).

Consistent with these authorities and requirements, TSA developed the PCSR program to assess the current security practices in the pipeline industry, with a focus on the physical and cyber security of pipelines and the crude oil and petroleum products, such as gasoline, diesel, jet fuel, home heating oil, and natural gas, moving through the system infrastructure. In addition, TSA issued SD 2021–02 in July 2021 and revised the information collection requirements based on the mandatory requirements in SD 2021–02. This ICR was approved by OMB on July 15, 2021. *See* ICR Reference Number: 202107–1652–002.

Establishing Compliance With Voluntary Pipeline Corporate Security Review (PCSR) Program Information Collection Requirements

PCSRs are voluntary, face-to-face visits, usually at the headquarters facility of the pipeline Owner/Operator. TSA has developed a Question Set to aid in the conducting of PCSRs. The PCSR Question Set structures the TSA-Owner/Operator discussion and is the central data source for the security information TSA collects. TSA developed the PCSR Question Set based on input from government and industry stakeholders on how best to obtain relevant information from a pipeline Owner/Operator about its security plan and processes.

This PCSR information collection provides TSA with real-time information on a company's security posture. The relationships these face-to-face contacts foster are critical to the Federal government's ability to reach out to the pipeline stakeholders affected by the PCSRs. In addition, TSA follows up via email with Owner/Operators on specific recommendations made by TSA during the PCSR.

While the PCSR collection supports security plans and processes, TSA has issued the SDs with mandatory requirements in order to mitigate specific security concerns posed by current threats to national security.

Establishing Compliance With Mandatory TSA Security Directive 2021–02 Information Collection Requirements (Emergency Revision)

On July 15, 2021, OMB approved TSA's requests for an emergency revision of this information collection, allowing for the institution of mandatory requirements issued within TSA's SD 2021–02, on July 19, 2021. *See* ICR Reference Number: 202107–1652–002. SD 2021–02 mandated regulated entities to (1) implement critically important mitigation measures to reduce the risk of compromise from a cyberattack; (2) develop and maintain an up-to-date Cybersecurity Contingency/Response Plan; and (3) test the effectiveness of the operator's cybersecurity practices through an annual cybersecurity architecture design review. In the renewal process of the ICR, TSA published two **Federal Register** notices on August 27, 2021 and November 15, 2021, respectively, requesting public comment on the information collection requirements for SD 2021–02. Subsequently, on July 26, 2022, OMB approved TSA's request to extend the information collection. *See* ICR Reference Number: 202111–1652–001.

On July 21, 2022, TSA issued SD 2021–02C, amending the SD 2021–02 series. This revision was necessary to address the ongoing cybersecurity threat to pipeline systems and associated infrastructure. SD 2021–02C provides Owner/Operators with more flexibility to meet the intended security outcomes while ensuring sustainment of the cybersecurity enhancements accomplished through this SD series.

Overall, SD 2021–02C changed the cybersecurity requirements from a prescriptive approach to a security outcome approach. SD 2021–02C also changed the scope of requirements to Critical Cyber Systems, as defined in the SD, and changed cybersecurity assessment requirements. There was no change to the applicability of the SD to Owner/Operators of hazardous liquid and natural gas pipelines or a liquefied natural gas facility notified by TSA that their pipeline system or facility is critical.

On July 29, 2022, OMB approved TSA's request for the emergency revision of this information collection, allowing for the institution of mandatory requirements issued within TSA SD 2021–02C. *See* ICR Reference Number: 202207–1652–001.

SD 2021–02C requires identified Owner/Operators to meet three requirements:

1. Establish and implement a TSA-approved Cybersecurity Implementation Plan that describes the specific cybersecurity measures employed and the schedule for achieving the outcomes described in the SD; and provide to TSA upon request.

2. Develop and maintain a record of an up-to-date Cybersecurity Incident Response Plan to reduce the risk of operational disruption, or the risk of other significant impacts on necessary capacity, as defined in this SD, should the Information and/or Operational Technology systems of a gas or liquid pipeline be affected by a cybersecurity incident; and provide to TSA upon request.

3. Establish a Cybersecurity Assessment Program and submit an annual plan that describes how the Owner/Operator will proactively and regularly assess the effectiveness of cybersecurity measures and identify and resolve device, network, and/or system vulnerabilities; and provide to TSA upon request.

The following is a summary of the information collection requirements:

1. Voluntary PCSR information collection requirements: Owner/Operators complete PCSR Question Set and follow-up requests.

2. Mandatory TSA SD information collection requirements:

a. Owner/Operators must submit a Cybersecurity Implementation Plan to TSA for approval, no later than October 25, 2022 (90 days after the effective date of the SD). Once approved by TSA, the Owner/Operator must implement and maintain all measures in the TSA-approved Cybersecurity Implementation Plan within the schedule as stipulated in the plan.

b. Consistent with the previous requirement in the SD 2021–02 series, Owner/Operators must have an up-to-date Cybersecurity Incident Response Plan. Owner/Operators must submit this Plan to TSA, upon request.

c. The Owner/Operator must submit an annual plan for their Cybersecurity Assessment Program to TSA, no later than 60 days after TSA's approval of the

[4] 49 U.S.C. 114(f)(3).

[5] 49 U.S.C. 114(f)(11).

[6] 49 U.S.C. 114(f)(15).

[7] *See* section 1557 of Public Law 110–53 (121 Stat. 266; Aug. 3, 2007) as codified at 6 U.S.C. 1207.

[8] *Id.* § 114(m), granting the TSA Administrator the same authority as the FAA Administrator under 49 U.S.C. 106(m).

Owner/Operator's Cybersecurity Implementation Plan. The plan must describe the Cybersecurity Assessment Program required by the SD, including the schedule for specific actions.

d. Owner/Operators must make records to establish compliance with SD 2021–02C available to TSA upon request for inspection and/or copying.

Submissions by pipeline Owner/Operators in compliance with the voluntary PCSR or the mandatory SD 2021–02C requirements are deemed Sensitive Security Information (SSI) and are protected in accordance with procedures meeting the transmission, handling, and storage requirements of SSI set forth in part 1520 of title 49, Code of Federal Regulations.

Annual Burden Discussion

For the voluntary PCSR program, the annual hour burden is estimated to be 220 hours based upon 20 PCSR visits per year, each lasting a total of eight hours, and the follow-up regarding security recommendations, lasting up to three hours ((20 × 8 = 160 hours) + (20 × 3 = 60 hours) = 220 hours).

For the mandatory information collections required by SD 2021–02C, TSA estimates a total of 100 Owner/Operators will provide TSA with their Cybersecurity Implementation Plan, their annual plan for their Cybersecurity Assessment Program and, upon request, documentation to establish compliance to include their Cybersecurity Incident Response Plans.

TSA estimates 100 entities will develop a Cybersecurity Implementation Plan, and the plan will be developed by a team consisting of a cybersecurity manager and four cybersecurity analysts/specialists. TSA assumes the team will spend two weeks developing the implementation plan; therefore, the time burden for this task will be 40,000 hours (5 individuals × 40 hours × 2 weeks.)

TSA estimates 100 entities will establish and update their Cybersecurity Incident Response Plans annually, and the time burden to produce this update is 80 hours (total—8,000 hours).[9]

TSA estimates 100 entities will submit an annual plan for their Cybersecurity Assessment Program, and the time burden for submitting an annual audit plan to TSA is 40 hours (total—4,000 hours).

TSA estimates 100 entities will develop compliance documentation and the time burden for this requirement is 80 hours (total 8,000 hours).

TSA estimates the total annual burden hours for the mandatory collection to be 20,220 hours (PCSR–220, Cybersecurity Incident Response Plan-8,000, Annual Plan for Cybersecurity Assessment-4,000, Compliance Documentation-8,000). In addition, the one-time burden for the development and submission to TSA of the Owner/Operator's Cybersecurity Implementation Plan is 40,000 hours.

TSA is seeking renewal of this information collection for the maximum three-year approval period.

Dated: September 28, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–21400 Filed 9–30–22; 8:45 am]

BILLING CODE 9110–05–P

[9] There is no requirement for Owner/Operators to submit Cybersecurity Incident Response Plans unless requested by TSA. In February 2022, under the provisions of the SD 2021–02 series and at TSA's request, pipeline Owner/Operators provided their Cybersecurity Incident Response Plan to TSA.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000 L1320000 PP0000 223]

Notice of Intent To Amend the Resource Management Plans for the Buffalo Field Office, Wyoming, and Miles City Field Office, Montana, and Prepare Associated Supplemental Environmental Impact Statements

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Wyoming and Montana/Dakotas State Directors each intend to prepare Resource Management Plan (RMP) amendments with associated Supplemental Environmental Impact Statements (EIS) for the Supplemental EIS and Potential RMP for the Buffalo Approved RMP and the Supplemental EIS and Potential RMP Amendment for the Miles City Approved RMP and by this notice are announcing the beginning of the scoping periods to solicit public comments and identify issues, and are providing the planning criteria for public review.

DATES: The BLM requests the public submit comments concerning the scope of these analyses, potential alternatives, and identification of relevant information and studies by November 2, 2022. To afford the BLM the opportunity to consider issues raised by commenters in the Draft RMP amendments/Supplemental EISs, please ensure your comments are received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The Buffalo Field Office will host a public meeting at the Campbell County Public Library, 2101 S 4J Road, Gillette, WY, from 5 p.m. to 7 p.m. on October 17, 2022. The Miles City Field Office will host a public meeting at the Miles City Field Office, 111 Garryowen Road, Miles City, Montana, from 5 p.m. to 7 p.m. on Oct 18, 2022.

ADDRESSES: You may submit comments on issues and planning criteria related to the Buffalo Field Office RMP amendment/Supplemental EIS by any of the following methods:

- Website: *https://eplanning.blm.gov/eplanning-ui/project/2021239/510.*
- *Mail:* Buffalo RMP Amendment/Supplemental EIS, Attn: Thomas Bills, Project Manager, BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2021239/510* and at the Buffalo Field Office.

You may submit comments on issues and planning criteria related to the Miles City Field Office RMP Amendment/Supplemental EIS by any of the following methods:

- *Website: https://eplanning.blm.gov* (*search for DOI–BLM–MT–2022–0086–RMP–EIS*).
- *Mail:* Miles City RMP Amendment/Supplemental EIS, Attn: Irma Nansel, Project Manager, BLM Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov* (search for *DOI–BLM–MT–2022–0086–RMP–EIS*) and at the Miles City Field Office.

FOR FURTHER INFORMATION CONTACT: The Buffalo Field Office RMP amendment/Supplemental EIS contact is Thomas Bills, Project Manager, telephone 307–684–1131; address BLM Buffalo Field Office, 1425 Fort Street Buffalo, WY 82834; email *tbills@blm.gov.* Contact Mr. Bills to have your name added to the Buffalo RMP amendment/Supplemental EIS mailing list.

The Miles City Field Office RMP amendment/Supplemental EIS contact is Irma Nansel, Project Manager, telephone (406) 233–3653; address BLM Miles City Field Office, 111 Garryowen Road, Miles City, MT, 59301; email *inansel@blm.gov.* Contact Ms. Nansel to have your name added to the Miles City

RMP amendment/Supplemental EIS mailing list.

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 for contacting Mr. Bills or Ms. Nansel. 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: This document provides notice that the BLM Wyoming and Montana/Dakotas State Directors intend to each prepare an RMP amendment with associated Supplemental EIS for the Buffalo and Miles City Field Offices, respectively, announces the beginning of the scoping processes, and seeks public input on issues and planning criteria. These RMP amendments are in response to a United States District Court of Montana order (*Western Organization of Resource Councils, et al.* v. *BLM;* 4:20–cv–00076–GF–BMM 8/3/2022) that, related to this effort, ordered BLM to complete new coal screening and remedial NEPA analysis to address the following: (1) considering no leasing and limited coal leasing alternatives, and (2) disclosing the public health impacts, both climate and non-climate, of burning fossil fuels (coal, oil, and gas) from the planning areas.

The Buffalo RMP amendment planning area is located in Campbell, Johnson, and Sheridan Counties, Wyoming, and encompasses approximately 780,000 surface acres of public land and 4.8 million acres of Federal mineral estate.

The Miles City RMP amendment planning area is located in Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Wibaux and portions of Big Horn and Valley Counties, Montana, and encompasses approximately 2.7 million surface acres and 11.7 million acres of Federal mineral estate.

The scope of this land use planning process does not include addressing the evaluation or designation of areas of critical environmental concern (ACEC) and the BLM is not considering ACEC nominations as part of this process.

Purpose and Need

The purpose of these RMP Amendments/Supplemental EISs is to provide additional analysis for land use planning that address the following:

(1) Complete new coal screening and analysis that considers a no leasing and limited coal leasing alternatives; and

(2) Disclose the public health impacts, both climate and non-climate, of burning fossil fuels (coal, oil, and gas) from the planning areas.

Preliminary Alternatives

Each of the RMP amendments/Supplemental EISs will include at least three alternatives varying the amount of BLM-administered Federal coal authorized to be available for leasing. The preliminary alternatives are: (1) the BLM-administered Federal coal within the Coal Development Potential Areas established in the 2019 RMP amendments/Supplemental EISs would be available for further consideration of leasing (No Action); (2) the Coal Development Potential Areas would be unavailable for leasing (no leasing alternative); and (3) a reduced level of coal leasing within the Coal Development Potential Areas. The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives for either RMP amendment/Supplemental EIS.

Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. Preliminary issues for the planning areas have been identified by BLM personnel and from early engagement conducted for these planning efforts with Federal, State, and local agencies; Tribes; and other stakeholders.

The BLM has identified the court ordered preliminary issues and analytical frameworks for these planning efforts' analyses. The BLM has identified the available coal resource data as part of these framework. The BLM requests that industry; State, Tribal, and local governments; and the public interested in coal management in the planning areas provide the BLM relevant coal resource data that can help inform these projects. Specifically, the BLM requests information on the development potential (*e.g.,* location, quality, and quantity) of the BLM-administered coal mineral estate, and on surface resource values related to multiple use conflicts and the suitability of the planning area for coal development. We will use this information to complete the RMP Amendments/Supplemental EISs consistent with 43 CFR 3420.1–4, and to formulate alternatives that identify areas acceptable for further leasing consideration. We are requesting these data to ensure that these planning efforts have sufficient information and data to consider a reasonable range of resource uses, management options, and alternatives for managing BLM-administered Federal coal mineral estate. Proprietary data marked as confidential may be submitted in response to this call for coal and other resource information. Please submit all proprietary information to the appropriate Field Manager at their address listed earlier. The BLM will treat submissions marked as ''Confidential'' in accordance with the laws and regulations governing the confidentiality of such information.

The planning criteria are available for public review and comment at the ePlanning website (see **ADDRESSES**) for each RMP Amendment/Supplemental EIS.

Summary of Expected Impacts

In each RMP Amendment/Supplemental EIS, the BLM will disclose the impacts of no-coal leasing and limited-coal leasing alternatives and will also disclose the public health impacts, both climate and non-climate, of burning fossil fuels from the Field Office planning area, including both greenhouse and non-greenhouse gas emissions.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including 90-day comment periods on the Draft RMP Amendments/Supplemental EISs and concurrent 30-day public protest periods and 60-day Governor's consistency reviews on the Proposed RMP Amendments/Supplemental EISs. The Draft RMP Amendments/Supplemental EISs are anticipated to be available for public review Winter 2022–2023 and the Proposed RMP Amendments/Final EISs are anticipated to be available for public protest of the Proposed RMP Amendment Summer 2023 with Approved RMP Amendments and Record of Decisions in Fall 2023.

Public Scoping Process

This notice of intent initiates the scoping periods and public reviews of the planning criteria, which guide the development and analysis of the Draft RMP Amendments/Supplemental EISs.

The BLM will be holding scoping meetings (see **DATES** and **ADDRESSES** sections earlier). The date(s) and location(s) of any additional scoping meetings will be announced at least 15 days in advance through local media,

newspapers, the ePlanning project pages, and BLM social media.

Cooperating Agencies

Potential Cooperating Agencies identified by the BLM for the Buffalo Field Office RMP Amendment/Supplemental EIS include: the Wyoming Office of the Governor; Wyoming Department of Environmental Quality; Wyoming Department of Game and Fish; Campbell County, Wyoming; Johnson County, Wyoming; U.S. Environmental Protection Agency (EPA) Region 8; U.S. Department of the Interior (DOI) Office of Surface Mining, Reclamation and Enforcement (OSMRE); and the U.S. DOI Fish and Wildlife Service (USFWS).

Potential Cooperating Agencies identified by the BLM for the Miles City Field Office RMP Amendment/Supplemental EIS include: the Montana Office of the Governor; Montana Department of Environmental Quality; Montana Department of Natural Resources and Conservation; Montana Fish, Wildlife and Parks; Big Horn County, Montana; Rosebud County, Montana; EPA Region 8; OSMRE; and USFWS.

Responsible Officials

The Wyoming State Director is the deciding official for the Buffalo planning effort, and the Montana/Dakotas State Director is the deciding official for the Miles City planning effort.

Nature of Decision To Be Made

The nature of the decisions to be made will be the State Directors' selection of land use planning decisions pursuant to these RMP amendments for managing BLM-administered lands under the principles of multiple use and sustained yield in a manner that best addresses the purpose and need.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the plan amendments in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in these planning efforts: air resources, planning, rangeland management, minerals and geology, outdoor recreation, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, and economics.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed plan amendments and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan amendments or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation, and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA and land use planning processes for these planning efforts to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the areas potentially affected by the proposed plan amendments will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will coordinate and consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. The BLM intends to hold a series of government-to-government consultation meetings, and will send invites to potentially affected Tribal Nations prior to the meetings. The BLM will provide additional opportunities for government-to-government consultation during the NEPA processes. Federal, State, and local agencies, along with Indian Tribal Nations and other stakeholders that may be interested in or affected by the proposed Buffalo and Miles City RMP amendments that the BLM is evaluating, are invited to participate in the scoping processes and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analyses as a cooperating agency.

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: 40 CFR 1501.7 and 43 CFR 1610.2)

Andrew Archuleta,

Wyoming State Director.

Theresa M. Hanley,

Montana/Dakotas Associate State Director.

[FR Doc. 2022–21413 Filed 9–30–22; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 221S180110; S2D2S SS08011000 SX064A000 22XS501520; OMB Control Number 1029–0030]

Agency Information Collection Activities; State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 2, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0030 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. 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. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 21, 2022 (87 FR 36880). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This part implements the requirement of section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.,* which provides authority for citizens to petition States to designate lands unsuitable for surface coal mining operations, or to terminate such designation. The regulatory authority uses the information to identify, locate, compare and evaluate the area requested to be designated as unsuitable, or terminate the designation, for surface coal mining operations.

Title of Collection: State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations.

OMB Control Number: 1029–0030.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments and individuals.

Total Estimated Number of Annual Respondents: 2.

Total Estimated Number of Annual Responses: 5.

Estimated Completion Time per Response: Varies 600 hour to 1,900 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 2,500.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $120.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2022–21410 Filed 9–30–22; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–847 and 849 (Fourth Review)]

Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Japan and Romania; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on carbon and alloy seamless standard, line, and pressure pipe from Japan and Romania would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted October 3, 2022. To be assured of consideration, the deadline for responses is November 2, 2022. Comments on the adequacy of responses may be filed with the Commission by December 14, 2022.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 26, 2000, the Department of Commerce (''Commerce'') issued antidumping duty orders on the imports of small and large diameter carbon and alloy seamless standard, line, and pressure pipe from Japan (65 FR 39360). On August 10, 2000, Commerce issued an antidumping duty order on the imports of large diameter carbon and alloy seamless standard, line, and pressure pipe from Romania (65 FR 48963). Commerce issued a continuation of the antidumping duty orders on certain carbon and alloy seamless standard, line, and pressure pipe from Japan and Romania following Commerce's and the Commission's first five-year reviews, effective May 8, 2006 (71 FR 26746), second five-year reviews, effective October 11, 2011 (76 FR 62762), and third five-year reviews, effective November 13, 2017 (82 FR 52275). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended

(19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are Japan and Romania.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission found two *Domestic Like Products* corresponding to the two scopes of the investigations: Small diameter carbon and alloy seamless standard, line, and pressure pipe and large diameter carbon and alloy seamless standard, line, and pressure pipe. Certain Commissioners defined the *Domestic Like Product* differently in the original determinations. In its full third five-year review determinations, the Commission found a single *Domestic Like Product* consisting of all seamless SLP pipe no greater than 16 inches outside diameter.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission found two *Domestic Industries:* A small diameter carbon and alloy seamless standard, line, and pressure pipe industry and a large diameter carbon and alloy seamless standard, line, and pressure pipe industry, encompassing all domestic producers of those products, respectively. Certain Commissioners defined the *Domestic Industry* differently in the original determinations. In its full third five-year review determinations, the Commission defined a single *Domestic Industry* consisting of all domestic producers of carbon and alloy seamless standard, line, and pressure pipe with an outside diameter not exceeding 16 inches.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 14, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the

Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–542, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: Please provide the requested information separately for each *Domestic Like Product,* as defined by the Commission in its previous determinations, and for each of the products identified by Commerce as *Subject Merchandise.* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/carbon_and_alloy_seamless_standard_line_and/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently

completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 26, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–21226 Filed 9–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683 (Fifth Review)]

Fresh Garlic from China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted October 3, 2022. To be assured of consideration, the deadline for responses is November 2, 2022. Comments on the adequacy of responses may be filed with the Commission by December 14, 2022.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 16, 1994, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of fresh garlic from China (59 FR 59209). Commerce issued a continuation of the antidumping duty orders on fresh garlic from China following Commerce's and the Commission's first five-year reviews, effective March 13, 2001 (66 FR 14544), second five-year reviews, effective October 19, 2006 (71 FR 61708), third five-year reviews, effective April 30, 2012 (77 FR 28355, May 14, 2012), and fourth five-year reviews, effective November 6, 2017 (82 FR 51394). The Commission is now conducting a fifth review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to

determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission found three separate *Domestic Like Products* consisting of fresh garlic, dehydrated garlic, and seed garlic corresponding with the broader scope of the original investigation. However, the Commission found that the domestic industries producing garlic for dehydration and seed garlic were neither materially injured nor threatened with material injury by reason of the subject imports from China. One Commissioner defined the *Domestic Like Product* differently in the original determination. Consistent with its *Domestic Like Product* definition in the original investigation, the Commission found in its full first five-year review determination and its expedited second, third, and fourth five-year review determinations a single *Domestic Like Product* consisting of all fresh garlic, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found three *Domestic Industries* consisting of the domestic producers of fresh garlic, the domestic producers of dehydrated garlic, and the domestic producers of seed garlic to coincide with the three *Domestic Like Products.* The Commission also found that crop tenders were not members of the *Domestic Industry.* One Commissioner defined the *Domestic Industry* differently in the original determination. In its full first five-year review determination, consistent with Commerce's narrower scope and the Commission's *Domestic Like Product* definition of a single *Domestic Like Product* consisting of all fresh garlic, the Commission found a single *Domestic Industry* consisting of all producers of fresh garlic. In its expedited second, third, and fourth five-year review determinations, the Commission again found a single *Domestic Industry* consisting of all domestic producers of fresh garlic.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 14, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also,

in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–543, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/fresh_garlic_china/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after crop year 2016 (June 2015-May 2016).

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during crop year 2022 (June 2021-May 2022), except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during crop year 2022 (June 2021-May 2022) (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during crop year 2022 (June 2021-May 2022) (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after crop year 2016 (June 2015-May 2016), and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 26, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–21227 Filed 9–30–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1186–1187 (Second Review)]

Stilbenic Optical Brightening Agents From China and Taiwan; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on stilbenic optical brightening agents from China and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted October 3, 2022. To be assured of consideration, the deadline for responses is November 2, 2022. Comments on the adequacy of responses may be filed with the Commission by December 14, 2022.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On May 10, 2012, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of certain stilbenic optical brightening agents from China and Taiwan (77 FR 27419 and 27423). Following the first five-year reviews by Commerce and the Commission, effective November 27, 2017, Commerce issued a continuation of the antidumping duty orders on imports of certain stilbenic optical brightening agents from China and Taiwan (82 FR 55990). The Commission is now conducting second five-year reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its expedited first

five-year review determinations, the Commission found a single *Domestic Like Product* consisting of all forms, states, concentrations, and compositions of stilbenic optical brightening agent products co-extensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to consist of all U.S. producers of the *Domestic Like Product,* namely Clariant Corporation, BASF Corporation, and 3V Incorporated. In its expedited five-year review determinations, the Commission again defined the *Domestic Industry* as consisting of all U.S. producers of certain stilbenic optical brightening agents coextensive with Commerce's scope.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 2, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 14, 2022. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–544, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the

Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/stilbenic_optical_brightening_agents_china_and/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for

downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2016, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 26, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–21229 Filed 9–30–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the National Crime Prevention and Privacy Compact Council (Council) created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact).

DATES: The Council will meet in open session from 8:30 a.m. (EDT) until 5:00 p.m. (EDT) on November 2, 2022.

ADDRESSES: The meeting will take place at the Sheraton Atlanta Hotel, 165 Courtland Street NE, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Chasity S. Anderson, FBI Compact Officer, Biometric Technology Center, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, telephone 304–625–2803.

SUPPLEMENTARY INFORMATION: Thus far, the Federal Government and 34 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, immigration and naturalization matters, and similar noncriminal justice purposes. The Compact provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from state, local, and federal agencies to serve on the Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system for noncriminal justice purposes.

Matters for discussion are expected to include:

(1) Recommendations from the National Fingerprint File Qualifications Requirements Focus Group
(2) Modernization of the *CJIS Security Policy*
(3) Council's Strategic Plan

The meeting will be conducted with a blended participation option. The meeting will be open to the public on a first-come, first-serve basis with limited seating due to COVID–19 safety protocols. Virtual options for participation will be made available to individuals unable to attend in-person.

To register for the meeting, individuals must provide their full name, city, state, agency/company name, phone, and email address to *agmu@leo.gov* no later than October 14, 2022. Individuals registering to participate in the meeting must indicate preference to attend the meeting in-person or virtually. Logistical information regarding participation will be provided prior to the meeting to all registered individuals.

Any member of the public wishing to file a written statement with the Council or wishing to address this session of the Council should notify the FBI Compact Officer, Ms. Chasity S. Anderson at *compactoffice@fbi.gov,* at least 7 days prior to the start of the session. The notification should contain the individual's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed and the time needed for the presentation. Individuals will ordinarily be allowed up to 15 minutes to present a topic. The Compact Officer will compile all requests and submit to the Compact Council for consideration.

Individuals requiring special accommodations should contact Ms. Anderson at *compactoffice@fbi.gov* by no later than October 18, 2022. Please note all personal registration information may be made publicly available through a Freedom of Information Act request.

Chasity S. Anderson,

FBI Compact Officer, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 2022–21402 Filed 9–30–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of two virtual meetings in October 2022.

SUMMARY: Notice is hereby given that the Workforce Information Advisory Council (WIAC or Advisory Council) will meet for two days, virtually. Information for public attendance at the virtual meetings will be posted at *www.dol.gov/agencies/eta/wioa/wiac/meetings* several days prior to each meeting date. The meetings will be open to the public.

DATES: The meetings will take place October 25, 2022 and October 27, 2022.

Each meeting will begin at 1:00 p.m. EST and conclude at approximately 3:00 p.m. EST. Public statements and requests for special accommodations or to address the Advisory Council must be received by October 21, 2022.

ADDRESSES: Information for public attendance at the virtual meetings will be posted at *www.dol.gov/agencies/eta/wioa/wiac/meetings* several days prior to each meeting date. If problems arise accessing the meetings, please contact Donald Haughton, Unit Chief in the Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, at 202–693–2784.

FOR FURTHER INFORMATION CONTACT: Steven Rietzke, Chief, Division of National Programs, Tools, and Technical Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–4510, 200 Constitution Ave. NW, Washington, DC 20210; Telephone: 202–693–3912; Email: *WIAC@dol.gov.* Mr. Rietzke is the WIAC Designated Federal Officer.

SUPPLEMENTARY INFORMATION:

Background: These meetings are being held pursuant to Sec. 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA) (Pub. L. 113–128), which amends Sec. 15 of the Wagner-Peyser Act of 1933 (29 U.S.C. 491–2). The WIAC is an important component of WIOA. The WIAC is a federal advisory committee of workforce and labor market information experts representing a broad range of national, State, and local data and information users and producers. The WIAC was established in accordance with provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.) and will act in accordance with the applicable provisions of FACA and its implementing regulation at 41 CFR 102–3. The purpose of the WIAC is to provide recommendations to the Secretary of Labor (Secretary), working jointly through the Assistant Secretary for Employment and Training and the Commissioner of Labor Statistics, to address: (1) the evaluation and improvement of the nationwide workforce and labor market information (WLMI) system and statewide systems that comprise the nationwide system; and (2) how the Department and the States will cooperate in the management of those systems. These systems include programs to produce employment-related statistics and State and local workforce and labor market information.

The Department of Labor anticipates the WIAC will accomplish its objectives by: (1) studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development. Additional information is available at *www.dol.gov/agencies/eta/wioa/wiac/meetings.*

Purpose: The WIAC is currently in the process of identifying and reviewing issues and aspects of the WLMI system and statewide systems that comprise the nationwide system and how the Department and the States will cooperate in the management of those systems. As part of this process, the Advisory Council meets to gather information and to engage in deliberative and planning activities to facilitate the development and provision of its recommendations to the Secretary in a timely manner.

Agenda: The agenda topics for the October 25, 2022 meeting are: (1) review minutes from the previous meeting, (2) review and discuss the sub-committee work on industrial policy, (3) review and discuss the sub-committee work on post-pandemic effects on the labor market, (4) develop a set of recommendations regarding the sub-committee discussions, (5) comment period for the general public, and (6) other business as needed. The agenda topics for the October 27, 2022, meeting are: (1) review minutes from the previous meeting, (2) review and discuss the sub-committee work on worker experiences and skills, (3) develop a set of recommendations regarding the sub-committee discussion, (4) comment period for the general public, and (5) other business as needed. A detailed agenda will be available at *www.dol.gov/agencies/eta/wioa/wiac/meetings* shortly before the meetings commence.

The Advisory Council will open the floor for public comment at approximately 2:00 p.m. EST on for both meeting dates, for approximately 10 minutes. However, that time may change at the WIAC chair's discretion.

Attending the meetings: Members of the public who require reasonable accommodations to attend any of the meetings may submit requests for accommodations via email to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''October 2022 WIAC Meeting Accommodations'' by the date indicated in the **DATES** section. Please include a specific description of the accommodations requested and phone number or email address where you may be contacted if additional information is needed to meet your request.

Public statements: Organizations or members of the public wishing to submit written statements may do so by mailing them to the person and address indicated in the **FOR FURTHER INFORMATION CONTACT** section by the date indicated in the **DATES** section or transmitting them as email attachments in PDF format to the email address indicated in the **FOR FURTHER INFORMATION CONTACT** section with the subject line ''October 2022 WIAC Meeting Public Statements'' by the date indicated in the **DATES** section. Submitters may include their name and contact information in a cover letter for mailed statements or in the body of the email for statements transmitted electronically. Relevant statements received before the date indicated in the **DATES** section will be included in the record of each meeting. No deletions, modifications, or redactions will be made to statements received, as they are public records. Please do not include personally identifiable information in your public statement.

Requests to Address the Advisory Council: Members of the public or representatives of organizations wishing to address the Advisory Council should forward their requests to the contact indicated in the **FOR FURTHER INFORMATION CONTACT** section, or contact the same by phone, by the date indicated in the **DATES** section. Oral presentations will be limited to 10 minutes, time permitting, and shall proceed at the discretion of the Advisory Council chair. Individuals with disabilities, or others who need special accommodations, should indicate their needs along with their request.

Brent Parton,

Acting Assistant Secretary for Employment and Training Administration.

[FR Doc. 2022–21347 Filed 9–30–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

AGENCY: Office of Workers' Compensation Programs, Labor Department.

ACTION: Notice of revision of listing of covered Department of Energy facilities.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is publishing a list of Department of Energy (DOE) facilities covered under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA).

DATES: This notice revises and republishes the listing of DOE facilities that was last published by OWCP on November 5, 2018 (83 FR 55401) to include additional determinations made on this subject through October 3, 2022.

ADDRESSES: OWCP welcomes comments regarding this list. Individuals who wish to suggest changes to this list may provide information to OWCP at the following address:

U.S. Department of Labor, Office of Workers' Compensation Programs, Division of Energy Employees Occupational Illness Compensation, Room C–3510, 200 Constitution Avenue, NW, Washington, DC 20210. You may also suggest changes to this list by e- mail at *DEEOIC-Public@dol.gov*. You should include ''DOE facilities list'' in the subject line of any email containing comments on this list.

FOR FURTHER INFORMATION CONTACT: Rachel D. Pond, Director, Division of Energy Employees Occupational Illness Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–3510, 200 Constitution Avenue NW, Washington, DC 20210. Telephone: 202–693–0081 (this is not a toll- free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), was originally enacted on October 30, 2000, and the primary responsibility for administering EEOICPA was assigned to the Department of Labor (DOL) by Executive Order 13179 (65 FR 77487). In section 2(c)(vii) of that Executive Order, DOE was directed to publish a list in the **Federal Register** of Atomic

Weapons Employer (AWE) facilities, DOE facilities, and facilities owned and operated by a Beryllium Vendor (as those terms are defined in sections 7384l(5), 7384l(12) and 7384l(6) of EEOICPA, respectively). Pursuant to this direction, DOE published a list of these three types of facilities covered under EEOICPA on January 17, 2001 (66 FR 4003), and subsequently revised and republished the entire list on June 11, 2001 (66 FR 31218), December 27, 2002 (67 FR 79068), July 21, 2003 (68 FR 43095) and August 23,

2004 (69 FR 51825). In subsequent notices published on November 30, 2005 (70 FR

71815), June 28, 2007 (72 FR 35448), April 9, 2009 (74 FR 16191), August 3, 2010 (75

FR 45608), May 26, 2011 (76 FR 30695), February 6, 2012 (77 FR 5781), February 11,

2013 (78 FR 9678), July 16, 2015 (80 FR 42094), February 17, 2016 (81 FR 8060) and

August 3, 2022 (87 FR 47399), DOE further revised the August 23, 2004 list by removing a total of 24 AWE facilities, and formally designating one additional AWE facility, without republishing the list in its entirety.

Following the amendments to EEOICPA that were enacted as subtitle E of Title XXXI of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, 118 Stat. 1811, 2178 (October 28, 2004), OWCP promulgated final regulations governing its expanded responsibilities under EEOICPA on December 29, 2006 (71 FR 78520) and amended those final regulations on February 8, 2019 (84 FR 3026). One of those regulations, 20 CFR 30.5(y)(2), indicates that OWCP has adopted the list of DOE facilities that was published by DOE on August 23, 2004, and notes that OWCP ''will periodically update this list as it deems appropriate in its sole discretion by publishing a revised list of covered [DOE] facilities in the **Federal Register**.'' In making these updates, § 30.5(y)(1) specifies that the Director of OWCP is solely responsible for determining if a particular work site under consideration meets the statutory definition of a *Department of Energy facility.* This sole responsibility is derived from the grant of primary authority to DOL to administer the EEOICPA claims process contained in Sec. 2(a)(i) of Executive Order 13179.

II. Purpose

Since OWCP last published a notice listing all DOE facilities covered under EEOICPA in the November 5, 2018 **Federal Register,**the Director of OWCP has made a number of determinations in connection with claims filed under EEOICPA. Those determinations are briefly described in this Supplementary Information and are memorialized in the two updated lists of DOE facilities published by OWCP today.

Specifically, the Director of OWCP has determined that the Elza Gate work site, located in Oak Ridge, Tennessee, meets the definition of a *Department of Energy facility* for the purposes of claims filed under EEOICPA because an entity conducted environmental remediation at the site under contract to DOE. In addition, OWCP's research has led the Director to modify the designation of the Reduction Pilot Plant that has appeared in OWCP's prior published lists by extending the covered period for that work site to include the additional period January 1, 1964 through November 26, 1978. As a result, the modified period of coverage for this work site now spans the time period from 1951 through May 18, 1979, with the period November 27, 1978 through May 18, 1979 for remediation only.

By updating the two lists found below, OWCP is presenting the public with the most current listing of DOE facilities in order to assist potential claimants and their families. OWCP is continuing its efforts in this area as it adjudicates claims filed under EEOICPA, and further revisions of these lists should be expected. Although DOE maintains a website (*https://ehss.energy.gov/Search/Facility/findfacility.aspx*) that provides information on AWE facilities, Beryllium Vendor facilities and DOE facilities to the public, the information on that website regarding DOE facilities should not be relied upon as it may not be up to date, nor is it binding on OWCP's adjudication of claims filed under EEOICPA. Instead, OWCP is solely authorized to give the public notice of the Director's determinations regarding DOE facilities.

III. Introduction to the Lists

The five complete lists previously published by DOE included all three types of work sites described in Executive Order 13179, *i.e.,* AWE facilities, Beryllium Vendor facilities, and DOE facilities. On the other hand, the lists published on June 23, 2009, November 24, 2010, March 6, 2012, April 8, 2013, January 20, 2015, November 5, 2018 and again today by OWCP only include work sites that meet the definition of a *Department of Energy facility,* because the authority to designate both AWE facilities and Beryllium Vendor facilities has been granted to DOE. However, since some work sites can meet the definition of more than just one type of covered work site during either the same or differing time periods, simply presenting one list of DOE facilities (without also differentiating among them in some easily understood fashion) could lead the reader to wrongly conclude that a listed work site has always been a DOE facility when, in fact, it only had that status during a brief period. To lessen the potential for this type of

misunderstanding, OWCP has decided to continue its practice of presenting two separate lists of DOE facilities.

The first list consists exclusively of work sites that have only been DOE facilities for purposes of coverage under EEOICPA, and the second list consists of work sites that have also been at least one other type of covered work site in addition to a DOE facility. To see what other types of covered work sites the DOE facilities appearing in the second list are or have been, readers can refer to the **Federal Register** notices published by DOE on August 23, 2004 (69 FR 51825), November 30, 2005 (70 FR 71815), June 28, 2007 (72 FR 35448), April 9, 2009 (74 FR 16191), August 3, 2010 (75 FR 45608), May 26, 2011 (76 FR 30695), February 6, 2012 (77 FR 5781), February 11, 2013 (78 FR 9678), July 16, 2015 (80 FR 42094), February 17, 2016 (81 FR 8060) and August 3, 2022 (87 FR 47399). Since covered time periods for a particular DOE facility are statutorily limited to periods during which ''operations'' are or were performed by or on behalf of DOE (or its predecessor agencies) at that DOE facility, and when DOE (or its predecessor agencies) either had a proprietary interest in the facility or had entered into a particular type of contract with an entity regarding the facility, the lists below include date ranges during which covered employment at each work site could have been performed. These date ranges, however, often do not reflect the exact day and month that a work site either acquired or lost its status as a DOE facility, and are not considered binding on OWCP in its adjudication of individual claims under EEOICPA. Rather, they are presented in this notice for the sole purpose of informing the public of the current results of OWCP's research into the operational histories of these work sites, some of which extend back to the establishment of the Manhattan Engineer District of the U.S. Army Corps of Engineers on August 13, 1942. OWCP's efforts in this area are continuing, and it expects that the date ranges included in this notice will change with the publication of future notices.

DOE facilities appearing on the lists that have undergone environmental remediation at the direction of or directly by DOE are identified by the following symbol—†—after the date range during which such environmental remediation occurred. During those periods, only the work of employees of DOE contractors who actually performed the remediation is ''covered work'' under EEOICPA.

LIST 1—WORK SITES THAT ARE/WERE DOE FACILITIES EXCLUSIVELY

Facility name	Location	Dates
Alaska DOE Facilities		
Amchitka Island Nuclear Explosion Site	Amchitka Island	1965–9/30/1973; 5/25/2001–10/13/2001.†
Project Chariot Site	Cape Thompson	1962; 1993.†
California DOE Facilities		
Area IV of the Santa Susana Field Laboratory	Ventura County	1955–1988; 1988–Present.†
Canoga Complex	Los Angeles County	1955–1960.
De Soto Complex	Los Angeles County	1959–1995; 1998.†
Downey Facility	Los Angeles County	1948–1955.
High Energy Rate Forging (HERF) Facility	Oxnard	1984–6/30/1997.
Laboratory for Energy-Related Health Research, University of California (Davis).	Davis	1958–1989; 1991–Present.†
Laboratory of Biomedical and Environmental Sciences, University of California (Los Angeles).	Los Angeles	194–Present.
Laboratory of Radiobiology and Environmental Health, University of California (San Francisco).	San Francisco	1951–1999.
Lawrence Berkeley National Laboratory	Berkeley	8/13/1942–Present.
Lawrence Livermore National Laboratory	Livermore	1950–Present.
Sandia National Laboratories, Salton Sea Test Base	Imperial County	1946–1961.
Sandia National Laboratories-Livermore	Livermore	1956–Present.
SLAC National Accelerator Laboratory	Menlo Park	1962–Present.
Colorado DOE Facilities		
Grand Junction Facilities	Grand Junction	8/1/1943–10/30/2001; 11/1/2001–Present.†
Project Rio Blanco Nuclear Explosion Sit	Rifle	1973–1976.
Project Rulison Nuclear Explosion Site	Grand Valley	1969–1971; 1972–1978.†
Rocky Flats Plant	Golden	1951–2006.
Florida DOE Facilities		
Pinellas Plant	Clearwater	1957–1997; 1999†; 2008–2009.†
Hawaii DOE Facilities		
Kauai Test Facility, U.S. Navy Pacific Missile Range	Kauai	1962–Present.
Idaho DOE Facilities		
Argonne National Laboratory-West	Scoville	1949–2005.
Idaho National Laboratory	Scoville	1949–Present.

LIST 1—WORK SITES THAT ARE/WERE DOE FACILITIES EXCLUSIVELY—Continued

Facility name	Location	Dates
Illinois DOE Facilities		
Argonne National Laboratory-East	Argonne	1946–Present.
Fermi National Accelerator Laboratory	Batavia	1967–Present.
Indiana DOE Facilities		
Dana Heavy Water Plant	Dana	1943–5/31/1957.
Iowa DOE Facilities		
Ames Laboratory, Iowa State University	Ames	8/13/1942–Present.
Kentucky DOE Facilities		
Paducah Gaseous Diffusion Plant	Paducah	1951–7/28/98; 7/29/98–10/20/14†; 10/21/14–Present.
Massachusetts DOE Facilities		
Winchester Engineering and Analytical Center	Winchester	1952–1961.
Michigan DOE Facilities		
Adrian Facility	Adrian	5/25/54–1962; 1995.†
Minnesota DOE Facilities		
Elk River Reactor	Elk River	1962–1968.
Mississippi DOE Facilities		
Salmon Nuclear Explosion Site	Hattiesburg	1964–6/29/1972.
Missouri DOE Facilities		
Kansas City Plant	Kansas City	11/5/1948–Present.
Mallinckrodt Chemical Co., Destrehan Street Facility	St. Louis	8/13/1942–1962; 1995.†
St. Louis Airport Storage Site (SLAPS)	St. Louis	1/3/1947–1973; 1984–1998.
Weldon Spring Plant	Weldon Spring	1955–1966; 10/1/1985–2002.†
Weldon Spring Quarry	Weldon Spring	1958–1966; 1967–10/31/2002.†
Weldon Spring Raffinate Pits	Weldon Spring	1955–1966; 1967–2002.†
Nebraska DOE Facilities		
Hallam Sodium Graphite Reactor	Hallam	1960–1971.
Nevada DOE Facilities		
Nevada Site Office	North Las Vegas	3/6/1962–Present.
Nevada Test Site	Mercury	1951–Present.
Project Faultless Nuclear Explosion Site	Central Nevada Test Site	1967–1974.
Project Shoal Nuclear Explosion Site	Fallon	1962–1/31/1964.
Tonopah Test Range	Tonopah	1956–Present.
Yucca Mountain Site Characterization Project	Yucca Mountain	1987–Present.
New Jersey DOE Facilities		
Middlesex Municipal Landfill	Middlesex	1984†; 1986.†
Middlesex Sampling Plant	Middlesex	1943–1967; 1980–1982† 4/1/1986–8/30/1986.†
New Brunswick Laboratory	New Brunswick	1948–1977.
Princeton Plasma Physics Laboratory, James Forrestal Campus of Princeton University.	Princeton	1951–Present.
New Mexico DOE Facilities		
Albuquerque Operations Office	Albuquerque	8/13/1942–Present.
Chupadera Mesa	White Sands Missile Range	1945.
Hangar 481, Kirtland AFB	Albuquerque	3/1/1984–2/29/1996.
Kirtland Operations Office, Kirtland AFB	Albuquerque	1964–Present.
Los Alamos Medical Center	Los Alamos	1952–1963.
Los Alamos National Laboratory	Los Alamos	8/13/1942–Present.
Lovelace Respiratory Research Institute, Kirtland AFB	Albuquerque	1960–6/20/2013.

LIST 1—WORK SITES THAT ARE/WERE DOE FACILITIES EXCLUSIVELY—Continued

Facility name	Location	Dates
Project Gasbuggy Nuclear Explosion Site	Farmington	2/11/1967–1973; 1978; 1992–Present.†
Project Gnome Nuclear Explosion Site	Carlsbad	7/1/1960–6/30/1962.
Sandia National Laboratories	Albuquerque	1945–Present.
South Albuquerque Works	Albuquerque	1951–1967.
Trinity Nuclear Explosion Site, Alamogordo Bombing and Gunnery Range.	White Sands Missile Range	1945; 1952†; 1967.†
Waste Isolation Pilot Plant	Carlsbad	3/26/1999–Present.
New York DOE Facilities		
Brookhaven National Laboratory	Upton	1947–Present.
Electro Metallurgical Co.	Niagara Falls	8/13/1942–1953.
Environmental Measurements Laboratory	New York	1946–2003.
Haist Property	Tonawanda	6/25/1943–1948.
Lake Ontario Ordnance Works	Niagara County	1944–1997.
Linde Ceramics Plant (Buildings 30, 31, 37 and 38 only)	Tonawanda	11/16/1942–1953; 1988– 1992†; 1996.†
Peek Street Facility (Knolls Atomic Power Laboratory)	Schenectady	1947–1954.
Sacandaga Facility	Glenville	1947–1953.
SAM Laboratories, Columbia University	New York	8/13/1942–1947.
Separations Process Research Unit (Knolls Atomic Power Laboratory)	Schenectady	1950–1965; 2007–2011.†
University of Rochester Atomic Energy Project	Rochester	1943–1986.
Ohio DOE Facilities		
Dayton Project (Units I, III, IV and floors 4, 5 and 6 of the Warehouse only).	Dayton and Oakwood	7/14/1943–1950.
Extrusion Plant (Reactive Metals Inc.)	Ashtabula	1962–11/1/2006.
Feed Materials Production Center (FMPC)	Fernald	1951–Present.
Mound Plant	Miamisburg	1947–Present.
Piqua Organic Moderated Reactor	Piqua	1963–2/28/69.
Portsmouth Gaseous Diffusion Plant	Piketon	1952–7/28/98; 7/29/98–Present.†
Oregon DOE Facilities		
Albany Metallurgical Research Center, U.S. Bureau of Mines	Albany	1987–1993†; 1995–Present.
Pennsylvania DOE Facilities		
Shippingport Atomic Power Plant	Shippingport	1984–1995.†
Puerto Rico DOE Facilities		
BONUS Reactor Plant	Punta Higuera	1964–1968.
Puerto Rico Nuclear Center	Mayaguez	1957–1976; 1987.†
South Carolina DOE Facilities		
Savannah River Site	Aiken	1950–Present.
Tennessee DOE Facilities		
Clarksville Modification Center, Ft. Campbell	Clarksville	1949–1967.
Clinton Engineer Works (CEW)	Oak Ridge	1943–1949.
Elza Gate	Oak Ridge	1991–1992.†
Oak Ridge Gaseous Diffusion Plant (K–25)	Oak Ridge	1943–1987; 1988–Present.†
Oak Ridge Hospital	Oak Ridge	1943–1959.
Oak Ridge Institute for Science Education	Oak Ridge	1946–Present.
Oak Ridge National Laboratory (X–10)	Oak Ridge	1943–Present.
Office of Scientific and Technical Information (OSTI)	Oak Ridge	1957–Present.
S–50 Oak Ridge Thermal Diffusion Plant	Oak Ridge	1944–1951.
Y–12 Plant	Oak Ridge	8/13/1942–Present.
Texas DOE Facilities		
Medina Modification Center	San Antonio	1958–1966.
Pantex Plant	Amarillo	1951–Present.

LIST 1—WORK SITES THAT ARE/WERE DOE FACILITIES EXCLUSIVELY—Continued

Facility name	Location	Dates
Virginia DOE Facilities		
Thomas Jefferson National Accelerator Facility	Newport News	1994–Present.
Washington DOE Facilities		
Hanford Engineer Works	Richland	8/13/1942–Present.
Pacific Northwest National Laboratory	Richland	2005–Present.
West Virginia DOE Facilities		
Reduction Pilot Plant	Huntington	1951–11/26/1978; 11/27/1978–5/18/1979.†
Wisconsin DOE Facilities		
LaCrosse Boiling Water Reactor	LaCrosse	1967–1969.
Territorial DOE Facilities		
Enewetak RADLAB	Enewetak Atoll (now part of the Republic of the Marshall Islands).	2/16/1977–9/30/1979.
Pacific Proving Ground	Bikini and Enewetak Atolls (now part of the Republic of the Marshall Islands), Johnston Island and Christmas Island.	1946–1962.

LIST 2—WORK SITES THAT ARE/WERE DOE FACILITIES (FOR THE YEARS IDENTIFIED IN THE LAST COLUMN ONLY) AND ALSO ANOTHER TYPE OF EEOICPA-COVERED FACILITY

Facility name	Location	Dates
Arizona DOE Facilities		
Ore Buying Station at Globe	Globe	7/1/1955–1957.
Uranium Mill in Monument Valley	Monument Valley	5/1/1989–2/28/1990;† 9/1/1992–5/31/1994.†
Uranium Mill in Tuba City	Tuba City	1/1/1985–2/28/1986;† 1/1/1988–4/30/1990.†
California DOE Facilities		
General Atomics (Torrey Pines Mesa and Sorrento West)	La Jolla	1996–1999.†
General Electric Vallecitos	Pleasanton	1998–6/7/2010.†
Colorado DOE Facilities		
Climax Uranium Mill in Grand Junction	Grand Junction	12/1/1988–8/31/1994.†
Green Sludge Plant in Uravan	Uravan	1943–1945.
New Uranium Mill in Rifle	Rifle	9/1/1988–9/30/1989;† 4/1/1992–10/311996.†
Old Uranium Mill in Rifle	Rifle	9/1/1988–9/30/1989;† 4/1/1992–10/31/1996.†
Uranium Mill in Durango	Durango	1948–1953; 10/1/1986–5/31/1991.†
Uranium Mill in Gunnison	Gunnison	9/1/1991–12/31/1995.†
Uranium Mill in Maybell	Maybell	5/1/1995–9/30/1998.†
Uranium Mill in Naturita	Naturita	5/1/1994–11/30/1994;† 6/1/1996–9/30/1998.†
Uranium Mill No. 1 in Slick Rock (East)	Slick Rock	1995–1996.†
Uranium Mill No. 2 in Slick Rock (West)	Slick Rock	1995–1996.†
Connecticut DOE Facilities		
Connecticut Aircraft Nuclear Engine Laboratory (CANEL)	Middletown	1958–7/8/1966.
Seymour Specialty Wire	Seymour	1992–1993.†
Idaho DOE Facilities		
Uranium Mill in Lowman	Lowman	1992;† 1994–Present.

LIST 2—WORK SITES THAT ARE/WERE DOE FACILITIES (FOR THE YEARS IDENTIFIED IN THE LAST COLUMN ONLY) AND ALSO ANOTHER TYPE OF EEOICPA-COVERED FACILITY—Continued

Facility name	Location	Dates
Illinois DOE Facilities		
General Steel Industries (South Plant)	Granite City	1993.†
Metallurgical Laboratory, University of Chicago (Eckhart Hall, Jones Laboratory and Ryerson Hall only).	Chicago	1982–1984; † 1987.†
National Guard Armory (Washington Park Armory)	Chicago	1987.†
Massachusetts DOE Facilities		
Chapman Valve Manufacturing Co.	Indian Orchard	1995.†
Hood Building	Cambridge	1946–1963.
Ventron Corporation	Beverly	1986; † 9/1/1995–3/30/1997.†
Missouri DOE Facilities		
Latty Avenue Properties	Hazelwood	1984–1986.†
New Jersey DOE Facilities		
Du Pont Deepwater Works	Deepwater	1996.†
Kellex/Pierpont	Jersey City	1979–1980.†
Rare Earths/W.R. Grace	Wayne	1985–1987.†
New Mexico DOE Facilities		
Ore Buying Station at Grants	Grants	7/1/1956–1958.
Ore Buying Station at Shiprock	Shiprock	7/1/1952–1/31/1954.
Uranium Mill in Ambrosia Lake	Ambrosia Lake	7/1/1987–4/30/1989; † 10/1/1992–7/31/1995.†
Uranium Mill in Shiprock	Shiprock	10/1/1984–11/30/1986.†
New York DOE Facilities		
Baker and Williams Warehouses (Pier 38)	New York	1991–1993.†
Colonie Interim Storage Site (National Lead Co.)	Colonie	1984–1998.†
West Valley Demonstration Project	West Valley	02/26/1982–Present.
Ohio DOE Facilities		
Alba Craft	Oxford	1994–1995.†
Associated Aircraft Tool and Manufacturing Co.	Fairfield	1994–1995.†
B & T Metals	Columbus	1996.†
Baker Brothers	Toledo	1995.†
Battelle Laboratories-King Avenue	Columbus	1986–2000.†
Battelle Laboratories-West Jefferson	Columbus	1986–Present.†
Beryllium Production Plant (Brush Luckey Plant)	Luckey	1949–1961; 1992–Present.†
General Electric Co. (Ohio)	Cincinnati/Evendale	1961–6/30/1970.
Herring-Hall Marvin Safe Co.	Hamilton	1994–1995.†
Oregon DOE Facilities		
Uranium Mill and Disposal Cell in Lakeview	Lakeview	1986–1989.†
Pennsylvania DOE Facilities		
Aliquippa Forge	Aliquippa	1988; † 1993–1994.†
C.H. Schnorr & Company	Springdale	1994.†
Vitro Manufacturing (Canonsburg)	Canonsburg	1983–1985; † 1996.†
South Dakota DOE Facilities		
Ore Buying Station at Edgemont	Edgemont	11/1/1952–7/12/1956.
Texas DOE Facilities		
Uranium Mill in Falls City	Falls City	1/1/1992–6/30/1994.†
Utah DOE Facilities		
Ore Buying Station at Marysvale	Marysvale	3/1/1950–1957.
Ore Buying Station at Moab	Moab	5/1/1954–1960.
Ore Buying Station at White Canyon	White Canyon	10/1/1954–1957.

LIST 2—WORK SITES THAT ARE/WERE DOE FACILITIES (FOR THE YEARS IDENTIFIED IN THE LAST COLUMN ONLY) AND ALSO ANOTHER TYPE OF EEOICPA-COVERED FACILITY—Continued

Facility name	Location	Dates
Uranium Mill in Mexican Hat	Mexican Hat	7/1/1987–10/31/1987; † 9/1/1992–2/28/1995.†
Uranium Mill in Moab (Atlas Site)	Moab	2001–Present.
Uranium Mill in Monticello	Monticello	1948–6/30/2000.
Wyoming DOE Facilities		
Ore Buying Station at Crooks Gap	Crooks Gap	12/1/1956–7/31/1957.
Ore Buying Station at Riverton	Riverton	3/1/1955–1957.
Uranium Mill in Converse County (Spook Site)	Converse County	4/1/1989–9/30/1989.†
Uranium Mill in Riverton	Riverton	5/1/1988–9/30/1990.†

† Denotes a period of environmental remediation.

Signed at Washington, DC, on September 23, 2022.

Christopher J. Godfrey,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2022–21348 Filed 9–30–22; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 22–076]

Name of Information Collection: Notice of Information Collection: NASA Safety Reporting System (NSRS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—extension of a currently approved collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by December 2, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review-Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292 or email *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection provides a means by which NASA contractors can voluntarily and anonymously report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

II. Methods of Collection

The current, paper-based reporting system ensures the protection of a submitter's anonymity and secure submission of the report by way of the U.S. Postal Service.

III. Data

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Annual Number of Activities: 75.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 75.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 19.

Estimated Total Annual Cost: $890.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2022–21325 Filed 9–30–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 22–078]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than October 18, 2022 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than [October 18, 2022 will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or

partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES:

Objections and Further Information: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at Email: *hq-patentoffice@mail.nasa.gov.* Questions may be directed to Phone: (202) 358–3437.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described and claimed in U.S. Patent No. 9,944,410 entitled ''System and Method for Air Launch From A Towed Aircraft,'' issued on April 17, 2018, to Sky Launch Corporation, having its principal place of business in Lancaster, California. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2022–21370 Filed 9–30–22; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 22–077]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than October 18, 2022 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than October 18, 2022 will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES:

Objections and Further Information: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at Email: *hq-patentoffice@mail.nasa.gov.* Questions may be directed to Phone: (202) 358–3437.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described and claimed in: PCT Application No. PCT/US21/36357, ''Systems and Methods for Oxygen Concentration with Electrochemical Stacks in Series Gas Flow'' to American Oxygen LLC, having its principal place of business at 2100 W Alexander St., Suite B, West Valley City, UT 84119–2062. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). An undivided interest in these inventions has been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2022–21371 Filed 9–30–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Oversight Review of the Center for High Energy Science at Cornell University and the Midscale RI2 Project for High Magnetic Field Beamline Project (#1203).

Date and Time:

October 25–26, 2022; 8:00 a.m.–6:00 p.m.

October 27, 2022; 8:00 a.m.–3:00 p.m.

Place: Cornell University, Physical Sciences Building, 245 Feeney Way, Room 401, Ithaca, NY 14853/On-site & Virtual.

Type of Meeting: Part-open.

Contact Person: Dr. Guebre X. Tessema, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–4935.

Purpose of Meeting: Hybrid (On-site & Virtual) site visit to provide advice and recommendations concerning progress and performance of CHEXS and HMF projects.

Agenda: Open sessions include science presentations by the facility and project staff.

Tuesday, October 25, 2022

8:30 a.m.–12:00 p.m. CHEXS Review (OPEN)
12:00 p.m.–1:00 p.m. Executive Session (CLOSED)
1:00 p.m.–4:45 p.m. CHEXS Review (OPEN)
4:45 p.m.–6:00 p.m. Executive Session (CLOSED)

Wednesday, October 26, 2022

8:30 a.m.–11:00 a.m. HMF Review (OPEN)
11:00 a.m.–11:45 a.m. Executive Sessions (CLOSED)

11:45 a.m.–1:30 p.m. HMF Review (OPEN)
1:30 p.m.–6:00 p.m. Executive Session (CLOSED)

Thursday, October 27, 2022

8:30 a.m.–1:00 p.m. Executive Session (CLOSED)

Reason for Closing: The work being reviewed during closed portions of the hybrid site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 28, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–21379 Filed 9–30–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 3, 10, 17, 24, 31, November 7, 2022. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of October 3, 2022

There are no meetings scheduled for the week of October 3, 2022.

Week of October 10, 2022—Tentative

Tuesday, October 11, 2022

10:00 a.m. NRC All Employees Meeting (Public Meeting) (Contact: Anthony DeJesus: 301–287–9219)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, October 13, 2022

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Jennie Rankin, 301–415–1530)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of October 17, 2022—Tentative

There are no meetings scheduled for the week of October 17, 2022.

Week of October 24, 2022—Tentative

There are no meetings scheduled for the week of October 24, 2022.

Week of October 31, 2022—Tentative

There are no meetings scheduled for the week of October 31, 2022.

Week of November 7, 2022—Tentative

Tuesday, November 8, 2022

9:00 a.m. Briefing on Regulatory Approaches for Fusion Energy Devices (Public Meeting) (Contact: Samantha Lav: 301–415–3487)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, November 10, 2022

10:00 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Jen Holzman, 301–287–9090)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: September 29, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–21502 Filed 9–29–22; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

30-Day Notice of Proposed Information Collection: Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0272, Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System. As required by the Paperwork Reduction Act of 1995, amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until November 2, 2022. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: You may submit comments, identified by docket number and title, by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Meredith Gitangu, Office of Personnel Management, 1900 E St. NW, Rm. 3468, Washington, DC 20415 Attention: Meredith Gitangu or send via electronic mail to *FEDVIP@opm.gov;* or by phone at (202) 606–2678.

SUPPLEMENTARY INFORMATION: The information collection was previously published in the **Federal Register** on October 21, 2021 in a Notice of Proposed Rulemaking (NPRM) to amend title 5 of the Code of Federal Regulations (CFR) part 894. The proposed rule had a 60-day comment period during which OPM received 7 comments, and 2 comments were unresponsive. No comments were received for the information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Federal Employees Dental and Vision Insurance Program Enrollment System uses BENEFEDS, which is the secure enrollment website sponsored by OPM that allows eligible individuals to enroll or change enrollment in a FEDVIP plan. Eligible individuals use the system to enroll or change enrollment during the annual Open Season or when experiencing a qualifying life event under 5 CFR 894.101. FEDVIP is available to eligible Federal civilian and U.S. Postal Service (USPS) employees, retirees (annuitants), survivor annuitants, compensationers, and their eligible family members (dependents); and certain TRICARE-eligible individuals (TEIs) who are authorized under section 715 of Public Law 114–328, on an enrollee-pay-all basis; there is no government contribution toward premiums.

The proposed rule, 89 FR 57764, published on October 21, 2021 proposes to modify eligibility for coverage under the FEDVIP to certain Federal employees on temporary appointments and certain employees on seasonal and intermittent schedules who became eligible for Federal Employees Health Benefits (FEHB) in 2015, and the rule also includes Postal employees on temporary appointments and seasonal and intermittent schedules. It also proposes to expand access to FEDVIP benefits to certain firefighters on temporary appointments and intermittent emergency response personnel who became eligible for FEHB coverage in 2012. This rule also updates the provisions on enrollment for active duty service members who become eligible for FEDVIP as uniformed service retirees pursuant to FY17 NDAA. In addition, this rule adds QLEs for enrollees who may become eligible for and enroll in dental and/or vision services from the VA. Lastly, the rule also has technical corrections and clarifications to the part.

OPM uses this enrollment system to carry out its responsibility to administer the FEDVIP in accordance with 5 U.S.C. chapters 89A and 89B and implementing regulations (5 CFR part 894).

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) OPM is soliciting comments for this collection (OMB No. 3206–0272).

Agency: Office of Personnel Management.

Title: Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System.

OMB Number: 3206–0272–RENEWAL.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 388,261.

Estimated Time per Respondent: .1211 hours.

Total Burden Hours: 47,108 hours.

Office of Personnel Management.

Kellie Cosgrove Riley,

Director, Office of Privacy and Information Management.

[FR Doc. 2022–21369 Filed 9–30–22; 8:45 am]

BILLING CODE 6325–64–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95934; File No. SR–CBOE–2022–048]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule

September 27, 2022.

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 September 20, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to update its Fees 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Fees Schedule to modify fees for certain Customer and Market-Maker orders executed in Cboe Volatility Index (''VIX'') options.[3]

The Exchange first proposes to reduce fees for certain complex Customer VIX transactions. By way of background, an ''Index Combo'' is a complex order to purchase or sell one or more index option series and the offsetting number of Index Combinations defined by the delta.[4] An ''Index Combination'' is a purchase (sale) of an index option call and sale (purchase) of an index option put with the same underlying index, expiration date and strike price.[5] Index Combinations can trade on their own or as part of a tied combo strategy (such as part of an Index Combo), where similar to a tied-to-stock option, an option contact [sic] is bought or sold in the same package as the two legs making up the Index Combination as the synthetic underlying position as a hedge. Currently, Customer complex orders, including Index Combo orders, in VIX options are assessed the following fees: $0.05 per contract when the premium price is between $0.00 and $0.10; $0.17 per contract when the premium price is between $0.11 and $0.99; $0.30 per contract when the premium price is between $1.00–$1.99; and $0.45 per contract when the premium price is equal or greater than $2.00, which orders yield fee codes CZ, DA, DB and DC, respectively.[6] The Exchange proposes to waive transaction fees for the Index Combination component (legs) of Customer Index Combo orders in VIX. The Index Combination legs will yield proposed new fee code ''CI'', and any remaining legs will continue to yield the applicable standard Customer complex order fee codes for VIX transactions as set forth in the Fees Schedule. The Exchange proposes to adopt new Footnote 43 (which is currently Reserved), to describe the fee waiver. The Exchange proposes to waive fees for Customer Index Combinations to encourage the submission of Index Combo orders which provide customers with a means to reduce or hedge the risk associated with price movements in the underlying index.

The Exchange next proposes to reduce fees for certain Market-Maker orders in VIX options that execute against qualifying complex orders. Currently, Market-Maker orders in VIX options are assessed $0.05 per contract when the premium price is between $0.00 and $0.99 (which orders yield fee code MV) and $0.23 per contract when the premium price is equal to or above $1.00 (which orders yield fee code MW). The Exchange proposes to reduce the transaction fee for certain Market-Maker VIX orders when the premium is equal to or above $1.00 from $0.23 to $0.05 per contract. Particularly, the Exchange proposes to assess $0.05 per contract for Market-Maker VIX orders where the order (i) is executed by the Market-Maker in open outcry, (ii) against a complex order that has 3 or more legs, and (iii) the total executed order quantity of the contra order is greater than or equal to 5,000 contracts.[7] A Market-Maker must be representing themselves on the trading floor in order to qualify for the reduced fee. Solicited orders where the Market-Maker is represented by a Floor Broker are not eligible. In connection with this change the Exchange proposes to adopt new fee code ''MI'' which will apply to such transactions[8] and proposes to describe the proposed criteria in new Footnote 43. The Exchange believes the proposed reduced fee will encourage Market-Makers to participate in additional open-outcry orders in VIX and in particular to quote tighter spreads with greater size.

The Exchange notes that currently, any post-trade edits to floor trades that change the symbol, price, size, or floor trader on any leg of the trade will result in single leg fee codes being assigned by the billing system to each leg of the trade. Additionally, the Exchange notes that orders which contain more than the maximum number of legs supported by the Cboe System (currently 16) must be submitted as multiple orders. In some instances the submitted child orders on their own may not appear to the System as qualifying for fee code CI or MI, as applicable, and therefore instead would receive the standard applicable fee code notwithstanding otherwise qualifying for the fee waiver or reduced fee as part of the original order. For example, if the contra order on a child order executes at a quantity less than 5,000 contracts, the System would not recognize that order as qualifying for the reduced fee and the Market-Maker order trading against it would not receive fee code MI (nor the corresponding reduced fee). Accordingly, the Exchange proposes to also clarify in Footnote 43 that supporting documentation (*e.g.,* documentation that includes the original trade detail) must be submitted to the Exchange within 3 business days of the transaction in order to receive the proposed fee waiver or reduced fee on qualifying orders for which (i) a post-trade edit to an order executed in open outcry was made that changed the symbol, price, size, and/or floor trader acronym on any leg of the transaction; and/or (ii) the original order contained more than the maximum number of legs supported by the Cboe System and was consequently submitted as multiple orders, where the applicable child order by itself does not meet the qualifications for the fee waiver or reduced fee. The proposal ensures TPHs have the means to receive the proposed fee waiver or reduced fee notwithstanding certain System limitations that may impact billing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[11] 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

[3] The Exchange initially filed the proposed fee changes on September 12, 2022 (SR–CBOE–2022–045). On September 20, 2022, the Exchange withdrew that filing and submitted this filing.

[4] *See* Cboe Options Rule 5.33, ''Index Combo''.

[5] *See* Cboe Options Rule 5.33(b)(5) (subparagraph (1) of definition of ''Index Combo'').

[6] Transaction fees for all Customer orders executed in VIX during GTH are currently waived through December 31, 2022. *See* Cboe Options Fees Schedule, Footnote 32.

[7] The 5,000 contracts may be summed across multiple legs of the contra order. As an example, if a contra complex order has 4 legs, and each execute for 1,250 contracts against 4 different Floor Market-Makers, each Market-Maker will be assessed $0.05 per contract for their respective order of 1,250 contracts.

[8] The Exchange notes that fee code ''MI'' will also apply to qualifying transactions where the VIX Premium is less than $1.00 (which currently yield Fee Code MV), because the proposed rate (*i.e.,* $0.05) is the same as the rate currently assessed to all Market-Maker VIX orders where the premium is less than $1.00.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to waive transaction fees for the Index Combination legs of a Customer Index Combo order executed in VIX options is reasonable, equitable and not unfairly discriminatory as Customers would not be subject to fees for contracts that are executed as part of an Index Combination and the proposed change would apply to all Customers uniformly. The Exchange believes the proposal is reasonably designed to encourage Customer order flow in VIX options. The Exchange wishes to promote the growth of VIX and believes that incentivizing increased Customer Index Combo order flow in VIX options would attract additional liquidity to the Exchange. The Exchange believes increased Customer order flow facilitates increased trading opportunities and attracts Market-Maker activity, which facilitates tighter spreads and may ultimately signal an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem. The Exchange notes that it similarly waives fees for other types of Customer orders in the Fees Schedule.[12]

Further, the Exchange believes that it is equitable and not unfairly discriminatory to waive fees for certain Customer complex orders because, as described above, Customer liquidity benefits all market participants by providing more execution opportunities, in turn, attracting Market Maker order flow, which ultimately enhances market quality on the Exchange to the benefit of all market participants. Additionally, the Exchange believes the proposed change is in line with other fee programs that are designed to incentivize the sending of complex orders, including Index Combo orders, to the Exchange. For example, the Exchange provides higher rebates under the Volume Incentive Program for complex orders as compared to simple orders.[13] The Exchange also assesses lower fees for complex Customer orders in VIX as compared to simple orders in VIX.[14]

The Exchange next believes the proposed change to reduce certain VIX transaction fees for Market-Makers is reasonable as Market-Makers will be paying lower fees for such transactions. The Exchange notes the proposed changes are designed to encourage the sending of additional large complex VIX orders in open-outcry. Indeed, the Exchange believes the proposed reduced fee will encourage Market-Makers to participate in additional open-outcry orders in VIX and in particular quote tighter spreads with greater size, which may signal additional corresponding increase in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants.

The Exchange believes the proposed fee change is equitable and not unfairly discriminatory because it applies to all Market-Makers uniformly. The Exchange believes that it is equitable and not unfairly discriminatory to propose lower transaction rates for Market-Makers because the Exchange recognizes that these market participants can provide key and distinct sources of liquidity. Additionally, as noted above, an increase in general market-making activity may provide more trading opportunities, in turn, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem. The Exchange notes too that Market-Makers take on a number of obligations that other market participants do not have. For example, unlike other market participants, Market-Makers take on quoting obligations and other market making requirements.

The Exchange also believes the proposed rule change is equitable and not unfairly discriminatory because, as proposed, the proposed fee reduction applies to all qualifying VIX orders executed by Market-Makers on the trading floor equally and because the Exchange believes that facilitating VIX orders submitted by Market-Makers via open outcry encourages and supports increased liquidity and execution opportunities in open outcry, which functions as an important price-improvement mechanism for customers. Indeed, the Exchange notes that all market participants stand to benefit from any increase in volume transacted on the trading floor, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its Fee Schedule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee changes for Customers and Market-Makers will be assessed automatically and uniformly to each similarly situated market participant (*i.e.,* all qualifying Customer VIX transactions will receive the proposed fee waiver and all qualifying Market-Maker VIX transactions will be assessed the proposed reduced fee amount). The Exchange notes that there is a history in the options markets of providing preferential treatment to Customers and Market-Makers. Also, as discussed in the statutory basis, the Exchange believes Customer order flow may facilitate increased trading opportunities and attract Market-Maker activity, which can contribute towards a robust and well-balanced market ecosystem. Market-Makers provide key and distinct sources of liquidity, and an increase in general market-making activity may facilitate tighter spreads, which tends to signal additional corresponding increases in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants. Further as discussed, Market-Makers take on a number of obligations that other market participants do not, such as quoting obligations and other market-making requirements. The Exchange also notes that the proposed fee changes are designed to attract additional VIX order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule change will impose

[12] *See* Cboe Options Fees Schedule, footnote 8, which waives the transaction fee for customer orders in ETF and ETN options executed in open outcry or in AIM or as a QCC or as a FLEX Options transaction, and footnote 9, which waives transaction fees for customer orders that provide or remove liquidity that are 99 contracts or less in ETF and ETN options.

[13] *See* Cboe Options Fees Schedule, Volume Incentive Program.

[14] *See* Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A.

any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to a product exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which list products that compete with VIX options) and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 17% of the market share of executed volume of options trades.[15] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference 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.'' [16] 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' . . . .''.[17] Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 [19] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–048 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–CBOE–2022–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–048 and should be submitted on or before October 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21338 Filed 9–30–22; 8:45 am]

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[15] See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 7, 2022), available at *http://markets.cboe.com/us/options/market_share/.*

[16] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[17] *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)).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95933; File No. SR–NASDAQ–2022–027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing With a Capital Raise

September 27, 2022.

On March 21, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change to allow companies to modify certain pricing limitations for companies listing in connection with a Direct Listing with a Capital Raise in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.[3] On May 19, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve or disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

On May 23, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 was published for comment in the **Federal Register** on June 2, 2022.[6] On July 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8] On September 15, 2022, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filings, as modified by Amendment No. 1, in its entirety.[9]

Section 19(b)(2) of the Act[10] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.[11] The 180th day after publication of the Notice is October 5, 2022. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2, along with the comments on the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates December 4, 2022, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–NASDAQ–2022–027), as modified by Amendment No. 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21337 Filed 9–30–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95936; File No. SR–MEMX–2022–26]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Adopt Connectivity Fees

September 27, 2022.

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 September 15, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] and non-Members (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

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

Background

The Exchange is re-filing its proposal to amend the Fee Schedule regarding fees the Exchange charges to Members and non-Members for physical connectivity to the Exchange and for application sessions (otherwise known as ''logical ports'') that a Member utilizes in connection with their participation on the Exchange (together with physical connectivity, collectively referred to in this proposal as ''connectivity services,'' as described in greater detail below and in Exhibit 5). The Exchange is proposing to implement the proposed fees immediately.

The Exchange filed its Initial Proposal on December 30, 2021, and began charging fees for connectivity services for the first time in January of 2022. On February 28, 2022, the Commission suspended the Initial Proposal and asked for comments on several questions.[4] The Exchange then filed the

[3] *See* Securities Exchange Act Release No. 94592 (April 4, 2022), 87 FR 20905 (April 8, 2022) (''Notice''). Comments received on the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2022-027/srnasdaq2022027.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94947 (May 19, 2022), 87 FR 31915 (May 25, 2022). The Commission designated July 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 94989 (May 26, 2022), 87 FR 33558 (June 2, 2022).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 95220 (July 7, 2022), 87 FR 41780 (July 13, 2022).

[9] *See* Securities Exchange Act Release No. 95811 (September 16, 2022), 87 FR 57951 (September 22, 2022).

[10] 15 U.S.C. 78s(b)(2).

[11] *See* Notice, *supra* Note 3.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] *See* Securities Exchange Act Release No. 94332 (February 28, 2022) (SR–MEMX–2021–22) (Suspension of and Order Instituting Proceedings to

Continued

Second Proposal, which was subsequently withdrawn and replaced with the Third Proposal. The Third Proposal was subsequently withdrawn and replaced with the Fourth Proposal. As set forth below, the Exchange believes that both the Initial Proposal, the Second Proposal, the Third Proposal, and the Fourth Proposal provided a great deal of transparency regarding the cost of providing connectivity services and anticipated revenue and that each of the prior proposals was consistent with the Act and associated guidance. The Exchange is re-filing this proposal promptly following the withdrawal of the Fourth Proposal with the intention of maintaining the existing fees for connectivity services while at the same time revising the proposal to focus on its Cost Analysis, as described below. The Exchange believes that this approach is appropriate and fair for competitive reasons as several other exchanges currently charge for similar services, as described below, and because others have followed a similar approach when adopting fees.[5]

As set forth in the Initial Proposal, the Second Proposal, the Third Proposal, the Fourth Proposal, and this filing, the Exchange does incur significant costs related to the provision of connectivity services and believes it should be permitted to continue charging for such services while also providing additional time for public comment on the level of detail contained in this proposal and other questions posed in the OIP. Finally, the Exchange does not believe that the ability to charge fees for connectivity services or the level of the Exchange's proposed fees are at issue, but rather, that the level of detail required to be included by the Exchange when adopting such fees is at issue. For these reasons, the Exchange believes it is appropriate to re-file this proposal and to continue charging for connectivity services.

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

In proposing to charge fees for connectivity services, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[6] and Rule 19b–4 thereunder,[7] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[8] which requires, among other things, that exchange fees be reasonable and equitably allocated,[9] not designed to permit unfair discrimination,[10] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[11] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[12]

Prior to January 3, 2022, MEMX did not charge fees for connectivity to the Exchange, including fees for physical connections or application sessions for order entry purposes or receipt of drop copies. The objective of this approach was to eliminate any fee-based barriers to connectivity for Members when MEMX launched as a national securities exchange in 2020, and it was successful in achieving this objective in that a significant number of Members are directly or indirectly connected to the Exchange.

As detailed below, MEMX recently calculated its aggregate monthly costs for providing physical connectivity to the Exchange at $795,789 and its aggregate monthly costs for providing application sessions at $347,936. Because MEMX offered all connectivity free of charge until January of this year, MEMX has borne 100% of all connectivity costs. In order to cover the aggregate costs of providing connectivity to its Users (both Members and non-Members [13]) going forward and to make a modest profit, as described below, the Exchange is proposing to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), to charge a fee of $6,000 per month for each physical connection in the data center where the Exchange primarily operates under normal market conditions (''Primary Data Center'') and a fee of $3,000 per month for each physical connection in the Exchange's geographically diverse data center, which is operated for backup and disaster recovery purposes (''Secondary Data Center''), each as further described below. The Exchange also proposes to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), to charge a fee of $450 per month for each application session used for order entry (''Order Entry Port'') and application session for receipt of drop copies (''Drop Copy Port'') in the Exchange's Primary Data Center, as further described below.[14]

Determine Whether to Approve or Disapprove Proposed Rule Change to Amend the Exchange's Fee Schedule to Adopt Connectivity Fees) (the ''OIP'').

[5] *See, e.g.,* Securities Exchange Act Release No. 87875 (December 31, 2019), 85 FR 770 (January 7, 2020) (SR–MIAX–2019–51) (notice of filing and immediate effectiveness of changes to the Miami International Securities Exchange LLC, or ''MIAX'', fee schedule). The Exchange notes that the MIAX filing was the eighth filing by MIAX to adopt the fees proposed for certain connectivity services following multiple times of withdrawing and re-filing the proposal. The Exchange notes that MIAX charged the applicable fees throughout this period while working to develop a filing that met the new standards being applied to fee filings. *See also* Fee Guidance, *infra* note 12.

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

[13] Types of market participants that obtain connectivity services from the Exchange but are not Members include service bureaus and extranets. Service bureaus offer technology-based services to other companies for a fee, including order entry services to Members, and thus, may access application sessions on behalf of one or more Members. Extranets offer physical connectivity services to Members and non-Members.

[14] As proposed, fees for connectivity services would be assessed based on each active connectivity service product at the close of business on the first day of each month. If a product is cancelled by a Member's submission of a written request or via the MEMX User Portal prior to such fee being assessed then the Member will not be obligated to pay the applicable product fee. MEMX will not return pro-rated fees even if a product is not used for an entire month.

Cost Analysis

Background on Cost Analysis

In October 2021, MEMX completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis''). The Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers''). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (75%), with smaller allocations to logical ports (2.6%), and the remainder to the provision of transaction execution and market data services (22.4%). In contrast, costs that are driven largely by client activity (*e.g.,* message rates), were not allocated to physical connectivity at all but were allocated primarily to the provision of transaction execution and market data services (90%) with a smaller allocation to application sessions (10%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity, only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange, many Members (but not all) consume market data from the Exchange in order to trade on the Exchange, and the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below.

Through the Exchange's extensive Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of connectivity services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of connectivity services, and thus bears a relationship that is, ''in nature and closeness,'' directly related to network connectivity services. In turn, the Exchange allocated certain costs more to physical connectivity and others to applications, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, MEMX estimates that the cost drivers to provide connectivity services, including both physical connections and application sessions, result in an aggregate monthly cost of $1,143,715, as further detailed below.

Costs Related to Offering Physical Connectivity

The following chart details the individual line-item costs considered by MEMX to be related to offering physical connectivity as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 13.8% of its overall Human Resources cost to offering physical connectivity).

Costs Drivers	Costs	Percent of all
Human Resources	$262,129	13.8
Connectivity (external fees, cabling, switches, etc.)	162,000	75.0
Data Center	219,000	75.0
External Market Data	n/a	n/a
Hardware and Software Licenses	4,507	1.2
Monthly Depreciation	99,328	18.5
Allocated Shared Expenses	48,826	10.0
Total	795,789	20.1

Below are additional details regarding each of the line-item costs considered by MEMX to be related to offering physical connectivity.

Human Resources

For personnel costs (Human Resources), MEMX calculated an allocation of employee time for employees whose functions include providing and maintaining physical connectivity and performance thereof (primarily the MEMX network infrastructure team, which spends most of their time performing functions necessary to provide physical connectivity) and for which the Exchange allocated 75% of each employee's time. The Exchange also allocated Human Resources costs to provide physical connectivity to a limited subset of personnel with ancillary functions related to establishing and maintaining such connectivity (such as information security and finance personnel), for which the Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who do support functions related to providing physical connectivity) and then applied a smaller allocation to such employees (less than 20%). The Exchange notes that it has fewer than seventy (70)

employees and each department leader has direct knowledge of the time spent by those spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing physical connectivity, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing physical connectivity. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing physical connectivity. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity

The Connectivity cost includes external fees paid to connect to other exchanges and third parties, cabling and switches required to operate the Exchange. The Exchange notes that it previously labeled this line item as ''Infrastructure and Connectivity'' but has eliminated the reference to Infrastructure because several other line-item costs could be considered infrastructure given the generality of that term. The Connectivity line-item is more narrowly focused on technology used to complete connections to the Exchange and to connect to external markets. The Exchange notes that its connectivity to external markets is required in order to receive market data to run the Exchange's matching engine and basic operations compliant with existing regulations, primarily Regulation NMS.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange notes that it does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties. The Exchange has allocated a high percentage of the Data Center cost (75%) to physical connectivity because the third-party data centers and the Exchange's physical equipment contained therein is the most direct cost in providing physical access to the Exchange. In other words, for the Exchange to operate in a dedicated space with connectivity of participants to a physical trading platform, the data centers are a very tangible cost, and in turn, if the Exchange did not maintain such a presence then physical connectivity would be of no value to market participants.

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange notes that it did not allocate any External Market Data fees to the provision of physical connectivity as market data is not related to such services.

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer physical connectivity to the Exchange.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of Exchange infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. As noted above, the Exchange allocated 18.5% of all depreciation costs to providing physical connectivity. The Exchange notes, however, that it did not allocate depreciation costs for any depreciated software necessary to operate the Exchange to physical connectivity, as such software does not impact the provision of physical connectivity.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall physical connectivity costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide physical connectivity. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange notes that the cost of paying directors to serve on its Board of Directors is also included in the Exchange's general shared expenses, and thus a portion of such overall cost amounting to 10% of the overall cost for directors was allocated to providing physical connectivity. The Exchange notes that the 10% allocation of general shared expenses for physical connectivity is lower than that allocated to general shared expenses for application sessions based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), physical connectivity does not require as many broad or indirect resources as other Core Services. The total monthly cost of $795,789 was divided by the number of physical connections the Exchange maintained at the time that proposed pricing was determined (143), to arrive at a cost of approximately $5,565 per month, per physical connection.

Costs Related to Offering Application Sessions

The following chart details the individual line-item costs considered by MEMX to be related to offering application sessions as well as the percentage of the Exchange's overall costs such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 7.7% of its overall Human Resources cost to offering application sessions).

Costs drivers	Costs	Percent of all
Human Resources	$147,029	7.7
Connectivity (external fees, cabling, switches, etc.)	5,520	2.6
Data Center	7,462	2.6
External Market Data	10,734	7.5

Costs drivers	Costs	Percent of all
Hardware and Software Licenses	37,771	10.1
Monthly Depreciation	44,843	8.3
Allocated Shared Expenses	94,567	19.4
Total	347,926	8.8

Human Resources

With respect to application sessions, MEMX calculated Human Resources cost by taking an allocation of employee time for employees whose functions include providing application sessions and maintaining performance thereof (including a broader range of employees such as technical operations personnel, market operations personnel, and software engineering personnel) as well as a limited subset of personnel with ancillary functions related to maintaining such connectivity (such as sales, membership, and finance personnel). The estimates of Human Resources cost were again determined by consulting with department leaders, determining which employees are involved in tasks related to providing application sessions and maintaining performance thereof, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing application sessions and maintaining performance thereof. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing application sessions and maintaining performance thereof. The Human Resources cost was again calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity

The Connectivity cost includes external fees paid to connect to other exchanges, cabling and switches, as described above.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide physical connectivity in the third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

External Market Data

External Market Data includes fees paid to third parties, including other exchanges, to receive and consume market data from other markets. The Exchange allocated a small portion of External Market Data fees (7.5%) to the provision of application sessions as such market data is necessary to offer certain services related to such sessions, such as validating orders on entry against the national best bid and national best offer and checking for other conditions (*e.g.,* whether a symbol is halted or subject to a short sale circuit breaker). Thus, as market data from other Exchanges is consumed at the application session level in order to validate orders before additional processing occurs with respect to such orders, the Exchange believes it is reasonable to allocate a small amount of such costs to application sessions.

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to monitor the health of the order entry services provided by the Exchange.

Monthly Depreciation

All physical assets and software, which also includes assets used for testing and monitoring of order entry infrastructure, were valued at cost, depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which is owned by the Exchange and some of which is leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange allocated 8.3% of all depreciation costs to providing application sessions. In contrast to physical connectivity, described above, the Exchange did allocate depreciation costs for depreciated software necessary to operate the Exchange to application sessions because such software is related to the provision of such connectivity.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses was allocated to overall application session costs as without these general shared costs the Exchange would not be able to operate in the manner that it does and provide application sessions. The costs included in general shared expenses include general expenses of the Exchange, including office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The Exchange again notes that the cost of paying directors to serve on its Board of Directors is included in the calculation of Allocated Shared Expenses, and thus a portion of such overall cost amounting to less than 20% of the overall cost for directors was allocated to providing application sessions. The Exchange notes that the 19.4% allocation of general shared expenses for application sessions is higher than that allocated to general shared expenses for physical connectivity based on its allocation methodology that weighted costs attributable to each Core Service based on an understanding of each area. While physical connectivity has several areas where certain tangible costs are heavily weighted towards providing such service (*e.g.,* Data Centers, as described above), application sessions require a broader level of support from Exchange personnel in different areas, which in turn leads to a broader general level of cost to the Exchange. The total monthly cost of $347,926 was divided by the number of application sessions the Exchange maintained at the time that proposed pricing was determined (835), to arrive at a cost of approximately $417 per month, per application session.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core services (including physical connectivity or application sessions) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filing it recently submitted proposing fees for proprietary data feeds offered by the Exchange. For instance, in calculating the Human

Resources expenses to be allocated to physical connections, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (75%) given their focus on functions necessary to provide physical connections. The salaries of those same personnel were allocated only 2.5% to application sessions and the remaining 22.5% was allocated to transactions and market data. The Exchange did not allocate any other Human Resources expense for providing physical connections to any other employee group outside of a smaller allocation (19%) of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel. In contrast, the Exchange allocated much smaller percentages of costs (11% or less) across a wider range of personnel groups in order to allocate Human Resources costs to providing application sessions. This is because a much wider range of personnel are involved in functions necessary to offer, monitor and maintain application sessions but the tasks necessary to do so are not a primary or full-time function.

In total, the Exchange allocated 13.8% of its personnel costs to providing physical connections and 7.7% of its personnel costs to providing application sessions, for a total allocation of 21.5% Human Resources expense to provide connectivity services. In turn, the Exchange allocated the remaining 78.5% of its Human Resources expense to membership (less than 1%) and transactions and market data (77.5%). Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including physical connections and application sessions, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide connectivity services to its Members and non-Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing connectivity services, but instead allocated approximately 27% of the Exchange's overall depreciation and amortization expense to connectivity services (18.5% attributed to physical connections and 8.3% to application sessions). The Exchange allocated the remaining depreciation and amortization expense (approximately 73%) toward the cost of providing transaction services and market data.

Looking at the Exchange's operations holistically, the total monthly costs to the Exchange for offering core services is $3,954,537. Based on the initial four months of billing for connectivity services, the Exchange expects to collect its original estimate of $1,233,750 on a monthly basis for such services.[15] Incorporating this amount into the Exchange's overall projected revenue, including projections related to market data fees adopted earlier this year, the Exchange anticipates monthly revenue ranging from $4,296,950 to $4,546,950 from all sources (*i.e.,* connectivity fees and membership fees that were introduced in January 2022, transaction fees, and revenue from market data, both through the fees adopted in April 2022 and through the revenue received from the SIPs). As such, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues, the Exchange would earn approximately 8.5% to 15% margin on its operations as a whole. The Exchange believes that this amount is reasonable.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. As a new entrant to the hyper-competitive exchange environment, and an exchange focused on driving competition, the Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from connectivity, the Exchange will have to be successful in retaining existing clients that wish to maintain physical connectivity and/or application sessions or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis was based on the Exchange's first year of operations and projections for the next year (which is currently underway). As such, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of connectivity services it will receive additional revenue to offset future cost increases. However, if use of connectivity services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange would propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, we believe that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Proposed Fees

Physical Connectivity Fees

MEMX offers its Members the ability to connect to the Exchange in order to transmit orders to and receive information from the Exchange. Members can also choose to connect to

[15] The Exchange notes that it has charged connectivity services for four months and so far the average amount expected is very close to the estimated revenue provided in the Initial Proposal. Specifically, the Exchange has earned an estimated $1,254,000 ($20,250 more than projected) for connectivity services on an average basis over January through July. The Exchange believes this difference is immaterial for purposes of this proposal and thus, will continue to use the original estimated revenue of $1,233,750 for purposes of this proposal.

MEMX indirectly through physical connectivity maintained by a third-party extranet. Extranet physical connections may provide access to one or multiple Members on a single connection. Users of MEMX physical connectivity services (both Members and non-Members [16]) seeking to establish one or more connections with the Exchange submit a request to the Exchange via the MEMX User Portal or directly to Exchange personnel. Upon receipt of the completed instructions, MEMX establishes the physical connections requested by the User. The number of physical connections assigned to each User as of August 31, 2022, ranges from one to ten, depending on the scope and scale of the Member's trading activity on the Exchange as determined by the Member, including the Member's determination of the need for redundant connectivity. The Exchange notes that 44% of its Members do not maintain a physical connection directly with the Exchange in the Primary Data Center (though many such Members have connectivity through a third-party provider) and another 44% have either one or two physical ports to connect to the Exchange in the Primary Data Center. Thus, only a limited number of Members, 12%, maintain three or more physical ports to connect to the Exchange in the Primary Data Center.

As described above, in order to cover the aggregate costs of providing physical connectivity to Users and make a modest profit, as described below, the Exchange is proposing to charge a fee of $6,000 per month for each physical connection in the Primary Data Center and a fee of $3,000 per month for each physical connection in the Secondary Data Center. There is no requirement that any Member maintain a specific number of physical connections and a Member may choose to maintain as many or as few of such connections as each Member deems appropriate. The Exchange notes, however, that pursuant to Rule 2.4 (Mandatory Participation in Testing of Backup Systems), the Exchange does require a small number of Members to connect and participate in functional and performance testing as announced by the Exchange, which occurs at least once every 12 months. Specifically, Members that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume must participate in mandatory testing of the Exchange's backup systems (*i.e.,* such Members must connect to the Secondary Data Center). The Exchange notes that Members that have been designated are still able to use third-party providers of connectivity to access the Exchange at its Secondary Data Center, and that one such designated Member does use a third-party provider instead of connecting directly to the Secondary Data Center through connectivity provided by the Exchange.[17] Nonetheless, because some Members are required to connect to the Secondary Data Center pursuant to Rule 2.4 and to encourage Exchange Members to connect to the Secondary Data Center generally, the Exchange has proposed to charge one-half of the fee for a physical connection in the Primary Data Center. The Exchange notes that its costs related to operating the Secondary Data Center were not separately calculated for purposes of this proposal, but instead, all costs related to providing physical connections were considered in aggregate. The Exchange believes this is appropriate because had the Exchange calculated such costs separately and then determined the fee per physical connection that would be necessary for the Exchange to cover its costs for operating the Secondary Data Center, the costs would likely be much higher than those proposed for connectivity at the Primary Data Center because Members maintain significantly fewer connections at the Secondary Data Center. The Exchange believes that charging a higher fee for physical connections at the Secondary Data Center would be inconsistent with its objective of encouraging Members to connect at such data center and is inconsistent with the fees charged by other exchanges, which also provide connectivity for disaster recovery purposes at a discounted rate.[18]

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of physical connections a User requests, based upon factors deemed relevant by each User (either a Member, service bureau or extranet). The Exchange believes these factors include the costs to maintain connectivity, business model and choices Members make in how to participate on the Exchange, as further described below.

The proposed fee of $6,000 per month for physical connections at the Primary Data Center is designed to permit the Exchange to cover the costs allocated to providing connectivity services with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange believes it is appropriate to charge fees that represent a reasonable markup over cost given the other factors discussed above and the need for the Exchange to maintain a highly performant and stable platform to allow Members to transact with determinism. The Exchange also reiterates that the Exchange did not charge any fees for connectivity services prior to January 2022, and its allocation of costs to physical connections was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses.

As noted above, the Exchange proposes a discounted rate of $3,000 per month for physical connections at its Secondary Data Center. The Exchange has proposed this discounted rate for Secondary Data Center connectivity in order to encourage Members to establish and maintain such connections. Also, as noted above, a small number of Members are required pursuant to Rule 2.4 to connect and participate in testing of the Exchange's backup systems, and the Exchange believes it is appropriate to provide a discounted rate for physical connections at the Secondary Data Center given this requirement. The Exchange notes that this rate is well below the cost of providing such services and the Exchange will operate its network and systems at the Secondary Data Center without recouping the full amount of such cost through connectivity services.

The proposed fee for physical connections is effective on filing and will become operative immediately.

Application Session Fees

Similar to other exchanges, MEMX offers its Members application sessions, also known as logical ports, for order entry and receipt of trade execution reports and order messages. Members can also choose to connect to MEMX indirectly through a session maintained by a third-party service bureau. Service bureau sessions may provide access to one or multiple Members on a single session. Users of MEMX connectivity services (both Members and non-Members [19]) seeking to establish one or more application sessions with the Exchange submit a request to the Exchange via the MEMX User Portal or directly to Exchange personnel. Upon receipt of the completed instructions,

[16] *See supra* note 13.

[17] The Exchange also notes that a second designated Member that is required to participate in mandatory testing with the Exchange for the first time this year has not yet connected to the Exchange in the Secondary Data Center and has indicated that it is likely to use a third-party provider.

[18] *See, e.g.,* the BZX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*.

[19] *See supra* note 13.

MEMX assigns the User the number of sessions requested by the User. The number of sessions assigned to each User as of August 31, 2022, ranges from one to more than 100, depending on the scope and scale of the Member's trading activity on the Exchange (either through a direct connection or through a service bureau) as determined by the Member. For example, by using multiple sessions, Members can segregate order flow from different internal desks, business lines, or customers. The Exchange does not impose any minimum or maximum requirements for how many application sessions a Member or service bureau can maintain, and it is not proposing to impose any minimum or maximum session requirements for its Members or their service bureaus.

As described above, in order to cover the aggregate costs of providing application sessions to Users and to make a modest profit, as described below, the Exchange is proposing to charge a fee of $450 per month for each Order Entry Port and Drop Copy Port in the Primary Data Center. The Exchange notes that it does not propose to charge for: (1) Order Entry Ports or Drop Copy Ports in the Secondary Data Center, or (2) any Test Facility Ports or MEMOIR Gap Fill Ports. The Exchange has proposed to provide Order Entry Ports and Drop Copy Ports in the Secondary Data Center free of charge in order to encourage Members to connect to the Exchange's backup trading systems. Similarly, because the Exchange wishes to encourage Members to conduct appropriate testing of their use of the Exchange, the Exchange has not proposed to charge for Test Facility Ports. With respect to MEMOIR Gap Fill ports, such ports are exclusively used in order to receive information when a market data recipient has temporarily lost its view of MEMX market data. The Exchange has not proposed charging for such ports because the costs of providing and maintaining such ports is more directly related to producing market data.

The proposed fee of $450 per month for each Order Entry Port and Drop Copy Port in the Primary Data Center is designed to permit the Exchange to cover the costs allocated to providing application sessions with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that the Exchange did not charge any fees for connectivity services prior to January 2022, and its allocation of costs to application sessions was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses.

The proposed fee is also designed to encourage Users to be efficient with their application session usage, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize in managing its aggregate costs for providing connectivity services. There is no requirement that any Member maintain a specific number of application sessions and a Member may choose to maintain as many or as few of such ports as each Member deems appropriate. The Exchange has designed its platform such that Order Entry Ports can handle a significant amount of message traffic (*i.e.,* over 50,000 orders per second), and has no application flow control or order throttling. In contrast, other exchanges maintain certain thresholds that limit the amount of message traffic that a single logical port can handle.[20] As such, while several Members maintain a relatively high number of ports because that is consistent with their usage on other exchanges and is preferable for their own reasons, the Exchange believes that it has designed a system capable of allowing such Members to significantly reduce the number of application sessions maintained.

The proposed fee will not apply differently based upon the size or type of the market participant, but rather based upon the number of application sessions a User requests, based upon factors deemed relevant by each User (either a Member or service bureau on behalf of a Member). The Exchange believes these factors include the costs to maintain connectivity and choices Members make in how to segment or allocate their order flow.[21]

The proposed fee for application sessions is effective on filing and will become operative immediately.

Proposed Fees—Additional Discussion

As discussed above, the proposed fees for connectivity services do not by design apply differently to different types or sizes of Members. As discussed in more detail in the Statutory Basis section, the Exchange believes that the likelihood of higher fees for certain Members subscribing to connectivity services usage than others is not unfairly discriminatory because it is based on objective differences in usage of connectivity services among different Members. The Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services. For these reasons, MEMX believes it is not unfairly discriminatory for the Members with higher message traffic and/or Members with more complicated connections to pay a higher share of the total connectivity services fees. While Members with a business model that results in higher relative inbound message activity or more complicated connections are projected to pay higher fees, the level of such fees is based solely on the number of physical connections and/or application sessions deemed necessary by the Member and not on the Member's business model or type of Member. The Exchange notes that the correlation between message traffic and usage of connectivity services is not completely aligned because Members individually determine how many physical connections and application sessions to request, and Members may make different decisions on the appropriate ways based on facts unique to their individual businesses. Based on the Exchange's architecture, as described above, the Exchange believes that a Member even with high message traffic would be able to conduct business on the Exchange with a relatively small connectivity services footprint.

Because the Exchange has already adopted fees for connectivity services, the Exchange has initial results of the

[20] *See, e.g.,* Cboe US Equities BOE Specification,*available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf* (describing a 5,000 message per second Port Order Rate Threshold on Cboe BOE ports).

[21] The Exchange understands that some Members (or service bureaus) may also request more Order Entry Ports to enable the ability to send a greater number of simultaneous order messages to the Exchange by spreading orders over more Order Entry Ports, thereby increasing throughput (*i.e.,* the potential for more orders to be processed in the same amount of time). The degree to which this usage of Order Entry Ports provides any throughput advantage is based on how a particular Member sends order messages to MEMX, however the Exchange notes that its architecture reduces the impact or necessity of such a strategy. All Order Entry Ports on MEMX provide the same throughput, and as noted above, the throughput is likely adequate even for a Member sending a significant amount of volume at a fast pace, and is not artificially throttled or limited in any way by the Exchange.

impact such fees have had on Member and non-Member usage of connectivity services. Since the fees went into effect as set forth in the Initial Proposal, nine (9) customers with physical connectivity to the Exchange have canceled one or more of their physical connections. These cancellations resulted in an approximate 6% drop in the physical connectivity offered by the Exchange prior to the Exchange charging for such connectivity.[22] In each instance, the customer told the Exchange that its reason for cancelling its connectivity was the imposition of fees. Of these customers, two (2) customers canceled services entirely, three (3) maintained at least one physical connection provided directly by the Exchange, and the remaining four (4) customers migrated to alternative sources of connectivity through a third-party provider. As such, some market participants (one market data provider and one extranet) determined that they no longer wanted to connect to the Exchange directly or through a third party as it was not necessary for their business and their initial connection was only worthwhile so long as services were provided free of charge. Other market participants (one market data provider, one extranet and one Member) determined that they still wished to be directly connected to the Exchange but did not need as many connections. Finally, some market participants (one market data provider, one service bureau and two trading participants) determined that there was a more affordable alternative through a third-party provider of connectivity services. As a general matter, the customers that discontinued use of physical connectivity or transitioned to a third-party provider of connectivity services were either connected purely to consume market data for their own purposes or distribution to others, were themselves extranets or service bureaus providing alternatives to the Exchange's connectivity services, or were smaller trading firms that elected not to participate on the Exchange directly and likely connected initially due to the fact that there were no fees to connect.

Additionally, since the Exchange began charging for application sessions, five (5) customers have canceled a total of thirty (30) application sessions (approximately 3.5% of all customer application sessions) due to the fees adopted by the Exchange.[23] As a general matter, these customers determined that the number of application sessions that they maintained was not necessary in order to participate on the Exchange.

Finally, the fees for connectivity services will help to encourage connectivity services usage in a way that aligns with the Exchange's regulatory obligations. As a national securities exchange, the Exchange is subject to Regulation Systems Compliance and Integrity (''Reg SCI'').[24] Reg SCI Rule 1001(a) requires that the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to ensure (among other things) that its Reg SCI systems have levels of capacity adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.[25] By encouraging Users to be efficient with their usage of connectivity services, the proposed fee will support the Exchange's Reg SCI obligations in this regard by ensuring that unused application sessions are available to be allocated based on individual User needs and as the Exchange's overall order and trade volumes increase. As noted above, based on early results, the adoption of fees has led to certain firms reducing the number of application sessions maintained now that such sessions are no longer provided free of charge. Additionally, because the Exchange will charge a lower rate for a physical connection to the Secondary Data Center and will not charge any fees for application sessions at the Secondary Data Center or its Test Facility, the proposed fee structure will further support the Exchange's Reg SCI compliance by reducing the potential impact of a disruption should the Exchange be required to switch to its Disaster Recovery Facility and encouraging Members to engage in any necessary system testing with low or no cost imposed by the Exchange.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[27] of the Act in general, and furthers the objectives of Section 6(b)(4)[28] of the Act, in particular, in that 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. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)[29] of the Act in that they are designed 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 a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fees for connectivity services are reasonable, equitable and not unfairly discriminatory because, as described above, the proposed pricing for connectivity services is directly related to the relative costs to the Exchange to provide those respective services and does not impose a barrier to entry to smaller participants.

The Exchange recognizes that there are various business models and varying sizes of market participants conducting business on the Exchange. The Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services. Accordingly, the Exchange believes the allocation of the proposed fees that increase based on the number of physical connections or application

[22] The Exchange notes that despite these cancellations, the Exchange has since had existing customers and new customers order physical connectivity that has resulted in the Exchange maintaining nearly the same amount of physical connections for customers as it did prior to the imposition of fees.

[23] The Exchange notes that, as was the case with respect to physical connectivity, the Exchange has since had existing customers and new customers order additional application sessions that has resulted in the Exchange maintaining nearly the same amount of application sessions for customers as it did prior to the imposition of fees.

[24] 17 CFR 242.1000–1007.

[25] 17 CFR 242.1001(a).

[26] While some Members might directly connect to the Secondary Data Center and incur the proposed $3,000 per month fee, there are other ways to connect to the Exchange, such as through a service bureau or extranet, and because the Exchange is not imposing fees for application sessions in the Secondary Data Center, a Member connecting through another method would not incur any fees charged directly by the Exchange. However, the Exchange notes that a third-party service provider providing connectivity to the Exchange likely would charge a fee for providing such connectivity; such fees are not set by or shared in by the Exchange.

[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(4).

[29] 15 U.S.C. 78f(b)(5).

sessions is reasonable based on the resources consumed by the respective type of market participant (*i.e.,* lowest resource consuming Members will pay the least, and highest resource consuming Members will pay the most), particularly since higher resource consumption translates directly to higher costs to the Exchange.

With regard to reasonableness, the Exchange understands that when appropriate given the context of a proposal the Commission has taken a market-based approach to examine whether the SRO making the proposal was subject to significant competitive forces in setting the terms of the proposal. In looking at this question, the Commission considers whether the SRO has demonstrated in its filing that: (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Commission will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. If the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

MEMX believes the proposed fees for connectivity services are fair and reasonable as a form of cost recovery for the Exchange's aggregate costs of offering connectivity services to Members and non-Members. The proposed fees are expected to generate monthly revenue of $1,233,750 providing cost recovery to the Exchange for the aggregate costs of offering connectivity services, based on a methodology that narrowly limits the cost drivers that are allocated cost to those closely and directly related to the particular service. In addition, this revenue will allow the Exchange to continue to offer, to enhance, and to continually refresh its infrastructure as necessary to offer a state-of-the-art trading platform. The Exchange believes that, consistent with the Act, it is appropriate to charge fees that represent a reasonable markup over cost given the other factors discussed above. The Exchange also believes the proposed fee is a reasonable means of encouraging Users to be efficient in the connectivity services they reserve for use, with the benefits to overall system efficiency to the extent Members and non-Members consolidate their usage of connectivity services or discontinue subscriptions to unused physical connectivity.

The Exchange further believes that the proposed fees, as they pertain to purchasers of each type of connectivity alternative, constitute an equitable allocation of reasonable fees charged to the Exchange's Members and non-Members and are allocated fairly amongst the types of market participants using the facilities of the Exchange.

As described above, the Exchange believes the proposed fees are equitably allocated because the Exchange's incremental aggregate costs for all connectivity services are disproportionately related to Members with higher message traffic and/or Members with more complicated connections established with the Exchange, as such Members: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high-touch network support services provided by the Exchange and its staff, including network monitoring, reporting and support services, resulting in a much higher cost to the Exchange to provide such connectivity services.

Commission staff previously noted that the generation of supra-competitive profits is one of several potential factors in considering whether an exchange's proposed fees are consistent with the Act.[30] As described in the Fee Guidance, the term ''supra-competitive profits'' refers to profits that exceed the profits that can be obtained in a competitive market. The proposed fee structure would not result in excessive pricing or supra-competitive profits for the Exchange. The proposed fee structure is merely designed to permit the Exchange to cover the costs allocated to providing connectivity services with a modest markup (approximately 8%), which would also help fund future expenditures (increased costs, improvements, etc.). The Exchange believes that this is fair, reasonable, and equitable. Accordingly, the Exchange believes that its proposal is consistent with Section 6(b)(4) [31] of the Act because the proposed fees will permit recovery of the Exchange's costs and will not result in excessive pricing or supra-competitive profit.

The proposed fees for connectivity services will allow the Exchange to cover certain costs incurred by the Exchange associated with providing and maintaining necessary hardware and other network infrastructure as well as network monitoring and support services; without such hardware, infrastructure, monitoring and support the Exchange would be unable to provide the connectivity services. The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by adopting fees for connectivity services. As detailed above, the Exchange has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these four primary sources of revenue. The Exchange's Cost Analysis estimates the costs to provide connectivity services at $1,143,715. Based on current connectivity services usage, the Exchange would generate monthly revenues of approximately $1,233,750.[32] This represents a modest profit when compared to the cost of providing connectivity services. Even if the Exchange earns that amount or incrementally more, the Exchange believes the proposed fees for connectivity services are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total expense of MEMX associated with providing connectivity services versus the total projected revenue of the Exchange associated with network connectivity services. As noted above, when incorporating the projected revenue from connectivity services into the Exchange's overall projected revenue, including projections related to recently adopted market data fees, the Exchange anticipates monthly revenue ranging from $4,296,950 to $4,546,950 from all sources. As such, applying the Exchange's holistic Cost Analysis to a holistic view of anticipated revenues, the Exchange would earn approximately 8.5% to 15% margin on its operations as a whole. The Exchange believes that this amount is reasonable and is again evidence that the Exchange will not earn a supra-competitive profit.

The Exchange notes that other exchanges offer similar connectivity options to market participants and that the Exchange's fees are a discount as

[30] *See* Fee Guidance, *supra* note 12.

[31] 15 U.S.C. 78f(b)(4).

[32] *See supra* note 15.

compared to the majority of such fees.[33] With respect to physical connections, each of the Nasdaq Stock Market LLC (''Nasdaq''), NYSE, NYSE Arca, Inc. (''Arca''), BZX and Cboe EDGX Exchange, Inc. (''EDGX'') charges between $7,500–$22,000 per month for physical connectivity at their primary data centers that is comparable to that offered by the Exchange.[34] Nasdaq, NYSE and Arca also charge installation fees, which are not proposed to be charged by the Exchange. With respect to application sessions, each of Nasdaq, NYSE, Arca, BZX and EDGX charges between $500–$575 per month for order entry and drop ports.[35] The Exchange further notes that several of these exchanges each charge for other logical ports that the Exchange will continue to provide for free, such as application sessions for testing and disaster recovery purposes.[36] While the Exchange's proposed connectivity fees are lower than the fees charged by Nasdaq, NYSE, Arca, BZX and EDGX, MEMX believes that it offers significant value to Members over these other exchanges in terms of bandwidth available over such connectivity services, which the Exchanges believes is a competitive advantage, and differentiates its connectivity versus connectivity to other exchanges.[37] Additionally, the Exchange's proposed connectivity fees to its disaster recovery facility are within the range of the fees charged by other exchanges for similar connectivity alternatives.[38] The Exchange believes that its proposal to offer certain application sessions free of charge is reasonable, equitably allocated and not unfairly discriminatory because such proposal is intended to encourage Member connections and use of backup and testing facilities of the Exchange, and, with respect to MEMOIR Gap Fill ports, such ports are used exclusively in connection with the receipt and processing of market data from the Exchange.

In conclusion, the Exchange submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [39] for the reasons discussed above in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities, does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest, particularly as the proposal neither targets nor will it have a disparate impact on any particular category of market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[40] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. In particular, while the Exchange did not officially propose fees until late December of 2021 when it filed the Initial Proposal, Exchange personnel had been informally discussing potential fees for connectivity services with a diverse group of market participants that are connected to the Exchange (including large and small firms, firms with large connectivity service footprints and small connectivity service footprints, as well as extranets and service bureaus) for several months leading up to that time. The Exchange received no official complaints from Members, non-Members (extranets or service bureaus), third-parties that purchase the Exchange's connectivity and resell it, and customers of those resellers, that the Exchange's fees or the proposed fees for connectivity services would negatively impact their abilities to compete with other market participants or that they are placed at a disadvantage.

As expected, the Exchange did, however, have several market participants reduce or discontinue use of connectivity services provided directly by the Exchange in response to the fees adopted by the Exchange. The Exchange does not believe that the proposed fees for connectivity services place certain market participants at a relative disadvantage to other market participants because the proposed connectivity pricing is associated with relative usage of the Exchange by each market participant and does not impose a barrier to entry to smaller participants. The Exchange notes that two smaller trading firms cancelled connectivity services and elected not to participate on the Exchange directly due to the imposition of fees but these participants were not actively participating on the Exchange prior to disconnecting and likely connected initially due to the fact that there were no fees to connect. The Exchange believes its proposed pricing is reasonable and, when coupled with the availability of third-party providers that also offer connectivity solutions, that participation on the Exchange is affordable for all market participants, including smaller trading firms. As described above, the connectivity services purchased by market participants typically increase based on their additional message traffic and/or the complexity of their operations. The market participants that utilize more connectivity services typically utilize the most bandwidth, and those are the participants that consume the most resources from the network. Accordingly, the proposed fees for

[33] One significant differentiation between the Exchanges is that while it offers different types of physical connections, including 10Gb, 25Gb, 40Gb, and 100Gb connections, the Exchange does not propose to charge different prices for such connections. In contrast, most of the Exchange's competitors provide scaled pricing that increases depending on the size of the physical connection. The Exchange does not believe that its costs increase incrementally based on the size of a physical connection but instead, that individual connections and the number of such separate and disparate connections are the primary drivers of cost for the Exchange.

[34] *See* the Nasdaq equities fee schedule, available at: *http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2;* the NYSE fee schedule, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf;* the NYSE Arca equities fee schedule, available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf;* the BZX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* the EDGX equities fee schedule, available at: *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.* This range is based on a review of the fees charged for 10–40Gb connections at each of these exchanges and relates solely to the physical port fee or connection charge, excluding co-location fees and other fees assessed by these exchanges. The Exchange notes that it does not offer physical connections with lower bandwidth than 10Gb and that Members and non-Members with lower bandwidth requirements typically access the Exchange through third-party extranets or service bureaus.

[35] *See id.*

[36] *See id.*

[37] As noted above, all physical connections offered by MEMX are at least 10Gb capable and physical connections provided with larger bandwidth capabilities will be provided at the same rate as such connections. In contrast to other exchanges, MEMX has not proposed different types of physical connections with higher pricing for those with greater capacity. *See supra* note 33. The Exchange also reiterates that MEMX application sessions are capable of handling significant amount of message traffic (*i.e.,* over 50,000 orders per second), and have no application flow control or order throttling, in contrast to competitors that have imposed message rate thresholds. *See supra* note 20 and accompanying text.

[38] *See supra* note 34.

[39] 15 U.S.C. 78f(b)(4) and (5).

[40] 15 U.S.C. 78f(b)(8).

connectivity services do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed connectivity fees reflects the network resources consumed by the various size of market participants and the costs to the Exchange of providing such connectivity services.

Inter-Market Competition

The Exchange does not believes the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. Additionally, other exchanges have similar connectivity alternatives for their participants, but with higher rates to connect.[41] The Exchange is also unaware of any assertion that the proposed fees for connectivity services would somehow unduly impair its competition with other exchanges.

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)(ii) of the Act[42] and Rule 19b–4(f)(2)[43] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–26 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–MEMX–2022–26. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–26 and should be submitted on or before October 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21339 Filed 9–30–22; 8:45 am]

BILLING CODE 8011–01–P

[41] *See supra* notes 33–38 and accompanying text.

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

[43] 17 CFR 240.19b–4(f)(2).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95917; File No. SR–MEMX–2022–19]

Self-Regulatory Organizations; MEMX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Market Data Fees

September 27, 2022.

On July 22, 2022, MEMX LLC (''MEMX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Fee Schedule to adopt fees for its market data products. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on August 10, 2022.[4] On September 20, 2022, MEMX withdrew the proposed rule change (SR–MEMX–2022–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21334 Filed 9–30–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95930; File No. SR–NYSE–2022–39]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fee Provisions of the Listed Company Manual Applicable to Companies Listing Upon Emergence From Bankruptcy

September 27, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 95420 (August 4, 2022), 87 FR 48721.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 14, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 Section 902.02 of the NYSE Listed Company Manual (the ''Manual'') to: (i) modify the conditions under which a listed company can qualify for the reduced fees that are provided to companies listing upon emergence from bankruptcy; (ii) specify that any company listing in connection with an underwritten public offering is not eligible for the reduction in annual fees or a waiver of initial listing fees provided to companies emerging from bankruptcy under that rule; and (iii) reset the annual fee reduction rate for companies listing upon emergence from bankruptcy. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Annual Fees

Section 902.02 of the Manual includes a subsection entitled ''Total Maximum Fee Payable in a Calendar Year by an Issuer Listing Upon Emergence from Bankruptcy'' (the ''Bankruptcy Subsection''), which sets forth a limitation on listing fees charged to companies that list upon emergence from bankruptcy. If an issuer lists upon emergence from bankruptcy, its annual fees will be calculated quarterly for the fiscal quarter in which it lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-fourth of the applicable annual fee rate. The total fees (including listing fees and annual fees) that may be billed to such an issuer during this period will be subject to a $25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. This fee cap is subject to the same exclusions as apply in relation to the $500,000 per year fee cap described in Section 902.02 under the subsection ''Total Maximum Fee Payable in a Calendar Year.'' If there are one or more fiscal quarters remaining in the year after the conclusion of the period described in this paragraph, the issuer will, on a prorated basis, be billed the regular annual fee subject to the $500,000 total fee cap for the remainder of that year.

The Exchange now proposes to amend the Bankruptcy Subsection to provide that an issuer will be entitled to the fee reductions and per year fee cap if it lists within 12 months of emergence from bankruptcy (rather than only if the issuer lists immediately upon emergence from bankruptcy). The Exchange believes that it is reasonable to expand the eligibility for the fee reductions set forth under the Bankruptcy Subsection to companies listing within 12 months of emergence from bankruptcy because these companies are subject to many of the same challenges as companies that list immediately upon emergence from bankruptcy. The Exchange notes that some companies choose not to list immediately upon emergence from bankruptcy or are unable to do so as they do not meet Exchange distribution standards until their post-emergence equity has traded for some time. The Exchange believes making the fee reduction available to companies within 12 months of emerging from bankruptcy would incentivize issuers to list on the Exchange, which should result in increased transparency and liquidity with respect to the issuer's securities.

The Exchange also proposes to amend the Bankruptcy Subsection to provide that the fee limitations thereunder will not be available for any company listing in connection with an underwritten public offering. The Exchange made the following statement in connection with its original proposal of this fee provision:

> Companies emerging from bankruptcy are typically not raising any new capital at the time of listing, so the payment of initial listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the desire in bankruptcy proceedings to ensure that creditors are paid as much as possible, such companies are much more sensitive to both the initial and continued costs associated with listing.[4]

The Exchange notes that companies often plan to list immediately upon emergence from bankruptcy and that the costs of the listing are therefore considered in the context of the payments made to settle the claims of creditors as part of the reorganization plan authorized by the bankruptcy court. However, an underwritten public offering is by its nature a transaction that is separate from and subsequent to the bankruptcy reorganization process and typically does not happen directly after emergence. As all of the claims of the issuer's creditors in the bankruptcy process are settled at the time of the issuer's emergence from bankruptcy, the focus on maximizing payments to the creditors of the bankrupt company and the associated sensitivity to the continued costs of listing cited at the time of adopting this fee provision are no longer relevant in the case of a company listing in connection with an underwritten public offering at some point after emergence. Furthermore, the Exchange believes that the fact that such companies are raising capital at the time of listing will generally place them in a financially more secure position than other companies listing after emergence from bankruptcy and will generally make them more comparable to companies listing in connection with an initial public offering.

The Exchange also proposes to amend the Bankruptcy Subsection by resetting the fee reduction rate for qualified issuers listing on or after September 15, 2022. Specifically, if an issuer lists upon emergence from bankruptcy, its annual fees will be calculated quarterly for the fiscal quarter in which it lists and in each of the succeeding 12 full fiscal quarters, at a rate of one-half of the applicable annual fee rate, rather than at a rate of one-quarter of the applicable rate as is the case under the rule as currently written. The Exchange believes that this adjustment is reasonable in light of the significant increase in the cost of services provided

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 55421 (March 8, 2007): 72 FR 11925 (March 14, 2007) (SR–NYSE–2007–19).

to issuers since the adoption of the current fee discount provision in 2007. The Exchange further believes that the proposed amended discounted fee structure will cause the affected issuers to pay fees that are more closely aligned with the cost of servicing their listings. This proposed amendment would not affect issuers that listed before September 15, 2022. Issuers with securities listed before that date would continue to pay the rate of one-fourth of the applicable annual fee rate as set forth in the current rule. The Exchange believes this is reasonable as these issuers made their decision to list on the Exchange on the basis of their eligibility for this reduced fee rate for the first 36 months of their listing and it would therefore be unfair to raise their fee cap during that period.

Initial Listing Fees

Section 902.02 also contains a provision waiving initial listing fees for certain categories of listings, including the listing of a company within 36 months of emergence from bankruptcy that has not had a security listed on a national securities exchange during such period. The Exchange proposes to exclude from this waiver any company listing in connection with an underwritten public offering. As is the case with the annual fee reduction for companies emerging from bankruptcy, the Exchange believes that the fact that such companies are raising capital at the time of listing will generally place them in a financially more secure position than other companies listing after emergence from bankruptcy and will generally make them more comparable to companies listing in connection with an initial public offering.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to expand the eligibility for the fee reductions set forth under the Bankruptcy Subsection to companies listing within 12 months of emergence from bankruptcy because those companies are subject to many of the same challenges as companies that list immediately upon emergence from bankruptcy. The Exchange notes that some companies choose not to list immediately upon emergence from bankruptcy or are unable to do so as they do not meet Exchange distribution standards until their post-emergence equity has traded for some time. The Exchange believes the proposed fee reduction would provide an incentive for those companies to list on the Exchange.

In this regard, the Exchange notes that the issuers that would benefit from the proposed expanded eligibility for the fee reduction, like all other listing applicants, would be required to satisfy the Exchange's listings standards as well as the other governance requirements and standards that the Exchange requires of issuers listed on the Exchange. Accordingly, the Exchange believes that it is in the public's interest, and the interest of the issuer, to provide an opportunity for the increased transparency and liquidity that is attendant with listing on the Exchange and therefore that it is reasonable to provide the applicable fee reduction for such issuers. The Exchange believes that the number of additional issuers that will qualify for this fee reduction, as proposed, will be limited. The Exchange also believes that limiting the fee reduction to 12 months following emergence from bankruptcy is reasonable because, in the Exchange's opinion, it is a period of time that is sufficient for the issuer to proceed with its reorganization and meet the Exchange's qualifications for listing.

The Exchange believes that the proposed adjustment to the fee rate for eligible issuers under the Bankruptcy Subsection from one-quarter of the applicable annual fee rate to one-half of such rate is reasonable in light of the significant increase in the cost of services provided to issuers since the adoption of the current fee discount provision in 2007. The Exchange believes that the proposed amended discounted fee structure will cause the affected issuers to pay fees that are more closely aligned with the cost of servicing their listings. The Exchange further believes it is reasonable to continue to apply the rate of one-fourth of the applicable annual fee rate set forth in the current version of the Bankruptcy Subsection to issuers that listed prior to the adoption of the proposed amendment, as these issuers made their decision to list on the Exchange on the basis of their eligibility for this reduced fee rate for the first 36 months of their listing and it would therefore be unfair to raise their fee cap during that period.

The Exchange also believes that it is reasonable to not provide the initial fee waiver or the proposed annual fee reduction to companies that have emerged from bankruptcy within the previous 36 or 12 months, as applicable, but that are listing in connection with an underwritten public offering. The Exchange notes that any company that is listing in connection with an underwritten public offering after emergence from bankruptcy will already have settled all claims of its creditors at the time of emergence, so the focus on maximizing payments to the creditors of the bankrupt company and the associated sensitivity to the continued costs of listing cited at the time of adopting this fee provision are not relevant to such companies. Furthermore, the fact that such companies are raising capital at the time of listing will generally place them in a financially more secure position than other companies listing after emergence from bankruptcy and will generally make them more comparable to companies listing in connection with an initial public offering. For the foregoing reasons, the Exchange believes that it does not constitute an inequitable allocation of fees and is not unfairly discriminatory to treat companies differently for purposes of these fee provisions if they are listing in connection with an underwritten public offering.

For the foregoing reasons, the Exchange believes that the proposal is 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. The proposed conditions on fees will be applicable to all similarly situated issuers on the same basis.

The Exchange does not believe that the proposed fee changes will have any meaningful effect on the competition among issuers listed on the Exchange.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable.

Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[10] of the Act 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–39 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–NYSE–2022–39. 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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–39 and should be submitted on or before October 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–21335 Filed 9–30–22; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11874]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Vittore Carpaccio: Master Storyteller of Renaissance Venice'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Vittore Carpaccio: Master Storyteller of Renaissance Venice'' at the National Gallery of Art, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–21401 Filed 9–30–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11876]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Roman Landscapes: Visions of Nature and Myth From Rome and Pompeii'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Roman Landscapes: Visions of Nature and Myth from Rome and Pompeii'' at the San Antonio Museum of Art, San Antonio, Texas, and at

possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–21403 Filed 9–30–22; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. AB 6 (Sub-No. 500X)]

BNSF Railway Company—Abandonment Exemption—in Cook County, Ill.

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.43 miles of the Sangamon Street Line beginning north of West 16th Street (Engineering Station 185+77) to Cullerton Street (Engineering Station 163+50) in Cook County, Ill. (the Line). The Line traverses U.S. Postal Service Zip Code 60608.

BNSF has certified that: (1) no local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line; (3) no formal complaint filed by a user of rail service on the Line (or by state or local government on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on November 2, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 13, 2022.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 24, 2022.

All pleadings, referring to Docket No. AB 6 (Sub-No. 500X), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BNSF has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by October 7, 2022. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by BNSF's filing of a notice of consummation by October 3, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2022–21416 Filed 9–30–22; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

TENNESSEE VALLEY AUTHORITY

Clinch River Nuclear Site Advanced Nuclear Reactor Technology Park Final Programmatic Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations and Tennessee Valley Authority's (TVA's) procedures for implementing the National Environmental Policy Act (NEPA). TVA has selected the Preferred Alternative identified in the Clinch River Nuclear (CRN) Site Advanced Nuclear Reactor Technology Park Final Programmatic Environmental Impact Statement (PEIS). The Notice of Availability of the Final PEIS for the Clinch River Nuclear Site Advanced Nuclear Reactor Technology Park was published in the **Federal Register** on July 29, 2022. The Preferred Alternative, Alternative D—Nuclear Technology Park at Area 1 and Area 2 with Small Modular Reactors (SMRs) and/or Advanced Non-Light Water Reactors

(Non-LWRs), provides the necessary flexibility in achieving the purpose and need of the project to support TVA's goal of demonstrating the feasibility of deploying advanced nuclear reactor technologies at the CRN Site capable of incrementally supplying clean, secure, and reliable power that is less vulnerable to disruption. As defined in the PEIS, advanced reactors can include non-LWRs and LWRs. SMRs are a type of advanced LWR reactor with an electrical output of generally no more than 300 megawatts electric (MWe).

FOR FURTHER INFORMATION CONTACT: J. Taylor Johnson, NEPA Compliance Specialist, Tennessee Valley Authority, 1101 Market Street, BR 2C–C, Chattanooga, Tennessee 37402; by telephone (423) 751–2732, or email at *jtcates@tva.gov*. The Final PEIS, this Record of Decision (ROD) and other project documents are available on TVA's website *https://www.tva.gov/nepa.*

SUPPLEMENTARY INFORMATION: TVA is a corporate agency of the United States that provides electricity for business customers and local power distributors serving 10 million people in the Tennessee Valley—an 80,000-square-mile region comprised of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. TVA receives no taxpayer funding and derives virtually all revenues from the sale of electricity. In addition to operating and investing revenues in its power system, TVA provides flood control, navigation, and land management for the Tennessee Valley watershed and provides economic development and job creation assistance within the Service area.

In May 2016, TVA submitted an application to the Nuclear Regulatory Commission (NRC) for an Early Site Permit (ESP) at the CRN Site for two or more new nuclear power units demonstrating small modular reactor (SMR) technology, with a total combined nuclear generating capacity not to exceed 800 MWe. The NRC prepared and released a Final Environmental Impact Statement (NRC ESP FEIS) to assess the environmental impacts of the action proposed in the TVA ESP application (ESPA). The NRC ESP FEIS identified issuance of an ESP for the CRN Site as the preferred alternative.

Following the NRC ESP FEIS publication in April 2019, the NRC issued an ESP to TVA on December 19, 2019, which is valid for up to 20 years. The ESP represents NRC's approval of the CRN Site as suitable for the future demonstration of the construction and operation of two or more SMRs with characteristics presented in the ESPA, but it does not authorize TVA to construct or operate a nuclear facility. Prior to construction or operation of advanced nuclear reactors at the CRN Site, TVA must apply for and receive additional permits and licenses from the NRC.

In June 2019, TVA released the agency's Integrated Resource Plan (IRP) Final Environmental Impact Statement (EIS) and the Final 2019 IRP. The IRP identified the various generating resources that TVA intends to pursue to meet the energy needs of the Tennessee River Valley over a 20-year planning period. The 2019 IRP recommended that TVA continue to evaluate emerging nuclear technologies, including SMRs, as part of technology innovation efforts aimed at developing future electricity generation capabilities. In December 2021, the TVA Board of Directors authorized the implementation of a New Nuclear Program to advance SMR planning efforts at the CRN Site, and to explore plans for potential additional reactors at other locations on the TVA system to support TVA's 2050 decarbonization aspiration. The Final PEIS for the Clinch River Nuclear Site Advanced Nuclear Reactor Technology Park is TVA's next step in exploring the potential for new nuclear generation on the TVA system, to pursue the recommendations of the IRP.

Nuclear Reactor Designs Considered

Nuclear technology alternatives considered by TVA for the CRN Site include both SMRs and advanced non-LWRs, both further defined in the PEIS. Potential SMR reactor designs analyzed in the PEIS include low- or high-power pressurized water reactors and boiling water reactors. Potential advanced non-LWR reactor designs analyzed in the PEIS include thermal, molten salt graphite-moderated; thermal, fluoride salt coolant, graphite-moderated; high temperature gas, graphite-moderated, helium-cooled; molten chloride fast reactors; and micro reactors.

Alternatives Considered

TVA considered four alternatives in the Draft PEIS and Final PEIS located in two different areas (Area 1 and Area 2) on the site identified as suitable for Nuclear Technology Park development. Area 1 includes lands previously disturbed by the Clinch River Breeder Reactor Project that were evaluated in the ESPA Environmental Report (ER). A portion of Area 2 was also evaluated in the ESPA ER for a proposed temporary laydown area.

The four alternatives considered by TVA in the PEIS are:

Alternative A—No Action. Under this alternative, TVA would not seek additional approvals from the NRC for the CRN Site, and a Nuclear Technology Park and advanced nuclear reactors would not be further explored, constructed, operated, and therefore not decommissioned at the CRN Site. The CRN Site would continue to be managed in accordance with the Watts Bar Reservoir Land Management Plan, and TVA would continue routine maintenance and clearing associated with the transmission lines that currently traverse the CRN Site. As this alternative would not support TVA's nuclear technology innovation efforts aimed at developing future generation capabilities, the No Action Alternative would not meet the purpose and need for the proposed action. It does, however, represent current conditions and provides a benchmark for comparing the environmental impacts of implementation of Alternatives B, C, and D.

Alternative B—Nuclear Technology Park at Area 1 with SMRs and/or Advanced Non-LWRs. Under Alternative B, potential project activities would include site preparation, construction, operation, and decommissioning of one or more advanced nuclear reactor(s) at Area 1 of the CRN Site. This alternative consists of two options for development of Area 1: Alternative B1—Construction of one or more SMRs or Alternative B2—Construction of one or more SMRs and/or advanced non-LWRs.

Alternative C—Nuclear Technology Park at Area 2 with Advanced Non-LWRs. Under this alternative, potential project activities would include site preparation, construction, operation, and potential decommissioning of one or more advanced non-LWRs at Area 2 on the CRN Site.

Alternative D—Nuclear Technology Park at Area 1 and Area 2 with SMRs and/or Advanced Non-LWRs, potential activities would include site preparation, construction, operation, and decommissioning of one or more advanced nuclear reactor(s) at Area 1 and Area 2 on the CRN Site. One or more SMRs and/or advanced non-LWRs could be constructed at Area 1 and one or more advanced non-LWRs could be constructed at Area 2.

Environmentally Preferred Alternative

The PEIS includes baseline information for understanding the potential environmental and socioeconomic impacts associated with the alternatives considered by TVA.

TVA considered 20 resource areas related to the human and natural environments and the impacts on these resources associated with each Nuclear Technology Park alternative. Alternative A—No Action would result in the lowest level of environmental impacts as the construction- and operation-related impacts resulting from Alternatives B through D on Areas 1 and 2 would be avoided. However, Alternative A—No Action does not meet the purpose and need for the project.

Implementation of Alternative D, TVA's preferred alternative, would result in minor to moderate unmitigated impacts to the environment. These impacts would be related to stormwater discharge into local surface waters and groundwater; alteration of stream habitat; loss of vegetated land cover; impacts to wetlands; and increased noise, dust, traffic, and air emissions. Minor to moderate adverse impacts during construction would result from soil disturbance and erosion; impacts to onsite streams; and shoreline alteration. Moderate impacts would include loss of upland plant and animal communities; loss of habitat for listed bat species; disruption of views from adjacent properties; removal of low-quality forest and herbaceous habitat; impacts to three small areas of native cedar glades; and traffic increases at selected intersections within the local transportation network.

Potential impacts to two state-listed plant species—rigid sedge and pale green orchid—could occur from the proposed development of the 161-kV offsite transmission line. These impacts would be mitigated to the extent possible through minimization measures and TVA's planned efforts to expand the Grassy Creek Habitat Protection Area (HPA) by about 14 acres in the area where these plants are located.

Moderate impacts to six archaeological sites determined to be eligible for listing on the National Register of Historic Places (NRHP) would occur due to construction disturbance from the project but would be mitigated through a Programmatic Agreement (PA) between TVA and the Tennessee State Historic Preservation Officer (SHPO). The proposed action would also result in minor to moderate beneficial impacts associated with increased employment, payroll, and tax revenues.

Minor impacts during operation of the Nuclear Technology Park would include localized alteration of hydrologic patterns, limited scour diversion from the use and discharge of cooling water from and into the Clinch River arm of the Watts Bar Reservoir, noise, increased traffic, and impacts associated with design basis accidents, severe accidents, and plant security. The combined environmental impacts from the uranium fuel cycle, the storage of spent fuel onsite, radioactive waste management, and the transportation of unirradiated fuel and radioactive waste would be minor.

The environmentally preferred action alternative that meets the project purpose and need is Alternative B—Nuclear Technology Park at Area 1 with SMRs and/or advanced non-LWRs. Alternative B would meet the purpose and need of the project and would have less impacts than Alternative D as Area 2 would not be disturbed. However, as the project would be limited to only the use of Area 1, there would be less flexibility for project activities and less opportunity for exploring technologies that could assist in meeting the project goals.

Impacts associated with Alternative C would be somewhat reduced relative to Alternative D, as the majority of Area 1 would not be disturbed. However, as the project would be limited to only the use of Area 2, and the advanced non-LWR technologies are less mature and further from commercialization than SMRs, there is limited flexibility to meet the purpose and need of the project.

Decision

Informed by the summary of the submitted alternatives, information, and analyses in the Final PEIS, TVA certifies it has considered all of the alternatives, information, analyses, and objections submitted by State, Tribal, and local governments and public commenters for consideration in developing the PEIS. TVA has selected the preferred alternative identified in the Final PEIS, Alternative D—Nuclear Technology Park at Area 1 and Area 2 with SMRs and/or advanced Non-LWRs. This alternative was selected over Alternative B—Nuclear Technology Park at Area 1 with SMRs and/or advanced non-LWRs and Alternative C—Nuclear Technology Park at Area 2 with advanced Non-LWRs, as it would best achieve the purpose and need of the project by providing the greatest flexibility to support TVA's goal of demonstrating the feasibility of deploying advanced nuclear reactor technologies at the CRN Site.

Public Involvement

On February 2, 2021, TVA published a Notice of Intent (NOI) in the **Federal Register** announcing that it planned to prepare a PEIS to address future actions at the CRN Site relating to construction and operation of a Nuclear Technology Park. The NOI initiated a public scoping period, which concluded on March 19, 2021. In addition to the NOI in the **Federal Register**, TVA contacted local, state, and federal agencies, local power companies, and directly served customers, and sent a media advisory to news outlets across the TVA service area. A public notice advertisement was also placed in the Roane County News, Knoxville News Sentinel, News-Herald, Oak Ridger, Courier News, and on the TVA website. As part of Scoping, TVA hosted a live virtual scoping webinar on March 1, 2021, to gather input from the public and stakeholders. A total of 98 individuals, including members of the general public and representatives of a variety of organizations as well as TVA, registered for the meeting, and 58 attended the question-and-answer session following the presentation. During the scoping period, TVA received 45 comment submissions from members of the pubic, local government, and state and federal agencies. Comment submissions were carefully reviewed and summarized in a Scoping Report included in Appendix C of the PEIS.

The Draft PEIS was released to the public on February 18, 2022, and a Notice of Availability including a request for comments on the Draft PEIS was published in the **Federal Register** on February 18, 2022. The Draft PEIS was posted on TVA's website and hard copies were available by request. Additionally, TVA held a virtual public open house on March 10, 2022. Approximately 160 individuals registered for the event which was attended by 75 individuals at the event's peak attendance. Attendees included individuals from the general public, NRC, EPA, TVA, and local media. TVA accepted and answered questions from the attendees following the presentation. TVA's public and agency involvement for the Draft PEIS included a 45-day public comment period, which closed on April 4, 2022.

TVA received 18 comment submissions, which included emails and submissions through the project website and virtual meeting room. Comment submissions were carefully reviewed and consisted of 72 individual comment statements. The most frequently mentioned topics from the public comments were related to support for the project, the impact from site development on threatened and endangered species, concern for habitat loss, impacts to water quality of the Clinch River arm of the Watts Bar Reservoir from general site development and runoff, as well as concern about fuel leaks and spent fuel storage. TVA

provided responses to these comments, made appropriate minor revisions to the Draft PEIS, and issued the Final PEIS.

The Notice of Availability for the Final PEIS was published in the **Federal Register** on July 29, 2022.

Mitigation Measures

TVA will use the following means to avoid or minimize environmental harm: Appropriate best management practices during any site preparation, construction, operation, and decommissioning of advanced nuclear reactors, including those described in A Guide for Environmental Protection and Best Management Practices for Tennessee Valley Authority, the Tennessee Erosion and Sediment Control Handbook, the project-specific stormwater pollution prevention plan, and those associated with a site-specific Integrated Pollution Prevention Plan.

In addition, TVA will:

- Conduct additional site-specific investigations to evaluate the presence of karst features in areas proposed for structure development.
- Ensure that any disturbance of contaminated sediments within the Clinch River arm of the Watts Bar Reservoir would be subject to the terms of the Watts Bar Interagency Agreement that includes the USACE, U.S. Department of Energy, TDEC, and the U.S. Environmental Protection Agency, to coordinate review of permitting and authorization.
- Minimize the noise effects of blasting by requiring the construction contractor to develop a blasting plan to include notifications to local officials, emergency departments, and neighboring businesses and residents.
- Minimize noise impacts based on further analysis and/or modeling to determine offsite operational noise impacts when designs for specific reactor and cooling technologies are developed.
- Minimize the effect of construction dewatering on groundwater levels in the areas surrounding any potential excavation and reduce the need for dewatering by appropriately blocking or grouting fractures and cavities transmitting large amounts of water. As appropriate, TVA will assess the effects of dewatering by monitoring groundwater levels surrounding the excavation and water levels in potentially affected surface waterbodies.
- Limit any new rail line construction to the north side of the rail spur, thereby avoiding 100- and 500-year floodplains.
- Minimize permanent and temporary impacts to wetlands and other sensitive resources during the design phase of any reactor to be constructed on site. If impacts to wetlands are not avoidable, CWA permitting with the USACE and TDEC will be conducted as appropriate.
- Establish a buffer around forested wetland W019, which is rated as having exceptional value, such that it would not be impacted by project activities.
- Design the diffuser ports that are part of the discharge system to direct effluent upwards into the water column so that limited physical alteration or scouring occurs, thereby minimizing impacts to benthic habitats.
- Work to minimize and avoid impacts in native cedar glade areas during design, construction, and operation.
- Time any proposed actions within 660 feet of active osprey nests to avoid nesting seasons, or coordinate with the U.S. Department of Agriculture Wildlife Services for guidance to ensure compliance under Executive Order 13186.
- When feasible, remove trees within the Project Area in winter (October 15–March 31) when most species of migratory birds would not be nesting and/or would be away from the region.
- Review any proposed tree removal plans once site-specific designs are completed to determine if impacts to potentially suitable Indiana bat and northern long-eared bat habitat may occur. Consultation under Section 7 of the Endangered Species Act will occur, as appropriate, when specific designs have been selected, the scope of each project has been refined, and impacts to federally listed bats can be properly assessed.
- Ensure that state-listed plant species including the rigid sedge and pale green orchid are not significantly impacted by designing the proposed offsite transmission line to avoid the species and their habitat to the greatest extent possible. TVA transmission engineers will consult with the TVA botanist during design to ensure the location of the habitat is considered early in the process.
- Pursue expansion of the Grassy Creek HPA by about 14 acres to provide additional protection to the state-listed rigid sedge and pale green orchid.
- Use site design to minimize and avoid impacts to streams and wetlands where feasible to lessen potential impacts to suitable habitat for the southeastern shrew and other riparian dependent rare species.
- Take steps to address localized traffic congestion by staggering work shifts to avoid localized delays at key intersections, installing traffic lights and stop signs, and adding turning lanes as appropriate to the level of traffic present.
- Equip mechanical draft cooling towers with efficient drift eliminators and/or other design attributes to reduce particulate matter emissions.
- Maintain the grounds of the Hensley Cemetery and avoid the cemetery during construction, operation and maintenance activities. The cemetery would remain accessible to those individuals with familial connection to individuals buried at Hensley Cemetery.
- Per the stipulations of the Programmatic Agreement (PA) executed between TVA, and the Tennessee State Historic Preservation Officer with concurring parties of the Eastern Band of Cherokee Indians and the United Keetoowah Band of Cherokee Indians in Oklahoma, TVA will seek ways to avoid or minimize adverse project impacts on NRHP-eligible archaeological sites, and if avoidance or sufficient minimization are not possible, TVA will mitigate the adverse effects in accordance with the stipulations of the PA. TVA will consult with the Tennessee SHPO and federally recognized tribes throughout the process.

Robert M. Deacy, Sr.,

Senior Vice President, Clinch River Project, Tennessee Valley Authority.

[FR Doc. 2022–21319 Filed 9–30–22; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1254]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: FAA Airport Data and Information

Correction

In Notice document 2022–20598, appearing on page 58178, in the issue of Friday. September 23, 2022, make the following correction:

On page 58178, in the second column, in the **DATES:** section, in the second line, ''September 23, 2022'' is corrected to read ''November 22, 2022''.

[FR Doc. C1–2022–20598 Filed 9–29–22; 2:00 pm]

BILLING CODE 0099–10–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0040]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Compliance and Enforcement Actions (CEA) & Voluntary Disclosure Report (VDR)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for an information collection. The collection involves Regulated Entity (RE) users that create and submit Compliance and Enforcement Action (CE) activity and Voluntary Disclosure Report (VDR) submittals to the FAA. The FAA enters and processes this activity and submittals using the Aviation Safety Knowledge Management Environment Compliance and Enforcement Actions (ASKME CEA) application. The information to be collected will be used to support processing CE and VDR processing for ASKME CEA application users andis necessary because it automates the process by which REs may disclose to the FAA potential occurrence of noncompliance to requirements.

DATES: Written comments should be submitted by December 2, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: [Walter Woodard, FAA Mike Monroney Aeronautical Center, 6500 S MacArthur Blvd., Bldg 12, Oklahoma City, OK 73169].

By fax: Not available.

FOR FURTHER INFORMATION CONTACT: Walter Woodard by email at: *walter.woodard@faa.gov;* phone: 405–954–3968

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Compliance and Enforcement Actions (CEA), Voluntary Disclosure Report (VDR).

Form Numbers: There is no standard form to use for CEA and VDR submissions.

Type of Review: A new information collection.

Background: The CEA system supports ASKME users. ASKME users are AIR employees who perform oversight activities of design and manufacturing regulated entities, including production approval holders, design approval holders, and organizational designation authorization holders. REs such as manufacturers, delegated organizations (Organization Designation Authorization) and design holders regulated by the FAA will communicate and exchange information with the FAA. The ASKME CEA is an internal web-based application and provides an more efficient process for CE and VDR activity received from manufacturers, delegated organizations and design holders.

Compliance and Enforcement Actions (CEA)

Title 49 United States Code, Subtitle VII—Aviation Programs encourages the development of civil aeronautics, and promotes safety in air commerce. Sections 44709, 44711 and 44736 allow the Department of Transportation or the Administrator of the Federal Aviation Administration (FAA) to re-inspect and perform oversight activities for civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, and Organization Designation Authorizations. An Organization Designation Authorization or ''ODA'' is an authorization by the FAA under section 44702(d) for an organization composed of 1 or more ODA units to perform approved functions on behalf of the FAA. See 49 U.S.C. 44736.

Section 44709 allows the FAA to re-inspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under 49 U.S.C. 44703.

Section 44711 prohibitions a person from violating a term of an air agency, design organization certificate, or production certificate or a regulation prescribed or order issued under section 44701(a) or (b) or any of sections 44702–44716 related to the holder of the certificate;

Under section 44736, when overseeing an ODA holder, the Administrator of the FAA shall conduct regular oversight activities by inspecting the ODA holder's delegated functions and taking action based on validated inspection findings.

When the FAA officials perform Section 44709 re-inspection or oversight activities and discovers violations, they process them using FAA Orders 8000.373B, Federal Aviation Administration Compliance Program, 2150.3C, FAA Compliance and Enforcement Program and AIR–002–035 Aircraft Certification Service (AIR) Compliance and Enforcement Process.

Voluntary Disclosure Report (VDR)

Title 14 Code of Federal Regulations, part 193 of the Federal Aviation Administration (FAA) regulations provides that certain information submitted to the FAA on a voluntary basis is not to be disclosed. This part implements statutory provision 49 U.S.C. 40123. The purpose of part 193 is to encourage the aviation community to voluntarily share information with the FAA so that the agency may work cooperatively with industry to identify modifications to rules, policies, and procedures needed to improve safety, security, and efficiency of the National Airspace System. The information collection associated with part 193 also supports the Department of Transportation's Strategic Goal of Safety and Security.

To encourage people to voluntarily submit desired information, § 40123 was added to Title 49, United States Code, in the Federal Aviation Reauthorization Act of 1996. Section 40123 allows the Administrator, through FAA regulations, to protect from disclosure voluntarily provided information relating to safety and security issues.

The White House Commission on Aviation Safety and Security issued a recommendation [i] on this subject. In Recommendation 1.8, the Commission noted that the most effective way to identify problems is for the people who operate the system to self-disclose the information, but that people will not provide information to the FAA unless it can be protected.

FAA programs that are covered under Part 193 are the Voluntary Safety Reporting Programs (FAA Order 7200.20), Air Traffic and Technical Operations Safety Action Programs (FAA Order 7200.22), Flight Operational

[i] *https://www.hsdl.org/?abstract&did=1839.*

Quality Assurance (FAA Order 8000.81), Aviation Safety Action Program (FAA Order 8000.82), and Voluntary Disclosure Reporting Program (FAA Order 8000.89).

The AIR ASKME CEA application supports the electronic processing of the three main compliance and enforcement actions as defined by FAA Order 2150.3C, Compliance and Enforcement Program. These actions are Voluntary Disclosure Reports, Compliance Actions and Enforcement Actions.

Respondents: Respondents are aviation design and manufacturing regulated entities, including production approval holders, design approval holders, and organization designation authorization holders. Responding to the collection of data is voluntary and will respond to actions in writing and processed by the FAA through the ASKME CEA application. FAA staff of AIR including Aviation Safety Inspectors (ASIs), Aviation Safety Engineers (ASEs), their supervisors and managers, and Organization Designation Authorization (ODA) Organization Management Team (OMT) members receive information submitted by the regulated entities.

Frequency: As needed.

Estimated Average Burden per Response: These reports require an average of 17 hour each to prepare.

Estimated Total Annual Burden: The total estimated burden hours based on the average Compliance and Enforcement/VDR closed cases activity from the CEA & Boeing Aviation Safety Oversight Office (BASSO) databases annually is 6048.

Editorial Note: This document was received for publication by the Office of the Federal Register on September 28, 2022.

AIR–952

Issued in Washington, DC, on April 6, 2022.

Walter Woodard,

ASKME Business Program Manager.

[FR Doc. 2022–21373 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0032]

Metro-North Railroad's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on September 20, 2022, Metro-North Railroad (MNCW) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by October 24, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0032. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on September 20, 2022, MNCW submitted an RFA to its PTCSP for its Advanced Civil Speed Enforcement System II (ACSES II) and that RFA is available in Docket No. FRA–2010–0032.

Interested parties are invited to comment on MNCW's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–21378 Filed 9–30–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[Docket No.: OFAC–2022–0004]

Agency Information Collection Activities; Proposed Collection; Comment Request for Persons Providing Remittance Forwarding Services to Cuba

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's information collection requirements for persons using remittance forwarding services related to Cuba, which are contained within the Cuban Assets Control Regulations.

DATES: Written comments must be submitted on or before December 2, 2022 to be assured of consideration.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Email: OFACreport@treasury.gov with Attn: Request for Comments (Cuban Remittance Forwarding Services).

Instructions: All submissions received must include the agency name and refer to Docket Number OFAC–2022–0004 and the Office of Management and Budget (OMB) control number 1505–0167. Comments received will be made available to the public via *https://www.regulations.gov* or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Title: Persons Providing Remittance Forwarding Services to Cuba.

OMB Number: 1505–0167.

Type of Review: Extension without change of a currently approved collection.

Description: Requirements to retain records are codified in § 515.572(b) of the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''). Pursuant to 515.572(b)(1), persons subject to U.S. jurisdiction who provide authorized remittance forwarding services related to Cuba are required to maintain for at least five years from the date of the transaction a certification from each customer indicating the section of Regulations or, if relevant, the number of the specific license, that authorizes the person to send the remittance to Cuba. The recordkeeping burden associated with § 515.572(b)(2) is addressed in 1505–0164.

The records covered by this information collection must be provided on request to the U.S. Department of the Treasury and will be used to monitor compliance with regulations governing transactions related to authorized remittances to or from Cuba using remittance forwarding service providers who are persons subject to U.S. jurisdiction.

Forms: Section 515.572(b)(1) does not specify any particular form of recordkeeping.

Affected Public: Individuals, households, businesses, non-governmental organizations and banking institutions. The likely respondents and record-keepers affected by this collection of information are persons using and providing U.S. remittance forwarding services.

Estimated Number of Unique Respondents: Based on newly acquired data and OFAC's revised methodology, the estimated number of annual respondents is 1,500,000.

Estimated Number of Records per Respondent: Based on newly acquired data and OFAC's revised methodology, the estimated number of records is approximately 1.2 records per respondent per year. (Some respondents may produce far more records; 1.2 records per respondent is an average.)

Estimated Total Number of Annual Records: Based on additional data and OFAC's revised methodology, as well as the effects of the pandemic and regulatory changes, the estimated total number of annual records is approximately 1,800,000.

Estimated Time Per Record: OFAC assesses that there is an average time estimate of 1 minute per record.

Estimated Total Annual Burden Hours: The estimated total annual reporting burden is approximately 1,800,000 minutes or approximately 30,000 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection 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 required to provide information.

(Authority: 44 U.S.C. 3501 *et seq.*)

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–21209 Filed 9–30–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
Yemen

Lindsay Kitzinger,

Acting International Tax Counsel, (Tax Policy).

[FR Doc. 2022–21397 Filed 9–30–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. app. 2, that the annual meeting of the Advisory Committee on Cemeteries and Memorials (the Committee) will be held Wednesday, November 2–Thursday,

November 3, 2022, at the Jefferson Barracks Medical Center, 1 Jefferson Barracks Drive, Building 56, 1st Floor, Room 130A–C, St. Louis, MO 63125. The meeting sessions will begin and end as follows:

Date	Time
Wednesday, November 2, 2022.	8:30 a.m. to 4:30 p.m. CST.
Thursday, November 3, 2022.	8:30 a.m. to 2:30 p.m. CST.

The meeting sessions are open to the public. If you are interested in attending the meeting virtually, the dial-in number for both days is 1–404–397–1596, Access Code: 27611544016#.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee will make recommendations to the Secretary regarding such activities.

On Wednesday, November 2, 2022, the agenda will include remarks by the Department of Veterans Affairs (VA) and National Cemetery Administration (NCA) Leadership; appointment of new members; briefings on the Federal Advisory Committee Act, VA History Program; an overview of the Jefferson Barracks National Cemetery Complex, National Cemetery Scheduling Office, and National Training Center, public comments and open discussion.

On Thursday, November 3, 2022, the agenda will include remarks and a recap from the committee chair; an Update on the Commemorative Plaque and Urn Benefit, Veterans Cemetery Grants Program, Veterans Benefits Administration Journey Map, Committee working group updates, public comments; and open discussion. In the afternoon, the Committee will tour Jefferson Barracks National Cemetery and the National Training Center. Transportation will not be provided for public guests.

Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Faith Hopkins, Designated Federal Officer, at 202–603–4499. Please leave a voice message. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at *Faith.Hopkins@va.gov.* In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: September 28, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–21367 Filed 9–30–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Monday,
No. 190 October 3, 2022

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 101

Accounting and Reporting Treatment of Certain Renewable Energy Assets; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 101

[Docket No. RM21–11–000]

Accounting and Reporting Treatment of Certain Renewable Energy Assets

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is issuing a notice of proposed rulemaking proposing reforms to the Uniform System of Accounts (USofA) for public utilities and licensees to include new accounts for wind, solar, and other non-hydro renewable assets; create a new functional class for energy storage accounts; codify the accounting treatment of renewable energy credits; and create new accounts within existing functions for hardware, software, and communication equipment. We propose revisions to the relevant FERC forms to accommodate these changes. We also seek comment on whether the Chief Accountant should issue guidance on the accounting for hydrogen. The Commission invites all interested persons to submit comments on the proposed reforms and in response to specific questions.

DATES: Comments are due November 17, 2022.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by U.S. Postal Service mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *For delivery via any other carrier (including courier):* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Daniel Birkam (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8035, *Daniel.Birkam@ferc.gov.*

Todd Kuzniewski (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6381, *Todd.Kuzniewski@ferc.gov.*

Sarah Greenberg (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6230, *Sarah.Greenberg@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

1. The Federal Energy Regulatory Commission (Commission or FERC) is proposing reforms to modernize the Uniform System of Accounts (USofA) [1] to account for the rapid changes in technology and resource mix over the last few decades. These reforms are intended to add to the USofA functional detail needed to inform the Commission's responsibilities under the Federal Power Act (FPA) to ensure that rates remain just and reasonable.

2. Specifically, we propose to: (1) create new accounts for wind, solar, and other non-hydro renewable assets; (2) establish a new functional class for energy storage accounts; (3) codify the accounting treatment of renewable energy credits (REC); and (4) create new accounts within existing functions for hardware, software, and communication equipment. These changes would also require corresponding changes to FERC Form Nos. 1, 1–F, 3–Q (electric), and 60.[2] We seek comment on these

[1] *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act,* 18 CFR part 101 (2021). Unless otherwise indicated, references to the USofA in this notice of proposed rulemaking refer to the USofA for public utilities and licensees.

[2] Proposed edits to the FERC Form No. 60 Annual Report of Centralized Service Companies, governed under the Public Utility Holding Company Act (PUHCA), are the result of proposed changes to the

proposed reforms. We also seek comment on whether the Chief Accountant should issue guidance on the accounting for hydrogen that would apply to both public utilities and licensees and to natural gas companies.

3. These proposed changes would account for new technologies, provide transparency to inform meaningful ratemaking, and provide useful information to stakeholders. Additionally, improving the accounting instructions so that they specifically describe the relevant equipment may result in fewer disputes about which accounts to use for which equipment and improve regulatory certainty. The use of these new discrete accounts based on functional use would also enable more reasonable estimates for plant service lives and their recorded depreciation, which in turn would result in more meaningful rate base, return, and cost of service measures.

II. Background

A. Previous Changes to the USofA

4. The USofA was created by the Federal Power Commission to facilitate the Commission's ratemaking responsibilities and uniformly capture financial and operational information for, first, traditional public utilities, and then natural gas pipelines.[3] As such, the USofA has been modified over time to account for changing technological, legal, and market conditions.

5. For example, in Order No. 552, the Commission revised the USofA to account for sulfur dioxide emissions allowances under the 1990 Clean Air Act Amendments.[4] In that order, the Commission created new inventory Accounts 158.1 (Allowance Inventory) and 158.2 (Allowances Withheld) and new expense Account 509 (Allowances) to accommodate the new sulfur dioxide emissions allowances. The Commission noted that some commenters sought to classify allowances in existing accounts to facilitate a desired ratemaking result; however, the Commission found these comments unpersuasive because the Commission's intention in its accounting rules is to provide sound and uniform accounting rather than to dictate any particular ratemaking result.[5]

6. In 2013, the Commission issued Order No. 784, which revised the USofA and related forms to address energy storage.[6] The Commission created: (1) new electric plant and associated operating and maintenance (O&M) expense accounts to record the investment and O&M costs of energy storage assets; (2) a new purchased power account to record the cost of power purchased for use in storage operations; and (3) new FERC Form Nos. 1 and 1–F schedules and amended existing schedules in those forms and FERC Form No. 3–Q (electric) to report operational and statistical data on storage assets.[7]

7. Specifically, the Commission created electric plant accounts for energy storage assets in the existing functional classifications: Account 348 (Energy Storage Equipment—Production), Account 351 (Energy Storage Equipment—Transmission), and Account 363 (Energy Storage Equipment—Distribution).[8] The Commission created corresponding new accounts for O&M expenses: Account 548.1 (Operation of Energy Storage Equipment) and Account 553.1 (Maintenance of Energy Storage Equipment) for energy storage plant classified as production; Account 562.1 (Operation of Energy Storage Equipment) and Account 570.1 (Maintenance of Energy Storage Equipment) for energy storage classified as transmission; and Account 582.1 (Operation of Energy Storage Equipment) and Account 592.2 (Maintenance of Energy Storage Equipment) for energy storage classified as distribution.[9]

8. In these energy storage accounts, the installed cost of energy storage assets is recorded based on the function or purpose the asset serves: where an energy storage asset performs more than one purpose or function, the cost of the asset is split among the accounts based on the functions performed and approved rate recovery.[10] While some commenters argued that the requirement to allocate energy storage assets that perform multiple functions across the relevant accounts places an undue administrative burden on utilities, the Commission was unpersuaded because utilities that recover the costs of storage operations on a cost of service basis must already maintain use and cost allocation information on the assets.[11] Furthermore, the Commission in Order No. 784 found that the alternative of recording all costs of energy storage assets in a single plant account would result in less transparent reporting.[12]

B. Locke Lord Petition

9. In Docket No. AC20–103, Locke Lord submitted a petition to the Chief Accountant requesting confirmation that the costs of certain wind and solar generating assets are properly booked to the ''Other Production'' Accounts 343 (Prime Movers), 344 (Generators), and 345 (Accessory Electric Equipment).[13] Specifically, Locke Lord proposed to book: (1) wind turbines, solar modules, combiner circuits, and inverters to Account 343 (Prime Movers); (2) wind turbine generators to Account 344 (Generators); and (3) DC conductors, individual low-voltage step up transformers, AC conductors (34.5 kV) associated with collection systems, power cables, conduit and underground duct banks, circuit breakers, disconnect switches and accessories, grounding conductors and grounding transformers, collection system buses, main and/or auxiliary transfer buses, collection system control systems, Supervisory Control and Data Acquisition (SCADA) systems, static capacitors and reactors, and collector system substations to Account 345 (Accessory Electric Equipment).[14]

10. Some commenters in that proceeding argued that the petition booked an inappropriate amount of costs, including costs related to the collector system and SCADA, into Account 345 (Accessory Electric Equipment), which are included in reactive power rates pursuant to the American Electric Power Service Corp. (*AEP*) Methodology.[15] Some commenters, including the Edison Electric Institute (EEI), suggested that the Commission consider creating new accounts for wind, solar, and other non-hydro renewable assets to resolve this dispute.[16]

11. The Commission denied the petition, noting that the record reflected

FERC forms for public utilities and licensees from which FERC Form No. 60 summarily references accounts.

[3] 18 CFR part 101.

[4] *Revisions to Unif. Sys. of Accts. to Acct. for Allowances under the Clean Air Act Amends. of 1990 & Reguly-Created Assets & Liabilities & to Form Nos. 1, 1–F, 2 and 2–A,* Order No. 552, 58 FR 17982 (Apr. 7, 1993), FERC Stats. & Regs. ¶ 30,967 (1993) (cross-referenced at 62 FERC ¶ 61,299).

[5] *Id.* at 17986.

[6] *Third-Party Provision of Ancillary Servs.; Acct. & Fin. Reporting for New Elec. Storage Tech.,* Order No. 784, 78 FR 46178 (July 30, 2013), 144 FERC ¶ 61,056 (2013), *order on clarification,* Order No. 784–A, 146 FERC ¶ 61,114 (2014).

[7] *Id.* P 123.

[8] *Id.* P 141.

[9] *Id.* P 147.

[10] *Id.* P 126.

[11] *Id.* P 133.

[12] *Id.* P 135.

[13] *Locke Lord LLP,* 174 FERC ¶ 61,033, at P 1 (2021).

[14] *Id.* P 6.

[15] *Id.* PP 10, 13. The *AEP* Methodology identifies costs associated with four groups of plant investment: (1) the generators/exciters; (2) generator step-up transformers; (3) accessory electric equipment; and (4) the remaining production plant investment. These costs are then allocated between real and reactive power using an allocation factor. *Id.* P 10 n.12.

[16] *Id.* PP 8, 13, 16.

substantial disagreement about equipment functions and categorizations.[17] In so doing, the Commission also noted that it would concurrently issue a Notice of Inquiry (NOI) to consider creating separate categories of accounts in the USofA for wind and solar generating assets.[18] The Commission has since opened a separate proceeding under Docket No. RM22–2–000 to gather comments and information about potential alternative reactive power compensation methods for both synchronous and nonsynchronous resource compensation (86 FR 67933 (Nov. 30, 2021)).

C. Notice of Inquiry

12. On January 19, 2021, the Commission issued an NOI in the instant docket seeking comment on the appropriate accounting treatment for certain renewable energy assets.[19] Specifically, the Commission sought comment on: (1) whether to create new accounts for non-hydro renewable energy generating assets; [20] (2) what modifications to FERC Form No. 1 are needed to reflect these changes; (3) whether to codify the proper accounting treatment of the purchase, generation, and use of RECs; and (4) whether there are rate setting implications of these accounting and reporting changes.

13. The Commission explained that the USofA contains discrete production accounts for steam, nuclear, hydraulic, and other, but does not contain any accounts designed for solar, wind, or other non-hydro renewable generating assets.[21] The Commission noted that companies record non-hydro renewable assets in the Other Production accounts of the USofA, but that parties have disagreed which Other Production accounts are appropriate for these assets.[22] For example, the Commission noted that no plant account clearly captures solar panels, PV inverters, wind generation towers, or the computer hardware and software required to operate wind and solar generators.[23] Similarly, the Commission explained that the O&M accounts do not clearly accommodate costs to record maintenance of wind and solar facilities, and some of the O&M accounts (such as Account 547 (Fuel)) are entirely inapplicable to wind and solar generation.[24]

14. The Commission also explained that the USofA accounts do not explicitly address the purchase, generation, or use of RECs.[25] The Commission has previously found that RECs are analogous to sulfur dioxide emission allowances, which were addressed in Order No. 552. Order No. 552 classified emission allowances as inventoriable items and established new inventory and expense accounts to record the allowances.[26] In keeping with Order No. 552, the Commission has found that RECs that are purchased or generated should be recorded in Account 158.1 (Allowance Inventory) and expensed to Account 509 (Allowances) as they are utilized.[27]

15. The Commission also noted that any proposed additions and modifications to the USofA would require corresponding changes to FERC Form No. 1 and could have a significant and measurable impact on rates.[28]

D. Comments

16. The Commission received four initial comments and three reply comments in response to the NOI. All commenters acknowledged the shift in generation mix towards increased wind and solar and the need for Commission guidance on how the costs of such facilities should be booked in the USofA. Commenters also suggested that the Commission convene a technical conference in this docket.

17. Comments generally addressed four topics: (1) the creation of new accounts for non-hydro renewables; (2) accounting for RECs; (3) addressing energy storage accounts; and (4) reporting and ratemaking impacts of the proposed changes.

1. Non-Hydro Renewables

18. EEI and Alliant Energy (Alliant) support the creation of new accounts for non-hydro renewable resources.[29] EEI and Alliant state that there are fundamental differences between traditional thermal resources and non-hydro renewable resources and that existing accounts do not and cannot accurately reflect the costs of non-hydro renewable assets.[30] EEI and Alliant both argue that the need for new accounts for non-hydro renewables is illustrated when such resources seek compensation for the provision of reactive power, as there are often disputes over whether collector systems (*i.e.,* facilities physically located between the high side of the generator step-up transformer and the transmission sub-station) should be included in reactive power rates.[31] EEI and Alliant state that these types of reactive power cases are usually set for hearing and settlement judge proceedings, which is a lengthy and costly process that could be mitigated with Commission guidance.[32] EEI's comment included an initial list of proposed accounts that could be developed for non-hydro renewable resources.[33] EEI specifically requests that the new accounts provide separate sub-system accounts for each type of renewable generation facility in order to identify the ways that these resources provide value to the grid.[34] EEI also acknowledges that additional accounts may be needed as new technologies are developed, such as hydrogen, tidal and wave energy,[35] and synthetic or biofuels.[36]

19. In contrast, the American Clean Power Association (ACP) and Solar Energy Industries Association (SEIA) argue that the current ''Other Production'' accounts can accommodate specific wind and solar generating equipment.[37] ACP explains that the typical configuration of wind and solar facilities contains a low voltage step-up transformer converting voltage to 34.5 kV connected to collection system feeders, which are then connected to a collection system bus located in the facility substation, static capacitors and/or reactors that supplement the reactive

[17] *Id.* P 19.

[18] *Id.* P 20.

[19] *Acct. & Rep. Treatment of Certain Renewable Energy Assets,* 86 FR 7086 (Jan. 26, 2021), 174 FERC ¶ 61,032 (2021) (NOI).

[20] The NOI defined non-hydro renewable assets as production assets other than hydroelectric generators (such as solar, wind energy, geothermal, biomass, etc.) that rely on the heat or motion of the earth or sun's radiation to produce energy. These assets are denoted as renewable because the power production is based on a fuel source that is not consumed or destroyed by the generation process, such as buried hydrocarbons (coal, oil, natural gas) or the decay of rare irradiated heavy metals (nuclear). Biomass (trees, nut shells, grain husks and stalks, etc.) is considered renewable, despite its hydrocarbon source being consumed, due to its carbon release being offset by regrowth of carbon capturing equivalent biomass. *Id.* P 1.

[21] *Id.* P 2.

[22] *Id.* PP 2–3.

[23] *Id.* PP 6–9.

[24] *Id.* P 9.

[25] *Id.* PP 4, 13.

[26] *Id.* (citing Order No. 552, FERC Stats. & Regs. ¶ 30,967).

[27] *Id.* PP 4, 13–14 (citing *Ameren Ill. Co.,* 170 FERC ¶ 61,267, at P 52 (2020)).

[28] *Id.* PP 12, 16.

[29] EEI Comments at 2–5 (filed Mar. 29, 2021); Alliant Comments at 1–3 (filed Mar. 29, 2021).

[30] EEI Comments at 4; Alliant Comments at 3.

[31] EEI Comments at 14; Alliant Comments at 3–5.

[32] EEI Comments at 14; Alliant Comments at 5.

[33] EEI Comments at 17–23.

[34] *Id.* at 4.

[35] The US does not have any tidal or wave generation units in operation, although there are demonstration projects being developed, but optimization of these systems is limited to certain coastal regions. EIA, *Tidal Power,* (Sept. 2021), *https://www.eia.gov/energyexplained/hydropower/tidal-power.php;* EIA, *Wave Power,* (Sept. 2021), *https://www.eia.gov/energyexplained/hydropower/wave-power.php.*

[36] EEI Comments at 4–5.

[37] ACP Comments at 3 (filed Mar. 29, 2021); SEIA Comments at 1–2 (filed Mar. 29, 2021).

power production capability, and a high voltage generator step-up transformer that converts the voltage to the transmission level.[38] ACP and SEIA argue, similar to the Docket No. AC20–103 petition, that the Commission should clarify that: (1) wind turbines, wind turbine generators, solar panels, combiner circuits, and inverters should be booked to Account 343 (Prime Movers) (or, alternatively, Account 344 (Generators)); and (2) low-voltage step-up transformers, collection systems, capacitors, breakers, switches and cabling, and communication and control equipment (including SCADA) should be booked to Account 345 (Accessory Electric Equipment).[39] ACP and SEIA contend that the above classifications would allow renewable generators to receive the appropriate level of reactive power compensation and relieve the wave of reactive power litigation.[40] However, SEIA and ACP both specifically note that they do not oppose the creation of new accounts, although they do not believe creating new accounts is worth the time or investment, as they believe the existing accounts are sufficient.[41] ACP also states that, if the Commission creates new accounts, it should provide guidance regarding how the new accounts should be treated for purposes of reactive power compensation.[42]

20. In reply comments, EEI rebuts the suggestion that the current ''Other Production'' accounts could be used for wind and solar assets.[43] In so doing, EEI contests ACP's assertion that there is a typical configuration for wind and solar resources.[44] For example, EEI notes that some wind facility designs have the first step-up in the nacelle, whereas others are designed with the first step-up transformer at the base of the nacelle. EEI also points out that there are differences in opinion concerning how equipment is classified.[45] EEI also contends that new configurations are likely to come in the future due to the pace of change in the resource mix and technological advancements.[46] All of this, EEI argues, supports the need for new accounts.[47] EEI states that, once the Commission decides the appropriate accounting, that will serve as the basis for ratemaking instruction, which will help provide regulatory certainty and resolve reactive power compensation issues.[48]

2. Energy Storage

21. The Energy Storage Association (ESA) requests a discussion about accounting for energy storage in a technical conference in this docket.[49] ESA did not discuss its preference for accounting for storage resources.

22. EEI also suggests that the Commission use this proceeding as an opportunity to modify the existing energy storage accounts.[50] Specifically, EEI recommends that the Commission replace the existing energy storage accounts with a separate function for energy storage, separate from production, transmission, and distribution, similar to the General Plant account.[51] EEI states that such an approach is appropriate because energy storage can provide generation, transmission, and distribution services, but it is difficult to track frequent (sometimes daily) changes between functions within a utility's books.[52] EEI proposes that separate Plant Accounts could be established within the new storage function to designate different types of storage, such as batteries/chemical, compressed air, flywheels, superconducting magnetic storage, and thermal.[53] EEI argues that this approach would assist in depreciation because separate accounts for each energy storage modality would facilitate the analysis of asset lives for determining depreciation rates for similar technologies.[54] EEI argues that this approach would also assist in ratemaking, because the asset, depreciation, and O&M costs could be allocated to the appropriate functions using an analysis based on the usage of the storage asset, consistent with Order No. 784.

23. ACP contests EEI's suggestion to replace the energy storage accounts, arguing that it is inappropriate to eliminate the existing storage accounts for production, transmission, and distribution functions.[55] In particular, ACP argues that the General Plant account is not an appropriate analogy for storage: ACP contends that storage is not retired on a schedule because it is depreciated based on recovering the service value over the useful life.[56] ACP also cautions that, if the Commission considers replacing the energy storage accounts, it should do so in view of the movement to characterize storage as transmission and with awareness of the potential for storage to be initially used to address a transmission reliability need, but to do so in larger MW than is needed to address the transmission need.[57]

3. Renewable Energy Credits

24. EEI supports formalizing the accounting requirements for RECs and similar instruments such as zero-emission credits (ZEC).[58] EEI cautions that the long-time existence of diverse accounting for RECs has been incorporated into both federal and retail ratemaking, so it will be important for the Commission to consider these varying treatments and provide a transition period to avoid unnecessary cost, complexity, and unintended changes in ratemaking.[59]

25. EEI also indicates that the Commission should consider, among other things, the following topics related to the treatment of RECs: (1) RECs can be acquired in a number of ways, and there may not always be explicitly identifiable costs (*e.g.,* if RECs are created by the operation of an utility's own generating facility or purchased as part of a contract that includes other products); (2) RECs may be used for more than one purpose (operational and/or nonoperational)—some companies acquire RECs to trade, whereas others use them to comply with clean energy regulations; and (3) there may be other instruments with similar economic characteristics that the Commission should include in these updates.[60]

4. Reporting and Ratemaking

26. EEI recognizes that, as the Commission noted in the NOI, additions and modifications to the USofA will require corresponding changes to FERC Form No. 1, and these changes could impact some rates, particularly in the reactive power context.[61] EEI states that changes to FERC Form No. 1 and FERC Form No. 3–Q will be required to allow reporting of new accounts.[62] EEI also specifically requests that the Commission add a new page to the forms for reporting Renewable Generating Plants, similar to existing pages 402–409 for Generating Plant

[38] ACP Comments at 4–6.
[39] *Id.* at 7–15; SEIA Comments at 6.
[40] ACP Comments at 2; SEIA Comments at 7–8.
[41] ACP Comments at 7–8, 15–16; SEIA Comments at 4.
[42] ACP Comments at 16.
[43] EEI Comments at 2–3.
[44] *Id.* at 3.
[45] *Id.* at 4.
[46] *Id.* at 3–4.
[47] *Id.* at 4.
[48] *Id.* at 5.
[49] ESA Comments at 1–2 (filed Apr. 26, 2021).
[50] EEI Comments at 6–9 (filed March 29, 2021).
[51] *Id.* at 7.
[52] *Id.* at 8.
[53] *Id.* at 8–9.
[54] *Id.* at 9.
[55] ACP Comments at 6–7.
[56] *Id.* at 7.
[57] *Id.* at 8.
[58] EEI Comments at 9–13.
[59] *Id.* at 10–11.
[60] *Id.* at 11–13.
[61] *Id.* at 5–6, 13–15.
[62] *Id.* at 5–6.

Statistics, in which companies should report solar, wind, and other non-hydro renewable plant with 10,000 kW or greater installed capacity. EEI specifically notes that FERC Form No. 1 pages 204–207, 219, 320–323, 336, 352–353, 401a, 414–416, and 419–420 would need to be updated to reflect a new separate function for energy storage assets. To address the ratemaking impacts of new accounts, EEI suggests that the Commission allow affected utilities to propose the necessary changes to formula rates as part of single-issue ratemaking filings.[63]

III. Discussion

A. Need for Reform

27. The USofA has not been significantly modified since the Commission issued Order No. 784 in 2013. The USofA does not address many technological and economic developments, such as the growth in non-hydro renewable generating facilities and RECs, among others. In the absence of clear guidance on these topics, the industry has disagreed on how to account for such items in the USofA.

28. As discussed in the NOI, the USofA contains discrete production accounts for Steam, Nuclear, Hydraulic, and Other Production.[64] However, the USofA does not contain any production accounts designed specifically for solar, wind, or other non-hydro renewable generating assets. Therefore, electric utilities currently record non-hydro renewable assets in the Other Production accounts of the USofA. This approach appears to be inadequate. As the record in Docket No. AC20–103 demonstrates, the lack of clarity on how to account for non-hydro renewable assets has led to disputes about which equipment belongs in which accounts. Renewable energy technologies such as wind and solar continue to expand and develop at a rapid pace, and now make up a significant portion of electricity production within FERC's accounting, reporting, and ratemaking jurisdiction. We also note that the NOI commenters all indicated that the Commission needs to address the accounting for non-hydro renewables.[65] This is due to non-hydro renewables having varied and distinct characteristics from existing electric production subfunctions within the USofA.

29. Similarly, new accounts appear to be needed for energy storage. In response to the NOI, commenters requested that the Commission address energy storage in this proceeding.[66] The Commission in Order No. 784 created accounts for energy storage spread across all functions for plant and maintenance expenses based on the understanding of the limited use of storage technology at that time, as well as the expected impact of storage on rates. Our existing accounting caused individual assets and their associated accumulated depreciation to be divided amongst several different accounts in different functions, with some energy storage assets changing functionality frequently during a reporting period.[67] The recordkeeping to track these frequent functionalization changes creates a significant accounting burden to utilities, and an increased internal control risk for reporting errors in our forms. This industry experience indicates a need to reform the energy storage accounts to reduce this burden and risk for error.

30. In addition, there appears to be a need to formalize the accounting treatment of the purchase, generation, or use of RECs. Although the Commission stated in 2020 that RECs are analogous to the sulfur dioxide emission allowances addressed in Order No. 552,[68] not all utilities follow this approach.[69] As such, codifying the treatment of RECs would promote their consistent treatment in Commission accounting and reporting.

31. Lastly, establishing designated computer hardware, software, and communications equipment accounts for all functions and plant subfunctions would help ensure greater consistency in accounting and reporting and eliminate ambiguity.[70] Currently, the USofA is inconsistent with the designated reporting of these items across the different functions, which can lead to confusion within the public utility industry. For instance, the Regional Transmission and Market Operation Plant function has designated plant accounts for computer hardware, software, and communication equipment which lists includable items like SCADA, whereas no other function or subfunction does.[71] Correspondingly, the Transmission and Regional Market functions contain maintenance accounts for computer hardware, software, and communication equipment, whereas no other function or subfunction does.[72] There is no consistent guidance or practice concerning the proper accounting of such costs in our existing accounts.

B. Proposed Revisions

32. Below, we propose several reforms to the USofA related to: (1) non-hydro renewables; (2) energy storage; (3) RECs; and (4) hardware, software, and communications equipment. We seek comment on each of these proposals.

1. Non-Hydro Renewables

33. We propose three new subfunctions within the Production Plant function: D. Solar Production, E. Wind Production, and F. Other Non-Hydro Renewable Production. The existing ''Other Production'' subfunction would be renumbered from D. to G. The new generation subfunction titled ''Other Non-Hydro Renewable Production'' would capture renewable generation technologies other than solar and wind.

34. To avoid confusion with the existing ''Other Production'' generation subfunction, we seek comment on whether to retitle that subfunction as ''Prime Mover Production'' because the current instructions to the ''Other Production'' subfunction only describe prime mover type generation assets.[73] All subfunctions would contain reserved account numbers (Accounts 338.3 for Solar, 338.22 and 338.25 for Wind, and 339.5 and 339.7 for Other Non-hydro Renewable) for future use.

35. The new non-hydro renewable subfunctions (Solar, Wind, and Other Non-hydro Renewable Production) would all include the following five accounts consistent with all other production subfunctions (*e.g.,* steam, nuclear and hydraulic): (1) Accounts 338.1, 338.20, and 339.1 (Land and Land Rights); (2) Accounts 338.2, 338.21, and 339.2 (Structures and Improvements); (3) Accounts 338.8, 338.29, and 339.8 (Other Accessory Electrical Equipment); (4) Accounts 338.12, 338.33, and 339.12 (Miscellaneous Power Plant

[63] *Id.* at 15 (citing *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 71 FR 43294 (July 31, 2006), 116 FERC ¶ 61,057, *order on reh'g,* Order No. 679–A, 72 FR 1152 (Jan. 10, 2007), 117 FERC ¶ 61,345, at P 98 (2006), *order on reh'g,* 119 FERC ¶ 61,062 (2007) (''[A]pplicants for single-issue ratemaking are only required to address cost and rate issues associated with the new investment and therefore are not obligated to justify the reasonableness of unchanged rates'')).

[64] 18 CFR part 101; *Acct. & Fin. Reporting for Pub. Utils. Including RTOs,* Order No. 668, 70 FR 77627 (Dec. 30, 2005), 113 FERC ¶ 61,276, at P 59 (2005).

[65] *See supra* notes 30, 42.

[66] ESA Comments at 1–2; EEI Comments at 6–9.

[67] EEI Comments at 6–9.

[68] *Ameren Ill. Co.,* 170 FERC ¶ 61,267 at P 52.

[69] EEI Comments at 10.

[70] The Commission's regulations currently contain accounts for computer hardware, software, and communication in the Regional Transmission and Market Operation function.

[71] 18 CFR part 101.

[72] *Id.*

[73] A prime mover electric generator is one where the fuel source directly moves the electric turbine rather than using a boiler or other secondary energy transfer.

Equipment); and (5) Accounts 338.13, 338.34, and 339.13 (Asset Retirement Costs).[74] These accounts would be similar in description and instruction to the existing accounts of the same title in each of the other production subfunctions.

36. Additionally, the new Solar and Wind Production subfunctions would both include three accounts: (1) Accounts 338.5 and 338.26 (Collector System); (2) Accounts 338.6 and 338.27 (Generation Step-up Transformers (GSU)); and (3) Accounts 338.7 and 338.28 (Inverters). The collector system account describes a distribution system in reverse and includes many of the same items listed in the accounts for Poles, Towers and Fixtures (Account 364), and Overhead Conductors and Devices (Account 365),[75] which are illustrative, not prescriptive. The GSU account would be used for transformers directly connected to the generator terminal tips and supporting equipment. The inverter account would be used for equipment converting power from direct current to alternating current.

37. Finally, all three subfunctions would have unique generating accounts: (1) Account 338.4 (Solar Panels) for Solar Production; (2) Account 338.23 (Wind Turbines) and Account 338.24 (Wind Towers and Fixtures) for Wind Production; and (3) Account 339.3 (Fuel Holders), Account 339.4 (Boilers), and Account 339.6 (Generators) for Other Non-hydro Renewable Production. The solar panels account would be specifically designated for panels and support equipment that change solar energy into electricity and related supporting structures such as racks and gears. The wind turbines account would include components that are located from the top of the tower to the end of the turbine blades. The wind towers and fixtures account includes the tower and the components contained within the tower that are located from the top of the foundation to the base of the nacelle. The three accounts for fuel holders, boilers, and generators included in Other Non-hydro Renewable Production allow for the recording of assets related to renewable generation that uses any fuel source or method (*e.g.,* steam or direct burning). These accounts would allow for recording biofuels, hydrogen, geothermal, and other types of generation in this subfunction. Many of the items listed in these account descriptions would be the same as those accounts listed in the Steam and Other Production subfunctions.[76]

38. Similar to the new plant accounts for non-hydro renewables, we propose new O&M expense accounts for these subfunctions, titled F. Solar Generation, G. Wind Generation, and H. Other Non-Hydro Renewable Generation. All three subfunctions would include the following seven accounts that are in common with all other subfunctions (*e.g.,* steam, nuclear, and hydraulic): (1) Accounts 558.1, 558.20, and 559.1 (Operation Supervision and Engineering); (2) Accounts 558.4, 558.23, and 559.4 (Rents); (3) Accounts 558.5, 558.24, and 559.5 (Operation Supplies and Expenses (Nonmajor only)); (4) Accounts 558.6, 558.25, and 559.6 (Maintenance Supervision and Engineering (Major only)); (5) Accounts 558.7, 558.26, and 559.7 (Maintenance of Structures (Major only)); (6) Accounts 558.16, 558.36, and 559.15 (Maintenance of Miscellaneous (Solar, Wind, or Other Non-hydro Renewable) Generation Plant (Major only)); and (7) Accounts 558.17, 558.37, and 559.16 (Maintenance of (Solar, Wind, or Other Non-hydro Renewable) Generation Plant (Nonmajor only)).[77] These accounts would have similar descriptions, items, and instructions to the existing accounts of the same title.

39. The Solar and Wind Generation subfunctions would have four maintenance accounts that the Other Non-hydro Renewable Generation subfunction would not have:[78] (1) Accounts 558.9 and 558.29 (Maintenance of Collector Systems (Major only)); (2) Accounts 558.10 and 558.30 (Maintenance of Generator Step-up Transformers (Major only)); (3) Accounts 558.11 and 558.31 (Maintenance of Inverter Expenses (Major only)); and (4) Accounts 558.12 and 558.32 (Maintenance of Other Accessory Electrical Equipment (Major only)). These accounts would allow for the recording of the maintenance expense for the associated plant accounts for Solar and Wind Production. The proposed list of items for Accounts 558.9 and 558.29 (Maintenance of Collector Systems (Major only)) would be similar to the list of items for Account 593 (Maintenance of Overhead Lines (Major only)) in the Distribution Expenses function.

40. We also propose new operating expense accounts for the main operating costs of the new generation subfunctions: for Solar Generation, Account 558.2 (Solar Panel Generation and Other Plant Operating Expenses (Major only)); for Wind Generation, Account 558.21 (Wind Turbine Generation and Other Plant Operating Expenses (Major only)); and for Other Non-hydro Renewable Generation, Account 559.2 (Other Miscellaneous Generation and Other Plant Operating Expenses (Major only)), and Account 559.3 (Fuel).

41. In addition, we propose new maintenance accounts for the specific generation assets: for Solar Generation, Account 558.8 (Maintenance of Solar Panels (Major only)); for Wind Generation, Account 558.27 (Maintenance of Wind Turbines, Towers and Fixtures (Major only)); and for Other Non-hydro Renewable Generation, Account 559.9 (Maintenance of Boilers (Major only)), and Account 559.10 (Maintenance of Generating and Electric Equipment (Major only)). These new accounts would have descriptions and instructions that are similar to those involving maintenance of other generation equipment in the other subfunctions. We propose to designate an account for maintenance of electrical equipment separate from the maintenance of generation equipment for the new Solar and Wind Generation subfunctions.

42. Finally, we propose new accounts for the Maintenance of Computer Hardware (Major only), the Maintenance of Computer Software (Major only), and Maintenance of Communication Equipment (Major only) for the three new plant subfunctions (Solar, Wind, and Other Non-hydro Renewable Generation) corresponding to the plant accounts, as discussed further below.

43. Lastly, tidal and wave energy use kinetic energy from the ocean to generate electricity, which is currently not addressed by the USofA.[79] We seek comment whether to include both tidal and wave energy as part of the existing hydraulic production function, rather than in the newly proposed other non-hydro renewable asset accounts. Both

[74] The three accounts under each number represents the three new subfunctions: Solar, Wind, and Non-hydro Renewable Production, respectively.

[75] Examples for Account 364: poles, towers, anchors, extension arms, etc.; Account 365: circuit breakers, conductors, lightning arrestors, etc.

[76] Account 342 (Fuel Holders, Producers, and Accessories); Account 312 (Boiler Plant Equipment); Account 344 (Generators).

[77] Item 7 includes three accounts that are designated as nonmajor only: thus, nonmajor entities would record all maintenance activities in these accounts without further granularity as required for major entities (Items 1–6).

[78] Unlike wind and solar, which are distributive in design (*i.e.,* with a collector system spread across a comparatively wide area), other non-hydro renewables are, as currently conceived, unlikely to be distributive in design. Rather, non-distributive plants would include plants that by design would be similar to existing coal, oil, nuclear, and gas plants in that they do not have a collector system, and in addition, their generator step up transformers and inverters are comparatively minor integrated parts.

[79] *See* EEI Comments at 4–5.

tidal and wave energy are related to, and may reasonably be viewed, as hydraulic production. However, we also acknowledge that tidal and wave energy have varied configurations and components from those currently described in the existing hydraulic production subfunction: for example, some configurations use the energy of water itself to turn the turbines, while other configurations use the force of the tide or waves to create compressed air which is then forced through the turbines. Additionally, some configurations require tethering equipment under water, while other configurations have land-based basins and equipment. We seek comment on whether it would be useful to record tidal and wave energy activities within existing hydraulic production accounts, or whether it would be more useful to consider tidal and wave energy activities as a type of other renewable production.

2. Energy Storage

44. We propose to create a new function for energy storage for accounting purposes.[80] This proposal is consistent with traditional accounting concepts that do not provide for recording the same physical plant asset in more than one account and are in line with our existing accounting instructions for plant in service capitalization, cost recording, and transfers.[81]

45. Currently, energy storage assets are recorded in several accounts in separate functions (generation, transmission, and distribution). This accounting requirement creates an additional burden with respect to recordkeeping, depreciation, and retirement, all of which increase internal control risk and the opportunity for error. These potential errors may arise as a utility reclassifies portions of the original cost of an asset between two or three different plant accounts, which may have different depreciation rates.[82] Based on our review of industry comments, it appears that the energy storage accounting requirements of Order No. 784, and the related accounting guidance,[83] created a significant burden and are not practical.[84] For example, companies emphasize that an energy storage asset's functionality can change on a daily basis requiring constant accounting reclassification entries. As a result, we propose to create one new function dedicated to energy storage.[85] By creating one new dedicated storage function, utilities would no longer be required to track and frequently reclassify storage assets based on changes in function, and thus, after the initial burden to implement the changes proposed to be adopted here, the continuing compliance burden would be significantly reduced.

46. In its reply comments, ACP claims that it is not appropriate for storage assets to be treated as general plant assets: ACP indicates that general plant is a catch-all category that utilities use for offices and miscellaneous and small cost property that does not fit in one of the other functional categories, whereas storage is significant property that should not be depreciated on a schedule like General Plant.[86] However, we do not propose to consider the energy storage function as general plant. As explained above, utilities would record energy storage assets in the proposed dedicated new function consistent with our proposed new accounting regulations, and then use the appropriate cost allocation methodologies for ratemaking purposes.

47. There are currently three plant accounts, three operating expense accounts, and three maintenance expense accounts for energy storage, as created in Order No. 784: Accounts 348 (Energy Storage Equipment—Production), 351 (Energy Storage Equipment—Transmission),[87] 363 (Storage Battery Equipment), 558.1 (Operations of Energy Storage Equipment), 553.1 (Maintenance of Energy Storage Equipment), 562.1 (Operations of Energy Storage Equipment), 570.1 (Maintenance of Energy Storage), 584.1 (Operations of Energy Storage Equipment), and 592.2 (Maintenance of Energy Storage Equipment). We propose to retitle most of these account numbers to indicate reserved, but as described below, retitle Accounts 553.1 and 592.2 as Maintenance of Computer Hardware (Major only).

48. We also propose to renumber the General Plant function from number 6. to number 7. in the Electric Plant Chart of Accounts and retitle existing number 6. to Energy Storage Plant function. Additionally, in the Operation and Maintenance Expense Chart of Accounts, we propose to retitle existing number 4. from Distribution Expenses to Energy Storage Expenses, and renumber Distribution Expenses from 4. to 5., Customer Account Expenses from 5. to 6., Customer Service and Informational Expenses from 6. to 7., Sales Expenses from 7. to 8., and Administrative and General Expenses from 8. to a new 9.

49. The proposed new dedicated storage function in the Electric Plant Chart of Accounts would be structured similarly to the other functions in the USofA and would include the following plant accounts: (1) Account 387.1 (Land and Land Rights); (2) Account 387.2 (Structures and Improvements); (3) Account 387.11 (Miscellaneous Energy Storage Equipment); and (4) Account 387.12 (Asset Retirement Costs for Energy Storage). The Energy Storage function would also have accounts, similar to those in the Solar and Wind Production subfunctions, for: (1) Account 387.5 (Collector System); (2) Account 387.6 (Generator Step-up Transformer (GSU)); and (3) Account 387.7 (Inverters). These proposed new accounts are intended to accommodate activities related to distributed and/or direct current energy storage plant

[80] All cost allocation issues would be resolved separately through the ratemaking process and would not require constant reclassification in the continuing property records and accounting systems.

[81] *See, e.g.,* Kester, *Accounting Theory and Practice,* 283–84 (1914) (discussing the classification of plant assets as units grouped for the same purpose, in this case applying depreciation, with the assumption of units being indivisible); Paton, *Accounting Theory,* 113–16 (1922) (discussing the idea that changes in the status of individual assets are by definition transactions, and not merely bookkeeping adjustments). Additionally, while generally accepted accounting principles (GAAP) accounting does not drive Commission accounting, it may provide useful information for our consideration. *See* Financial Accounting Standards Board (FASB) *Concepts Statement No. 5,* at 89 (1986) (explaining that the reasons for changing the recorded value of assets still in use does not contemplate moving recorded values between multiple asset accounts within the same entity on a regular basis (changes in utility or substance and changes in price)); Foster & Rodney, *Public Utility Accounting,* Chs. 10–11, 219 (1951) (showing in Figure 10–1 the conceptual complexity of adjusting plant account records and continuing property records). These accounting concepts are indicated in the USofA in General Instruction 12. Records for Each Plant (Major Utility), and Electric Plant Instructions 2. Electric Plant to Be Recorded at Cost, and 12. Transfers of Property. These instructions all discuss the maintaining of records for plant in service, and imply that adjustments to records are a major event akin to unitization or classification (discussed in the instruction to account 106 Completed Construction not Classified—Electric (Major only)), or retirement (discussed in Electric Plant Instruction 10. Additions and Retirements of Electric Plant).

[82] Companies currently must also shift portions of the related accumulated depreciation balances.

[83] AI14–1, *Accounting and Reporting Guidance for New Electric Storage Technologies* (2014).

[84] EEI Comments at 6–9 (filed March 29, 2021).

[85] Cost allocation would, as noted earlier, be addressed separately through the ratemaking process. *See supra* note 81.

[86] ACP Reply Comments at 6–8 (filed Apr. 26, 2021).

[87] The title of Account 351 currently reads as ''Reserved'' in the USofA Electric Plant Chart of Accounts.

assets.[88] We also propose to include the three new plant accounts for computer hardware, software, and communication equipment as described below. Finally, we propose to add a new Account 387.3 (Energy Storage Equipment), which would include the primary energy storage equipment in this function as described in the proposed instructions.

50. We also propose new Operations and Maintenance Expense accounts for the Energy Storage function: (1) Account 577.1 (Operation Supervision and Engineering); (2) Account 577.4 (Rents); (3) Account 577.5 (Operation Supplies and Expenses (Nonmajor only)); (4) Account 578.1 (Maintenance Supervision and Engineering (Major only)); (5) Account 578.2 (Maintenance of Structures (Major only)); (6) Account 578.4 (Maintenance of Collector Systems (Major only)); (7) Account 578.5 (Maintenance of Generator Step-up Transformers (Major only)); (8) Account 578.6 (Maintenance of Inverter Expenses (Major only)); (9) Account 578.10 (Maintenance of Miscellaneous Other Energy Storage Plant (Major only)); and (10) Account 578.11 (Maintenance of Other Energy Storage Plant (Nonmajor only)). We further propose to create three new additional expense accounts specific to the new Energy Storage function: (1) Account 577.2 (Operation of Energy Storage Equipment (Major only)); (2) Account 577.3 (Storage Fuel); and (3) Account 578.3 (Maintenance of Energy Storage Equipment (Major only)). Finally, we propose to create three new maintenance computer hardware, software, and communication equipment accounts related to the energy storage function as described below.

51. Pumped storage is currently recorded within the Hydraulic Production subfunction in the USofA, consistent with the instructions to Account 348 (Energy Storage Equipment—Production), which state: ''The cost of pumped storage hydroelectric plant shall be charged to hydraulic production plant.'' We propose to remove Account 348 and instead use its instructions in the new Account 387.3 as part of the proposed new Energy Storage function.

3. Renewable Energy Credits

52. We propose to retitle General Instruction No. 21 (Allowances) to Allowances and Renewable Energy Credits (RECs). We also propose several changes to this instruction. In Part A, we propose to remove the reference to the Clean Air Act to make the instruction less restrictive. We further propose to modify the instruction to reference the proposed new accounts as described below. Additionally, we propose to move the last sentence of Part A to the beginning of Part B. We also propose that Parts A and C refer to historical cost to make the instruction consistent with other existing regulatory text in the USofA.[89] We further propose to correct Part D, which currently reads, in part, ''Issuances from inventory from inventory included in . . .'' to instead read ''Issuances from inventory included in . . . [.]'' We propose to update the text in Part E to include references to RECs in addition to allowances and to add language to Part F to clarify the inventory accounting for RECs. We also propose to replace the language included in existing Part G with language that would instead provide guidance for cases in which allowances and RECs may be considered as prepayments. We propose to move the existing language in Part G which currently addresses penalties to Part H, and remove the reference to the Environmental Protection Agency (EPA) to make the instruction applicable to similar items created by other regulatory bodies. Then, we propose to move and update the existing language in Part H to a newly proposed Part I that would address gains and losses on dispositions of allowances and RECs. Finally, we propose to add a new Part J that would address the revenues for RECs associated with the sale of energy.

53. Additionally, we propose to change the existing text to Account 158.1 (Allowance Inventory) and Account 158.2 (Allowances Withheld) to remove the references to the EPA, to reference historical cost, and to include a new note to address prepayments in accordance with the proposed text within General Instruction No. 21.

54. The Commission has recognized that RECs are state-created and -issued.[90] As such, the Commission has concluded that when REC transactions are independent of wholesale electric energy transactions, these unbundled REC transactions do not fall within the Commission's authority under FPA sections 205 and 206; these unbundled REC transactions do not directly affect rates for electric energy sold at wholesale. By contrast, the Commission also has concluded that when RECs are bundled with electric energy sold at wholesale, the Commission has authority over the entire transaction, including the RECs, as all components are deemed to directly affect the wholesale electric energy rates.[91] Therefore, we also propose two new inventory accounts for RECs: Account 158.3 (Bundled Renewable Energy Credits Inventory), to record RECs bundled with energy sales, and Account 158.4 (Unbundled Renewable Energy Credits Inventory), to record RECs unbundled from energy sales.[92]

55. We propose to renumber Account 509 (Allowances) to Account 509.1, delete the reference to sulfur dioxide in this account, and create two new expense accounts for RECs: Account 509.2 (Bundled Renewable Energy Credits), and Account 509.3 (Unbundled Renewable Energy Credits). These accounts would be used to expense monthly bundled and unbundled REC costs, respectively, similar to how Account 509.1 is used for allowances.

56. Finally, we propose to add Account 411.11 (Gains from the Disposition of RECs) and Account 411.12 (Losses from the Disposition of RECs), consistent with the newly proposed instructions in Part I of General Instruction No. 21.

57. While we recognize that there may be differences in accounting and reporting for RECs (*e.g.,* inventory vs. intangible assets) as may be allowed by other regulatory bodies, we believe that the characteristics of RECs are more akin to inventory.[93] Generally, if another accounting authority's treatment conflicts with the accounting and financial reporting needed by the Commission to fulfill its statutory responsibilities, then the Commission's accounting and reporting regulations prevail.[94]

4. Hardware, Software, and Communication Equipment

58. We propose new accounts in each function and subfunction for computer hardware, software, and communication equipment in this proceeding. While the USofA was updated in 2005 to include

[88] The Commission does not expect these accounts to be used if they are not applicable to a specific energy storage plant.

[89] 18 CFR part 101, General Instruction No. 21 (Allowances).

[90] *WSPP Inc.,* 139 FERC ¶ 61,061, at P 21 (2012).

[91] *Id.* PP 22–24.

[92] We propose to use the term ''bundled'' to convey that the RECs are sold with their associated energy, and the term ''unbundled'' to convey that the RECs are sold separately from the energy.

[93] *Ameren Ill. Co.,* 170 FERC ¶ 61,267, at P 52 (explaining that RECs are appropriately classified as inventory).

[94] *See* Order No. 552, FERC Stats. & Regs. ¶ 30,967 at 30,801 (''If GAAP conflicts with the accounting and financial reporting needed by the Commission to fulfill its statutory responsibilities, then GAAP must yield. GAAP cannot control when it would prevent the Commission from carrying out its duty to provide jurisdictional companies with the opportunity to earn a fair return on their investment and to protect ratepayers from excessive charges and discriminatory treatment.'').

accounts for recording computer hardware, software, and communication equipment owned by regional transmission organizations (RTOs), there are no comparable accounts for non-RTO public utilities and licensees to report these types of assets.[95] This has led to discrepancies in how non-RTO public utilities record computer hardware, software, and communication equipment, with many utilities recording these assets in general accounts (*e.g.,* Account 303 (Miscellaneous Intangible Plant) and Account 391 (Office Furniture and Equipment)). To eliminate ambiguity and ensure greater consistency and transparency in accounting and reporting, we propose including computer hardware, software, and communication equipment in each different functional area, including the general function. It appears that the creation of new accounts for these items would allow more accurate functional identification, which would assist in the ratemaking process.

59. We recognize that these proposed accounts are needed for the new Non-hydro Renewable Generation subfunctions and the new Energy Storage function proposed above, but based on industry input from EEI, among others, we preliminarily find that these new accounts are needed for all functions and production subfunctions. As such, we propose to add three plant accounts and three maintenance accounts to all functions and subfunctions that currently lack them. These accounts are: Accounts 315.1, 324.1, 334.1, 338.9, 338.30, 339.9, 345.1, 351.1, 363.1, 387.8, and 397.1 (Computer Hardware); Accounts 315.2, 324.2, 334.2, 338.10, 338.31, 339.10, 345.2, 351.2, 363.2, 387.9, and 397.2 (Computer Software); Account 315.3, 324.3, 334.3, 338.11, 338.32, 339.11, 345.3, 351.3, 363.3, 387.10, and 397.3 (Communication Equipment); Accounts 513.1, 531.1, 544.1, 553.1, 558.13, 558.33, 559.12, 578.7, 587.8, 592.2, and 935.1 (Maintenance of Computer Hardware (Major only)); Accounts 513.2, 531.2, 544.2, 553.2, 558.14, 558.34, 558.13, 578.8, 587.9, 582.3, 935.2 (Maintenance of Computer Software (Major only)); and Account 513.3, 531.3, 544.3, 553.3, 558.15, 558.35, 559.14, 578.9, 587.10, 592.4, 935.3 (Maintenance of Communication Equipment (Major only)). The existing Transmission Expenses Maintenance accounts 569.1, 569.2, 569.3, would have (Major only) added to the account names to denote this condition, as consistent with the newly proposed accounts. Because the RTO function only exists in RTOs and independent system operators, we currently see no need for this designation on accounts in this function (*i.e.,* Accounts 576.2, 576.3, and 576.4). These accounts would all have the same descriptions, instructions, and items as the existing RTO and Transmission function accounts of the same title.

60. We also propose adding a new Electric Plant Instruction No. 17, Integrated computer hardware, software, and communication equipment. The instruction would explain that where computer hardware, software, and communication equipment is integrated as part of a larger retirement unit, it shall be recorded in the property account of the retirement unit purchased. It would further clarify that, if this hardware, software, or communication equipment is not integrated, Plant Instruction No. 10 should be followed.

61. We seek comment on whether the Commission also should create computer hardware, software, and communication accounts for natural gas pipelines, oil pipelines, and a holding company's service companies.

C. Reporting

62. To accommodate the proposed changes to the USofA explained above, we propose to amend Form Nos. 1, 1–F, and 3–Q (electric) to include the new subfunctions for Wind, Solar, and Other Non-hydro Renewable as well as a new Energy Storage function within the plant and O&M expense sections of the forms, including the schedules for depreciation.[96] Each subfunction and function would include the accounts as described above. The currently existing functional accounts for energy storage would be removed (Accounts 348, 351, 363, 548.1, 562.1, 570.1, and 584.1) or replaced (Accounts 553.1 and 592.2).

63. The proposed reporting changes to Form Nos. 1, 1–F, and 3–Q (electric) would result in changes to service company reporting in FERC Form No. 60, Schedule XVI—Analysis of Charges for Service—Associate and Non-Associate Companies, because the Form No. 60 summarizes the functional and sub-functional O&M expenses detailed in Form Nos. 1, 1–F, and 3–Q (electric).[97] As such, these proposed changes to FERC Form No. 60 consist of new rows for the summarized totals of the proposed new Energy Storage function and Generation sub-functions O&M expenses.

64. We also propose to amend Form Nos. 1, 1–F, and 3–Q (electric) to include RECs as part of the instructions and titles wherever allowances are discussed.[98] Further, we propose to consolidate inputs for both sulfur dioxide and nitrogen oxides (NO_X) in the existing Allowances schedule,[99] to include inputs for both bundled and unbundled RECs, and to amend the related title for Account 509 to read as Account 509.1.[100] We propose to add separate gain and loss accounts to the statement of income for RECs.[101]

65. We further propose to amend Form Nos. 1, 1–F, and 3–Q (electric) to include new plant and maintenance expense accounts for computer hardware, software, and communication equipment within all functions and subfunctions (including the general function).[102] In the Depreciation and Amortization of Electric Plant schedule section B (Basis for Amortization Charges), we propose to eliminate the first two sentences and the word software from the third sentence as these clauses would no longer be applicable to software.[103]

66. Currently, FERC Form No. 1 contains several statistical pages for different classes of large production generators. To simplify the forms and reduce the reporting burden, we propose to combine all large generating assets into one statistical page to also include hydro and non-hydro renewables.[104]

67. Finally, we propose to amend the energy storage statistical pages to remove references in the instructions and columns related to cost functionalization.[105]

D. Hydrogen Guidance

68. Comments in response to the NOI and separate industry inquiries advocated for accounting guidance for hydrogen. We solicit comment on whether the Chief Accountant should issue such guidance.[106] This guidance

[95] Order No. 668, 113 FERC ¶ 61,276.

[96] Appendix B: FERC Form Nos. 1/1–F at 204–207, 219, 321–322; FERC Form No. 1 at 227, 336, 352, 354, 401a; FERC Form No. 1–F at 21, 24; FERC Form No. 3–Q (electric) at 208, 324a, 324b (see the appendix at the end of this document).

[97] Appendix B: FERC Form No. 60 at 304–305a.

[98] Appendix B: FERC Form Nos. 1/1–F at 320; FERC Form No. 1 at 2, 110–111, 120–121, 228a, 229a; Form No. 1–F at 4, 10–11, 15–16.

[99] Appendix B: FERC Form No. 1 at 228a–229a amended, pages 228b–229b deleted.

[100] Appendix B: FERC Form Nos. 1/1–F at 320; FERC Form No. 1–F at 15.

[101] Appendix B: FERC Form Nos. 1/3–Q (electric) at 114; FERC Form No. 1–F at 6.

[102] Appendix B: FERC Form Nos. 1/1–F at 204–207, 320–323; FERC Form No. 3–Q (electric) at 325.

[103] Appendix B: FERC Form No. 1 at 336.

[104] Appendix B: FERC Form No. 1 at 402–403 amended; pages 406–407 deleted.

[105] Appendix B: FERC Form No. 1 at 414–420.

[106] We are not proposing changes to the USofA to account for hydrogen but rather seek comment on

could provide that the classification of hydrogen plant should be determined based on its functionality for both plant and its associated O&M accounting as well as for fuel accounting, including any newly created accounts that may result from this proceeding. This guidance could further define which activities are appropriate for accounting under the electric and which under the natural gas USofA. In addition, we seek comment on whether it would be helpful in the case of hydrogen to use existing natural gas accounts and instructions for production plant and O&M expenses, or if it would be more helpful either to update titles and instructions, or to create new accounts in a future proceeding.

IV. Information Collection Statement

69. The information collection requirements contained in this notice of proposed rulemaking (NOPR) are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[107] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[108] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

70. This NOPR would require jurisdictional entities as detailed in 18 CFR part 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provision of the Federal Power Act, General Instructions) to update, modify, and add accounts as directed in Docket No. RM21–11–000. The updates within the USofA will also be required in the respective forms (FERC Form Nos. 1, 1–F, 3–Q (electric), and 60) that are filed with the Commission.

71. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 via email (*DataClearance@ferc.gov*) or telephone (202) 502–8663).

72. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

73. Please send comments concerning the collections of information and the associated burden estimates to the Office of Information and Regulatory Affairs, Office of Management and Budget, through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Numbers 1902–0021, 1902–0029, 1902–0205, and 1902–0215 in the subject line of your comments. Comments should be sent within 45 days of publication of this NOPR in the **Federal Register**.

74. Please submit a copy of your comments on the information collections to the Commission via the eFiling link on the Commission's website at *https://www.ferc.gov.* Comments on the information collection that are sent to FERC should refer to Docket No. RM21–11–000.

Title: Annual Report of Major Electric Utilities, Licensees, and Others (FERC Form No. 1), Annual Report for Nonmajor Public Utilities and Licensees (FERC Form No. 1–F), Quarterly Financial Report of Electric Utilities, Licensees (FERC Form No. 3–Q (electric), Annual Reports of Centralized Service Companies (FERC Form No. 60).

Action: Proposed revision of collections of information in accordance with Docket No. RM21–11–000 and request for comments.

OMB Control Nos.: 1902–0021 (FERC Form No. 1) and 1902–0029 (FERC Form No. 1–F), 1902–0205 (FERC Form No. 3–Q (electric), and 1902–0215 (FERC Form No. 60).

Respondents: Public utilities and licensees and centralized service companies who are not exempt or waived from filing per 18 CFR parts 141 and 369.

Frequency of Information Collection: Annually.

Necessity of Information: The reforms in this proposed rule adjust the USofA to account for changes in the industry, particularly around renewable generation.

Internal Review: The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

75. The Commission estimates a one-time burden due to the proposed revisions in FERC Form Nos. 1, 1–F, 3–Q (electric), and 60 reflected in the NOPR in Docket No. RM21–11–000 but estimates that the ongoing burden following the implementation to be consistent with the current collection estimates. The burden estimates below are included in two tables, the first table showing the one-time implementation burden required to update, add, and modify accounts related to the NOPR and the second table showing the ongoing annual burden to record and report on each account in the FERC Form Nos. 1, 1–F, 3–Q (electric), and 60.

76. The one-time implementation burden includes updating, adding, and modifying accounts to be compliant with the NOPR in Docket No. RM21–11–000. This includes updates to the Form Nos. 1, 1–F, 3–Q (electric), and 60 for the creation of new accounts and production subfunctions for wind, solar, and other non-hydro renewable assets; establishing a new functional class for energy storage accounts; codifying the accounting treatment of RECs, and creation of new accounts within existing functions for hardware, software, and communication equipment. The Reporting section III(B)(6) of this document indicates which forms and pages will be affected by the categorized proposed changes.

77. The estimates below were calculated using previous NOPRs combined with the Commission's best estimate to the required effort to update, modify, or add accounts within the USofA. The Commission estimates that on average it will take 20 minutes to create or transition an account to be compliant with the requirements listed in this NOPR. In total there are 154 accounts being added, modified, or updated, but not all accounts are in each form. FERC Form No. 1 requires 145 account changes, FERC Form No. 1–F requires 145 account changes, and FERC Form No. 60 requires 11 account changes. The changes to FERC Form No. 3–Q (electric) are reflected in the calculations for FERC Form No. 1 since the quarterly reports are generally a subset of the annual filings required by FERC Form No. 1. The changes above are reflected in the one-time implementation burden estimate listed in Table 1 below.[109]

the potential issuance of more general accounting guidance that could be issued by the Chief Accountant.

[107] 44 U.S.C. 3507(d).

[108] 5 CFR 1320.11.

[109] The burden numbers in the table are rounded to 1 decimal place, and the costs are rounded to the nearest dollar.

TABLE 1—RM21–11–000

[NOPR one-time implementation burden, in Year 1]

Requirement	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [110] (4)	Total annual burden hours & cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Form No. 1	217	1	217	48.3 hrs.; $4,202	10,481.1 hrs.; $911,834	$4,202
Form No.1–F	2	1	2	48.3 hrs.; $4,202	96.6 hrs.; $8,404	4,202
Form No. 3–Q electric [111]	221	3	663	0 hrs. $0	0 hrs. $0	0
Form No. 60	42	1	42	3.7 hrs.; $322	155.4 hrs.; $13,524	305
Total for Implementation Burden			924		10,733.1 hrs.; $933,762	

78. The Commission estimates that the ongoing burden in years 2 and beyond will be consistent with the current burden estimates related to FERC Form Nos. 1, 1–F, 3–Q (electric), and 60 because, although the accounts are changing, the data historically has been recorded and documented under different account names: therefore, after the initial implementation of the changes, respondents will likely revert to the current burden estimates. The estimated ongoing burden is shown in Table 2 below.

TABLE 2—RM21–11–000 NOPR

[Annual ongoing burden (current), starting in Year 2]

Requirement [112]	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [1] (4)	Total annual burden hours & cost [1] (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Form No. 1 (including Form 1T)	217	1	217	1,182 hrs.; $102,834	256,494 hrs.; $22,314,978	$102,834
Form No.1–F (including Form 1–FT)	2	1	2	136 hrs.; $11,832	272 hrs.; $23,664	11,832
Form No. 3–Q electric (including Form 3–QT).	221	3	663	168 hrs. $14,616	111,384 hrs. $9,690,408	43,848
Form No. 60 (including Form 60A)	42	1	42	78 hrs.; $6,786	3,276 hrs.; $285,012	6,786
Total Ongoing Burden (current)			924		371,426 hrs.; $32,314,062	

V. Environmental Analysis

79. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[113] No environmental consideration is necessary for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[114] and also that addresses accounting.[115] This NOPR addresses accounting. In addition, this NOPR involves information gathering, analysis, and dissemination. Therefore, this NOPR falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

VI. Regulatory Flexibility Act

80. The Regulatory Flexibility Act of 1980 (RFA) [116] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[117] The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[118] electric generators definitions of ''small'' range from 250–750 employees based on the type of generation. For the purpose of our analysis, we use the 250 employee threshold that is used for solar, wind, geothermal, biomass, and ''other'' generators since the proposed rules accounting changes are particularly relevant for these types of generation.

81. In our analysis, we utilized previous submissions of the FERC Form Nos. 1,[119] 1–F,[120] 3–Q (electric),[121] and 60 [122] filers to create populations of companies to determine the number of small entities. The Commission found that of this population, approximately seven percent of companies filing FERC Form No. 1, 50% of companies filing

[110] The average burden and cost per response is calculated using the hourly wage figures for FERC staff. The Commission estimates that the costs for the Commission are comparable to those in industry. Commission staff average salary plus benefits totals $180,703 or $87 per hour.

[111] The Commission assumes that the one-time burden for the FERC Form No. 3–Q is incorporated into the calculation of FERC Form No. 1 since quarterly filings are typically a subset of the annual filings.

[112] The temporary forms (labeled ''T'') are currently undergoing the collection renewal process, which combines the ''T'' forms with their parent forms. The ''T'' forms were created during the XBRL transition since OMB does not allow for more than one Information Collection Request to be submitted under a single OMB control number. The ''T'' forms are anticipated to be retired following OMB approval of each renewed form.

[113] *Reguls. Implementing the Nat'l Envt'l Pol'y Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. 30,783 (1987) (cross-referenced at 41 FERC 61,284).

[114] *See* 18 CFR 380.4(a)(5).

[115] *See* 18 CFR 380.4(c)(16).

[116] 5 U.S.C. 601–612.

[117] *Id.* 603(c).

[118] 13 CFR 121.201.

[119] The total population of FERC Form No. 1 filers totaled 222. We used a statistical sample size of 99 companies that produces a 95% confidence level.

[120] The total population of FERC Form No. 1–F filers totaled 2.

[121] The FERC Form 3–Q are quarterly filings, which are typically a subset of the annual filings. The Commission assumes that the 3–Q filers are consistent with FERC Form No. 1 filers.

[122] The total population of FERC Form No. 60 filers totaled 43. We used a statistical sample size of 35 companies that produces a 95% confidence level.

FERC Form No. 1–F,[123] and approximately eight percent of companies filing FERC Form No. 60, qualify as ''small'' using the definition provided by SBA. The Commission believes this rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

VII. Comment Procedures

82. We invite interested persons to submit comments on the matters and issues proposed in this NOPR to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due November 17, 2022. Comments must refer to Docket No. RM21–11–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

83. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *https://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

84. Commenters that are not able to file comments electronically may file an original of their comment by the U.S. Postal Service (USPS) mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

[123] The Commission recognizes that 50% is a significant percentage. However, because only two companies file the FERC Form No. 1–F, 50% of FERC Form No. 1–F filers only represents one company. When compared to the total population of all filers effected by this rulemaking, one company (50% of FERC Form No. 1–f filers) is not deemed significant.

VIII. Document Availability

85. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19).

86. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

87. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform system of accounts.

By direction of the Commission.

Issued: July 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 101, chapter I, title 18, *Code of Federal Regulations,* as follows.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 2. In part 101:

■ a. Under General Instructions, Instruction 21 is revised;

■ b. Under Electric Plant Instructions, Instruction 17 is added;

■ c. Under Balance Sheet Chart of Accounts, Accounts 158.3 and 158.4 are added to the list;

■ d. Under Balance Sheet Accounts:

■ i. Accounts 108, 111, 158.1, and 158.2 are revised; and

■ ii. Accounts 158.3 and 158.4 are added;

■ e. Under Electric Plant Chart of Accounts:

■ i. Accounts 315.1, 315.2, 315.3, 324.1, 324.2, 324.3, 334.1, 334.2, and 334.3 are added to the list;

■ ii. Section 2.d. of the list is revised;

■ iii. Sections 2.e., 2.f., and 2.g. and Accounts 351.1, 351.2, and 351.3 are added to the list;

■ iv. Account 363 is removed from the list and reserved;

■ v. Accounts 363.1, 363.2, and 363.3 are added to the list;

■ vi. Account 387 is removed from the list;

■ vii. Section 6 is redesignated as section 7 of the list;

■ viii. A new section 6 is added to the list;

■ ix. Account 397 is removed from the list and reserved; and

■ x. Accounts 397.1, 397.2, and 397.3 are added to the list;

■ f. Under Electric Plant Accounts:

■ i. Accounts 315.1, 315.2, 315.3, 324.1, 324.2, 324.3, 334.1, 334.2, 334.3, 338.1 through 338.13, 338.20 through 338.34, 339.1 through 339.13, and 345.1 through 345.3 are added;

■ ii. Accounts 348 and 351 are removed and reserved;

■ iii. Accounts 351.1, 351.2, and 351.3 are added;

■ iv. Account 363 is removed and reserved;

■ v. Accounts 363.1, 363.2, 363.3, 387, and 387.1 through 387.12 are added;

■ vi. Account 397 is removed and reserved; and

■ vii. Accounts 397.1, 397.2, and 397.3 are added;

■ g. Under Income Chart of Accounts, Accounts 411.11 and 411.12 are added to the list;

■ h. Under Income Accounts, Accounts 411.11 and 411.12 are added;

■ i. Under Operation and Maintenance Expense Chart of Accounts:

■ i. Account 509 is removed from the list;

■ ii. Accounts 509.1, 509.2, 509.3, 513.1, 513.2, 513.3, 531.1, 531.2, 531.3, 544.1, 544.2, and 544.3 are added to the list;

■ iii. Account 548.1 is removed from the list and reserved;

■ iv. Account 553.1 of the list is revised;

■ v. Accounts 553.2 and 553.3 and sections 1.f., 1.g, and 1.h. are added to the list;

■ vi. Account 562.1 is removed from the list and reserved;

■ vii. Accounts 569.1, 569.2, and 569.3 of the list are revised;
■ viii. Account 570.1 is removed from the list and reserved;
■ ix. Sections 4 through 8 are redesignated as sections 5 through 9 of the list;
■ x. A new section 4 is added to the list;
■ xi. Account 584.1 is removed from the list and reserved;
■ xii. Account 592.2 of the list is revised; and
■ xiii. Accounts 592.3, 592.4, 935.1, 935.2, and 935.3 are added to the list; and
■ j. Under Operation and Maintenance Expense Accounts:
■ i. Account 509 is redesignated as Account 509.1;
■ ii. Newly redesignated Account 509.1 is revised;
■ iii. Accounts 509.2, 509.3, 513.1, 513.2, 513.3, 531.1, 531.2, 531.3, 544.1, 544.2, and 544.3 are added;
■ iv. Account 548.1 is removed and reserved;
■ v. Account 553.1 is revised;
■ vi. Accounts 553.2, 553.3, 558.1 through 558.17, 558.20 through 558.37, and 559.1 through 559.16 are added;
■ vii. Account 562.1 is removed and reserved;
■ viii. Accounts 569.1, 569.2, and 569.3 are revised;
■ ix. Account 570.1 is removed and reserved;
■ x. Accounts 577.1, 577.2 through 577.5, 578.1 through 578.11 are added;
■ xi. Account 584.1 is removed and reserved; and
■ xii. Account 592.2, 592.3, 592.4, 935.1, 935.2, and 935.3 are added.

The revisions and additions read as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

* * * * *

General Instructions

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21. *Allowances and renewable energy credits (RECs).*

A. Public utilities owning allowances and RECs for operational purposes, shall account for such allowances and RECs at historical cost in Account 158.1, Allowance Inventory, Account 158.2, Allowances Withheld, Account 158.3, Bundled Renewable Energy Credits Inventory, or Account 158.4, Unbundled Renewable Energy Credits Inventory, as appropriate.

B. Allowances and RECs acquired for speculative purposes shall be accounted for in Account 124, Other Investments. When purchased allowances and RECs acquired for speculative purposes become eligible for use in different years, and the allocation of the purchase cost cannot be determined by fair value, the purchase cost allocated to allowances and RECs of each vintage shall be determined through use of a present-value based measurement. The interest rate used in the present-value measurement shall be the utility's incremental borrowing rate, in the month in which the allowances and RECs are acquired, for a loan with a term similar to the period that it will hold the allowances and RECs and in an amount equal to the purchase price.

C. The underlying records supporting operational allowances and RECs recorded in Account 158.1, Account 158.2, Account 158.3, and Account 158.4 shall be maintained in sufficient detail at historical costs and provide the number of allowances and RECs and the related cost by vintage year, including allowances and RECs acquired at zero cost.

D. Issuances from inventory included in Account 158.1, Account 158.2, Account 158.3, and Account 158.4 shall be accounted for on a vintage basis using a monthly weighted-average method of historical cost determination. The cost of eligible allowances and RECs not used in the current year, shall be transferred to the vintage for the immediately following year.

E. Account 158.1 shall be credited and Account 509.1, Allowances, debited concurrent with the monthly remittance of the allowances to be charged to expense based on each month's emissions. Account 158.3 and 158.4 shall be credited and Account 509.2, Bundled Renewable Energy Credits, and Account 509.3, Unbundled Renewable Energy Credits, debited, respectively, so that the cost of the RECs to be remitted for the year is charged to expense based on each month's usage. This may, in certain circumstances, require allocation of the cost between months on a fractional basis.

F. In any period in which actual emissions exceed the amount allowable based on eligible allowances owned, the utility shall estimate the cost to acquire the additional allowances needed and charge Account 158.1 with the estimated cost and credit the proper liability account. In any period in which a utility records its estimated amount of required RECs, the utility shall debit Account 158.3 with the estimated cost and credit the proper liability account. When differences between the estimated and actual costs become known, the adjustments should be made through Account 158.1 and Account 158.3 and Account 509.1 and Account 509.2 within a single month, as appropriate.

G. When a prepayment is made for allowances or RECs, the payment is debited to Account 165, Prepayments. This accounting is not intended to influence the outcome of any rate treatment.

H. Penalties assessed by any authoritative agencies shall be charged to Account 426.3, Penalties.

I. Gains on dispositions of allowances and RECs, other than those held for speculative purposes, shall be accounted for as follows. First, if there is uncertainty as to the regulatory treatment, the gain shall be deferred in Account 254, Other Regulatory Liabilities, pending resolution of the uncertainty. Second, if there is certainty as to the existence of a regulatory liability, the gain will be credited to Account 254, with subsequent recognition in income when reductions in charges to customers occur or the liability is otherwise satisfied. Third, all other gains will be credited to Account 411.8, Gains from Disposition of Allowances, or Account 411.11, Gain from Disposition of RECs. Losses on disposition of allowances and RECs, other than those held for speculative purposes, shall be accounted for as follows. Losses that qualify as regulatory assets shall be charged directly to Account 182.3, Other Regulatory Assets. All other losses shall be charged to Account 411.9, Losses from Disposition of Allowances, or Account 411.12, Losses from Disposition of RECs. (*See* Definition No. 31.) Gains or losses on disposition of allowances and RECs held for speculative purposes shall be recognized in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate.

J. Revenues for RECs associated with the sale of energy shall be recorded in the appropriate operating revenue account.

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Electric Plant Instructions

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17. *Integrated computer hardware, software, and communication equipment.* Where computer hardware, software, and communication equipment is integrated as part of a larger retirement unit, it shall be recorded in the property account of the retirement unit purchased. This shall be done consistently with electric plant instruction 10.

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Balance Sheet Chart of Accounts

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3. Current and Accrued Assets

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158.3 Bundled renewable energy credits inventory.

158.4 Unbundled renewable energy credits inventory.

* * * * *

Balance Sheet Accounts

* * * * *

108 Accumulated provision for depreciation of electric utility plant (Major only).

A. This account shall be credited with the following:

(1) Amounts charged to account 403, Depreciation Expense, or to clearing accounts for current depreciation expense for electric plant in service.

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in electric plant in service in a separate subaccount.

(3) Amounts charged to account 421, Miscellaneous Nonoperating Income, for depreciation expense on property included in account 105, Electric Plant Held for Future Use. Include, also, the balance of accumulated provision for depreciation on property when transferred to account 105, Electric Plant Held for Future Use, from other property accounts. Normally account 108 will not be used for current depreciation provisions because, as provided herein, the service life during which depreciation is computed commences with the date property is includible in electric plant in service; however, if special circumstances indicate the propriety of current accruals for depreciation, such charges shall be made to account 421, Miscellaneous Nonoperating Income.

(4) Amounts charged to account 413, Expenses of Electric Plant Leased to Others, for electric plant included in account 104, Electric Plant Leased to Others.

(5) Amounts charged to account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work, or to clearing accounts for current depreciation expense.

(6) Amounts of depreciation applicable to electric properties acquired as operating units or systems. (See electric plant instruction 5.)

(7) Amounts charged to account 182, Extraordinary Property Losses, when authorized by the Commission.

(8) Amounts of depreciation applicable to electric plant donated to the utility.

(The utility shall maintain separate subaccounts for depreciation applicable to electric plant in service, electric plant leased to others and electric plant held for future use.)

B. At the time of retirement of depreciable electric utility plant, this account shall be charged with the book cost of the property retired and the cost of removal and shall be credited with the salvage value and any other amounts recovered, such as insurance. When retirement, costs of removal and salvage are entered originally in retirement work orders, the net total of such work orders may be included in a separate subaccount hereunder. Upon completion of the work order, the proper distribution to subdivisions of this account shall be made as provided in the following paragraph.

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant:

(1) Steam production,

(2) Nuclear production,

(3) Hydraulic production,

(4) Solar production,

(5) Wind production,

(6) Other Non-hydro Renewable production,

(7) Other production,

(8) Transmission,

(9) Distribution,

(10) Regional Transmission and Market Operation,

(11) Energy Storage Plant, and

(12) General.

These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification:

(a) The amount of accrual for depreciation,

(b) The book cost of property retired,

(c) Cost of removal,

(d) Salvage, and

(e) Other items, including recoveries from insurance.

Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of plant recorded in Account 108, Accumulated provision for depreciation of electric utility plant (Major only).

D. When transfers of plant are made from one electric plant account to another, or from or to another utility department, or from or to nonutility property accounts, the accounting for the related accumulated provision for depreciation shall be as provided in electric plant instruction 12.

E. The utility is restricted in its use of the accumulated provision for depreciation to the purposes set forth above. It shall not transfer any portion of this account to retained earnings or make any other use thereof without authorization by the Commission.

* * * * *

111 Accumulated provision for amortization of electric utility plant (Major only).

A. This account shall be credited with the following:

(1) Amounts charged to account 404, Amortization of Limited-Term Electric Plant, for the current amortization of limited-term electric plant investments.

(2) Amounts charged to account 421, Miscellaneous Nonoperating Income, for amortization expense on property included in account 105, Electric Plant Held for Future Use. Include also the balance of accumulated provision for amortization on property when transferred to account 105, Electric Plant Held for Future Use, from other property accounts. See also paragraph A(2), account 108, Accumulated Provision for Depreciation of Electric Utility Plant.

(3) Amounts charged to account 405, Amortization of Other Electric Plant.

(4) Amounts charged to account 413, Expenses of Electric Plant Leased to Others, for the current amortization of limited-term or other investments subject to amortization included in account 104, Electric Plant Leased to Others.

(5) Amounts charged to account 425, Miscellaneous Amortization, for the amortization of intangible or other electric plant which does not have a definite or terminable life and is not subject to charges for depreciation expense, with Commission approval.

(The utility shall maintain subaccounts of this account for the amortization applicable to electric plant in service, electric plant leased to others and electric plant held for future use.)

B. When any property to which this account applies is sold, relinquished, or otherwise retired from service, this account shall be charged with the amount previously credited in respect to such property. The book cost of the property so retired less the amount chargeable to this account and less the net proceeds realized at retirement shall be included in account 421.1, Gain on Disposition of Property, or account 421.2, Loss on Disposition of Property, as appropriate.

C. For general ledger and balance sheet purposes, this account shall be

regarded and treated as a single composite provision for amortization. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant: (1) Steam production; (2) nuclear production; (3) hydraulic production; (4) solar production; (5) wind production; (6) other non-hydro renewable production; (7) other production; (8) transmission; (9) distribution; (10) regional transmission and market operation; (11) energy storage plant; and (12) general. These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification (a) the amount of accrual for amortization, (b) the book cost of property retired, (c) cost of removal, (d) salvage, and (e) other items, including recoveries from insurance.

D. The utility is restricted in its use of the accumulated provision for amortization to the purposes set forth above. It shall not transfer any portion of this account to retained earnings or make any other use thereof without authorization by the Commission.

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158.1 Allowance inventory.

A. This account shall include the cost of allowances owned by the utility and not withheld by any authoritative agency. *See* General Instruction No. 21 and Account 158.2, Allowances Withheld.

B. This account shall be credited and Account 509.1, Allowances, shall be debited concurrent with the monthly emissions.

C. Separate subdivisions of this account shall be maintained so as to separately account for those allowances usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the historical cost.

(**Note:** For prepayments of allowances, see General Instruction No. 21.)

158.2 Allowances withheld.

A. This account shall include the cost of allowances owned by the utility but withheld by any authoritative agency. (*See* General Instruction No. 21.)

B. The inventory cost of the allowances released by any authoritative agency for use by the utility shall be transferred to Account 158.1, Allowance Inventory.

C. The underlying records of this account shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the historical cost.

158.3 Bundled renewable energy credits inventory.

A. This account shall include the cost of RECs owned by the utility, bundled with energy, and not withheld by any authoritative agency. See General Instruction No. 21 and Account 158.2, Allowances and RECs Withheld.

B. This account shall be credited and Account 509.2, Bundled Renewable Energy Credits, shall be debited concurrent with the monthly use of RECs.

C. Separate subdivisions of this account shall be maintained so as to separately account for those RECs usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each REC included; the origin of each REC; and the historical cost.

(**Note:** For prepayments of RECs, see General Instruction No. 21.)

158.4 Unbundled renewable energy credits inventory.

A. This account shall include the cost of RECs owned by the utility, not considered bundled with energy, and not withheld by any authoritative agency. See General Instruction No. 21 and Account 158.2, Allowances and RECs Withheld.

B. This account shall be credited and Account 509.3, Unbundled Renewable Energy Credits, shall be debited concurrent with the monthly use of RECs.

C. Separate subdivisions of this account shall be maintained so as to separately account for those RECs usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each REC included; the origin of each REC; and the historical cost.

(**Note:** For prepayments of RECs, see General Instruction No. 21.)

* * * * *

Electric Plant Chart of Accounts

* * * * *

2. Production Plant

a. steam production

* * * * *

315.1 Computer hardware.
315.2 Computer software.
315.3 Communication equipment.

* * * * *

b. nuclear production

* * * * *

324.1 Computer hardware.
324.2 Computer software.
324.3 Communication equipment.

* * * * *

c. hydraulic production

* * * * *

334.1 Computer hardware.
334.2 Computer software.
334.3 Communication equipment.

* * * * *

d. solar production

338.1 Land and land rights.
338.2 Structures and improvements.
338.3 [Reserved]
338.4 Solar panels.
338.5 Collector system.
338.6 Generator step-up transformers (GSU).
338.7 Inverters.
338.8 Other accessory electrical equipment.
338.9 Computer hardware.
338.10 Computer software.
338.11 Communication equipment.
338.12 Miscellaneous power plant equipment.
338.13 Asset retirement costs for solar production.

e. wind production

338.20 Land and land rights.
338.21 Structures and improvements.
338.22 [Reserved]
338.23 Wind turbines.
338.24 Wind towers and fixtures.
338.25 [Reserved]
338.26 Collector system.
338.27 Generator step-up transformers (GSU).
338.28 Inverters.
338.29 Other accessory electrical equipment.
338.30 Computer hardware.
338.31 Computer software.
338.32 Communication equipment.
338.33 Miscellaneous power plant equipment.
338.34 Asset retirement costs for wind production.

f. other non-hydro renewable production

339.1 Land and land rights.
339.2 Structures and improvements.
339.3 Fuel holders.
339.4 Boilers.
339.5 [Reserved]
339.6 Generators.
339.7 [Reserved]
339.8 Other accessory electrical equipment.
339.9 Computer hardware.
339.10 Computer software.
339.11 Communication equipment.
339.12 Miscellaneous power plant equipment.
339.13 Asset retirement costs for other non-hydro renewable production.

g. other production

340 Land and land rights.
341 Structures and improvements.
342 Fuel holders, producers, and accessories.
343 Prime movers.
344 Generators.
345 Accessory electric equipment.
345.1 Computer hardware.
345.2 Computer software.

345.3 Communication equipment.
346 Miscellaneous power plant equipment.
347 Asset retirement costs for other production plant.
348 [Reserved]
3. Transmission Plant
* * * * *
351.1 Computer hardware.
351.2 Computer software.
351.3 Communication equipment.
* * * * *
4. Distribution Plant
* * * * *
363 [Reserved]
363.1 Computer hardware.
363.2 Computer software.
363.3 Communication equipment.
* * * * *
6. Energy Storage Plant
387 [Reserved]
387.1 Land and land rights.
387.2 Structures and improvements.
387.3 Energy storage equipment.
387.4 [Reserved]
387.5 Collector system.
387.6 Generator step-up transformers (GSU).
387.7 Inverters.
387.8 Computer hardware.
387.9 Computer software.
387.10 Communication equipment.
387.11 Miscellaneous energy storage equipment.
387.12 Asset retirement costs for energy storage.
7. General Plant
* * * * *
397 [Reserved]
397.1 Computer hardware.
397.2 Computer software.
397.3 Communication equipment.
* * * * *

Electric Plant Accounts

* * * * *

315.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

315.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

315.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.
* * * * *

324.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

324.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

324.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.
* * * * *

334.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

334.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

334.3 Communication equipment.

This account shall include the cost of communication equipment owned and

used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

338.1 Land and land rights.

This account shall include the cost of land and land rights used in connection with solar power generation. (See electric plant instruction 7.)

338.2 Structures and Improvements.

This account shall include the cost in place of structures and improvements used in connection with solar power generation. (See electric plant instruction 8.)

338.3 [Reserved]

338.4 Solar panels.

This account shall include the installed cost of the racks, solar panels, and other equipment to be used primarily for generating Direct Current (DC) electricity.

338.5 Collector system.

This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities and devices (such as static capacitors) that are used to transport and consolidate the power fed from individual solar panels, once it has been stepped-up, to the substation prior to interconnection to the grid.

Items

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
3. Armored conductors, buried, submarine, including insulators, insulating materials, splices in terminal chamber, potheads, etc.
4. Brackets.
5. Circuit breakers.
6. Conductors, including insulated and bare wires and cables.
7. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
8. Crossarms and braces.
9. Excavation and backfill, including shoring, bracing, bridging, and disposal of excess excavated material.
10. Extension arms.
11. Fireproofing, in connection with any items listed herein.
12. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
13. Ground wires, clamps, etc.
14. Guards.
15. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, etc.
16. Insulators, including pin, suspension, and other types, and tie wire or clamps.
17. Lightning arresters.
18. Paving, Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
19. Permits for construction.
20. Pole steps and ladders.
21. Poles, wood, steel, concrete, or other material.
22. Racks complete with insulators.
23. Railings.
24. Railroad and highway crossing guards.
25. Reinforcing and stubbing.
26. Removal and relocation of subsurface obstructions.
27. Settings.
28. Sewer connections, including drains, traps, tide valves, check valves, etc.
29. Shaving, painting, gaining, roofing, stenciling, and tagging.
30. Splices.
31. Sumps, including pumps.
32. Switches.
33. Towers.
34. Tree trimming, initial cost including the cost of permits therefor.
35. Ventilating equipment.
36. Other line devices.

338.6 Generator step-up transformers (GSU).

This account shall include only the cost of the GSU transformers directly connected to the generator terminal tips and other equipment used for conveying the power to the GSU for the purpose of initially changing the voltage or frequency of electric energy for the purpose of moving the power. It shall exclude the cost of additional transformers and other equipment once the power has been initially stepped up from a generator voltage to a higher voltage.

338.7 Inverters.

This account shall include the installed cost of inverters for the purpose of converting electricity from direct current (DC) to alternating current (AC).

338.8 Other accessory electrical equipment.

This account shall include the installed cost of other conversion or auxiliary generating apparatus and equipment used primarily in connection with the control and switching of electric energy produced by solar panels, including weather monitoring equipment, and the protection of electric circuits and equipment which operate at generating level voltage (excluding SCADA systems). This account shall exclude Collector System costs, Account 338.5, Collector System; GSU costs, Account 338.6, Generator Step-up Transformers (GSU); and Inverter costs, Account 338.7, Inverters.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.
2. Excitation system, including motor, turbine and dual-drive exciter sets and rheostats, storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats, etc., special housings, protective screens, etc.
3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, etc., special housing, protective screens, etc.
4. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, trunktype boards complete, cubicles, station supervisory control boards, generator and exciter signal stands, temperature-recording devices, frequency control equipment, master clocks, watt-hour meter, station totalizing wattmeter, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housing for batteries, protective screens, doors, etc.
5. Station buses, including main, auxiliary transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors,

starting transformers, current transformers, potential transformers, protective relays, storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station ground system, special fire-extinguishing system, and test equipment.

Note A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

Note B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

338.9 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

338.10 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

338.11 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

338.12 Miscellaneous power plant equipment.

This account shall include the installed cost of miscellaneous equipment in and about the solar plant devoted to general station use, and which is not properly includible in any of the foregoing solar power production accounts.

Items

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, piping, etc.
2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, hoists, etc., with electric and mechanical connections.
3. Fire-extinguishing equipment for general station use.
4. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
5. Miscellaneous equipment, including atmospheric and weather indicating devices, intrasite communication equipment, laboratory equipment, signal systems, callophones, emergency whistles and sirens, fire alarms, and other similar equipment.
6. Miscellaneous belts, pulleys, countershafts, etc.
7. Refrigerating system including compressors, pumps, cooling coils, etc.
8. Station maintenance equipment, including lathes, shapers, planers, drill presses, hydraulic presses, grinders, etc., with motors, shafting, hangers, pulleys, etc.
9. Ventilating equipment, including items wholly identified with apparatus listed herein.

Note: When any item of equipment, listed herein is used wholly in connection with equipment included in another account, its cost shall be included in such other account.

338.13 Asset retirement costs for solar production.

This account shall include asset retirement costs on plant included in solar production function.

338.20 Land and land rights.

This account shall include the cost of land and land rights used in connection with wind power generation. (See electric plant instruction 7.)

338.21 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with wind power generation. (See electric plant instruction 8.)

338.22 [Reserved]

338.23 Wind turbines.

This account shall include the cost installed of the mechanical turbine parts and generator equipment, including nacelle, gearbox, etc., to be used primarily for generating electricity.

338.24 Wind towers and fixtures.

This account shall include the cost installed of towers and appurtenant fixtures used for supporting wind power production. Foundations shall be included in Account 338.21 Structures and Improvements.

338.25 [Reserved]

338.26 Collector system.

This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities that are installed beyond the high side of the GSU transformer and the transmission or distribution point of interconnection.

Items

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
3. Armored conductors, buried, submarine, including insulators, insulating materials, splices in terminal chamber, potheads, etc.
4. Brackets.
5. Circuit breakers.
6. Conductors, including insulated and bare wires and cables.
7. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
8. Crossarms and braces.
9. Excavation and backfill, including shoring, bracing, bridging, and disposal of excess excavated material.
10. Extension arms.
11. Fireproofing, in connection with any items listed herein.
12. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
13. Ground wires, clamps, etc.
14. Guards.
15. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, etc.
16. Insulators, including pin, suspension, and other types, and tie wire or clamps.

17. Lightning arresters.
18. Paving, Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
19. Permits for construction.
20. Pole steps and ladders.
21. Poles, wood, steel, concrete, or other material.
22. Racks complete with insulators.
23. Railings.
24. Railroad and highway crossing guards.
25. Reinforcing and stubbing.
26. Removal and relocation of subsurface obstructions.
27. Settings.
28. Sewer connections, including drains, traps, tide valves, check valves, etc.
29. Shaving, painting, gaining, roofing, stenciling, and tagging.
30. Splices.
31. Sumps, including pumps.
32. Switches.
33. Towers.
34. Tree trimming, initial cost including the cost of permits therefor.
35. Ventilating equipment.
36. Other line devices.

338.27 Generator step-up transformers (GSU).

This account shall include only the cost of the GSU transformers and other equipment used for conveying the power to the pad-mount GSU for the purpose of initially changing the voltage or frequency of electric energy for the purpose of moving the power. It shall exclude the cost of additional transformers and other equipment once the power has been initially stepped up from a generator voltage to a higher voltage.

338.28 Inverters.

This account shall include the installed cost of inverters for the purpose of converting electricity from direct current (DC) to alternating current (AC).

338.29 Other accessory electrical equipment.

This account shall include the installed cost of other conversion or auxiliary generating apparatus and equipment used primarily in connection with the control and switching of electric energy produced by wind turbines, including weather monitoring equipment, and the protection of electric circuits and equipment which operate at generating level voltage (excluding SCADA systems). This account shall exclude Collector System costs, Account 338.26, Collector System; GSU costs, Account 338.27, Generator Step-up Transformers (GSU); and Inverter costs, Account 338.28, Inverters.

338.30 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

338.31 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

338.32 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

338.33 Miscellaneous power plant equipment.

This account shall include the installed cost of miscellaneous equipment in and about the wind plant devoted to general station use, and which is not properly includible in any of the foregoing wind power production accounts.

338.34 Asset retirement costs for wind production.

This account shall include asset retirement costs on plant included in wind production function.

339.1 Land and land rights.

This account shall include the cost of land and land rights used in connection with other non-hydro renewable power generation. (See electric plant instruction 7.)

339.2 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with other non-hydro renewable power generation. (See electric plant instruction 8.)

Note: This includes mirrors for solar boiler systems.

339.3 Fuel holders.

This account shall include the cost installed of renewable fuel handling and storage equipment used between the point of fuel delivery to the station and the intake through which fuel is either directly drawn to the engine, or into a boiler system, inclusive.

Items

1. Blower and fans.
2. Boilers and pumps.
3. Economizers.
4. Exhauster outfits.
5. Flues and piping.
6. Pipe system.
7. Producers.
8. Regenerators.
9. Scrubbers.
10. Steam injectors.
11. Tanks for storage of electrolytes, hydrogen, renewable natural gas, algae, etc.
12. Vaporizers.

339.4 Boilers.

This account shall include the cost installed of furnaces, boilers, steam and feed water piping, boiler apparatus and accessories used in the production of steam or other vapor, to be used primarily for generating electricity. This account includes solar boiler systems.

1. Boiler feed system, including feed water heaters, evaporator condensers, heater drain pumps, heater drainers, deaerators, and vent condensers, boiler feed pumps, surge tanks, feed water regulators, feed water measuring equipment, and all associated drives.
2. Boiler plant cranes and hoists and associated drives.
3. Boilers and equipment, including boilers and baffles, economizers,

superheaters, foundations and settings, water walls, arches, grates, insulation, blow-down system, drying out of new boilers, also associated motors or other power equipment.

4. Draft equipment, including air preheaters and accessories, induced and forced draft fans, air ducts, combustion control mechanisms, and associated motors or other power equipment.

5. Gas-burning equipment, including holders, burner equipment and piping, control equipment, etc.

6. Instruments and devices, including all measuring, indicating, and recording equipment for boiler plant service together with mountings and supports.

7. Lighting systems.

8. Stacks, including foundations and supports, stack steel and ladders, stack concrete, stack lining, stack painting (first), when set on separate foundations, independent of substructure or superstructure of building.

9. Station piping, including pipe, valves, fittings, separators, traps, desuperheaters, hangers, excavation, covering, etc., for station piping system, including all steam, condensate, boiler feed and water supply piping, etc.

10. Ventilating equipment.

11. Water purification equipment, including softeners and accessories, evaporators and accessories, heat exchangers, filters, tanks for filtered or softened water, pumps, motors, etc.

12. Water-supply systems, including pumps, motors, strainers, raw-water storage tanks, boiler wash pumps, intake and discharge pipes and tunnels not a part of a building.

339.5 [Reserved]

339.6 Generators.

This account shall include the cost installed of other non-hydro renewable generators of all types apart from wind and solar.

Items

1. Cranes, hoists, etc., including items wholly identified with such apparatus.

2. Fire-extinguishing equipment.

3. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.

4. Generator cooling system, including air cooling and washing apparatus, air fans and accessories, air ducts, etc.

5. Generators—main, a.c. or d.c., including field rheostats and connections for self-excited units and excitation system when identified with the generating unit.

6. Lighting systems.

7. Lubricating system, including tanks, filters, strainers, pumps, piping, coolers, etc.

8. Mechanical meters, and recording instruments.

9. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.

10. Cooling system, including towers, pumps, tank, and piping.

11. Piping—main exhaust, including connections between generator and condenser and between condenser and hotwell.

12. Piping—main steam, including connections from main throttle valve to turbine inlet.

13. Circulating pumps, including connections between condensers and intake and discharge tunnels.

14. Tunnels, intake and discharge, for condenser system, when not a part of structure, water screens, etc.

15. Water screens, motors, etc.

16. Moisture separator for turbine steam.

17. Turbine lubricating oil (initial charge).

339.7 [Reserved]

339.8 Other accessory electrical equipment.

This account shall include the installed cost of other conversion or auxiliary generating apparatus and equipment used primarily in connection with the control and switching of electric energy produced by other non-hydro renewable, including weather monitoring equipment, and the protection of electric circuits and equipment which operate at generating level voltage (excluding SCADA systems).

339.9 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.

2. Servers.

3. Workstations.

4. Energy Management System (EMS) hardware.

5. Supervisory Control and Data Acquisition (SCADA) system hardware.

6. Peripheral equipment.

7. Networking components.

339.10 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.

2. User interface software.

3. Modeling software.

4. Database software.

5. Tracking and monitoring software.

6. Energy Management System (EMS) software.

7. Supervisory Control and Data Acquisition (SCADA) system software.

8. Evaluation and assessment system software.

9. Operating, planning and transaction scheduling software.

10. Reliability applications.

11. Market application software.

339.11 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.

2. Remote terminal units.

3. Microwave towers.

4. Global Positioning System (GPS) equipment.

5. Servers.

6. Workstations.

7. Telephones.

339.12 Miscellaneous power plant equipment.

This account shall include the installed cost of miscellaneous equipment in and about the other non-hydro renewable plant devoted to general station use, and which is not properly includible in any of the foregoing other non-hydro renewable power production accounts.

339.13 Asset retirement costs for other non-hydro renewable production.

This account shall include asset retirement costs on plant included in other non-hydro renewable production function.

* * * * *

345.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.

2. Servers.

3. Workstations.

4. Energy Management System (EMS) hardware.

5. Supervisory Control and Data Acquisition (SCADA) system hardware.

6. Peripheral equipment.

7. Networking components.

345.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

345.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

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348 [Reserved]

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351 [Reserved]

351.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

351.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

351.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

363 [Reserved]

363.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

363.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

363.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

* * * * *

387 [Reserved]

387.1 Land and land rights.

This account shall include the cost of land and land rights used in connection with energy storage plant. (See electric plant instruction 7.)

387.2 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with energy storage plant. (See electric plant instruction 8.)

387.3 Energy storage equipment.

A. This account shall include the cost installed of energy storage equipment used to store energy for load managing purposes.

B. Labor costs and power purchased to energize the equipment are includible on the first installation only. The cost of removing, relocating and resetting energy storage equipment shall not be charged to this account but to operations and maintenance expense accounts for energy storage expenses, as appropriate.

C. The records supporting this account shall show, by months, the function(s) each energy storage asset supports or performs.

Items

1. Batteries/Chemical.
2. Compressed Air.
3. Flywheels.
4. Superconducting Magnetic Storage.
5. Thermal.

Note: The cost of pumped storage hydroelectric plant shall be charged to hydraulic production plant. These are examples of items includible in this account. This list is not exhaustive.

387.4 [Reserved]

387.5 Collector system.

This account shall include all cost of cabling, junction boxes, connection cabinets, and all facilities that are installed beyond the high side of the GSU transformer and the transmission or distribution point of interconnection.

Items

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
3. Armored conductors, buried, submarine, including insulators, insulating materials, splices in terminal chamber, potheads, etc.
4. Brackets.
5. Circuit breakers.
6. Conductors, including insulated and bare wires and cables.
7. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
8. Crossarms and braces.
9. Excavation and backfill, including shoring, bracing, bridging, and disposal of excess excavated material.
10. Extension arms.
11. Fireproofing, in connection with any items listed herein.
12. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
13. Ground wires, clamps, etc.
14. Guards.
15. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, etc.
16. Insulators, including pin, suspension, and other types, and tie wire or clamps.
17. Lightning arresters.
18. Paving, Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
19. Permits for construction.
20. Pole steps and ladders.
21. Poles, wood, steel, concrete, or other material.
22. Racks complete with insulators.
23. Railings.
24. Railroad and highway crossing guards.
25. Reinforcing and stubbing.
26. Removal and relocation of subsurface obstructions.
27. Settings.
28. Sewer connections, including drains, traps, tide valves, check valves, etc.
29. Shaving, painting, gaining, roofing, stenciling, and tagging.
30. Splices.
31. Sumps, including pumps.
32. Switches.
33. Towers.
34. Tree trimming, initial cost including the cost of permits therefor.
35. Ventilating equipment.
36. Other line devices.

387.6 Generator step-up transformers (GSU).

This account shall include only the cost of the GSU transformers and other equipment used for conveying the power to the pad-mount GSU for the purpose of initially changing the voltage or frequency of electric energy for the purpose of moving the power. It shall exclude the cost of additional transformers and other equipment once the power has been initially stepped up from a generator voltage to a higher voltage.

387.7 Inverters.

This account shall include the installed cost of inverters for the purpose of converting electricity from direct current (DC) to alternating current (AC).

387.8 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

387.9 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.
2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

387.10 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

387.11 Miscellaneous energy storage equipment.

This account shall include the installed cost of miscellaneous equipment in and about the energy storage equipment devoted to general station use, and which is not properly includible in any of the foregoing energy storage plant accounts.

387.12 Asset retirement costs for energy storage plant.

This account shall include asset retirement costs on plant included in the energy storage plant function.

* * * * *

397 [Reserved]

397.1 Computer hardware.

This account shall include the cost of computer hardware and miscellaneous information technology equipment to provide scheduling, system control and dispatching.

Items

1. Personal computers.
2. Servers.
3. Workstations.
4. Energy Management System (EMS) hardware.
5. Supervisory Control and Data Acquisition (SCADA) system hardware.
6. Peripheral equipment.
7. Networking components.

397.2 Computer software.

This account shall include the cost of off-the-shelf and in-house developed software purchased and used to provide scheduling, system control and dispatching activities.

Items

1. Software licenses.

2. User interface software.
3. Modeling software.
4. Database software.
5. Tracking and monitoring software.
6. Energy Management System (EMS) software.
7. Supervisory Control and Data Acquisition (SCADA) system software.
8. Evaluation and assessment system software.
9. Operating, planning and transaction scheduling software.
10. Reliability applications.
11. Market application software.

397.3 Communication equipment.

This account shall include the cost of communication equipment owned and used to acquire or share data and information used to control and dispatch the system.

Items

1. Fiber optic cable.
2. Remote terminal units.
3. Microwave towers.
4. Global Positioning System (GPS) equipment.
5. Servers.
6. Workstations.
7. Telephones.

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Income Chart of Accounts

1. Utility Operating Income

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411.11 Gains from disposition of RECs.
411.12 Losses from disposition of RECs.

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Income Accounts

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411.11 Gains from disposition of RECs.

This account shall be credited with the gain on the sale, exchange, or other disposition of RECs in accordance with paragraph (H) of General Instruction No. 21. Income taxes relating to gains recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

Note: Revenues for RECs associated with the sale of energy shall be recorded in the appropriate operating revenue account consistent with General Instruction No. 21 (J).

411.12 Losses from disposition of RECs.

This account shall be debited with the loss on the sale, exchange, or other disposition of RECs in accordance with paragraph (H) of General Instruction No. 21. Income taxes relating to losses recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

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Operation and Maintenance Expense Chart of Accounts

1. Power Production Expenses
a. steam power generation

Operation

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509.1 Allowances.
509.2 Bundled renewable energy credits.
509.3 Unbundled renewable energy credits.

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Maintenance

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513.1 Maintenance of computer hardware (Major only).
513.2 Maintenance of computer software (Major only).
513.3 Maintenance of communication equipment (Major only).

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b. nuclear power generation

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Maintenance

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531.1 Maintenance of computer hardware (Major only).
531.2 Maintenance of computer software (Major only).
531.3 Maintenance of communication equipment (Major only).

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c. hydraulic power generation

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Maintenance

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544.1 Maintenance of computer hardware (Major only).
544.2 Maintenance of computer software (Major only).
544.3 Maintenance of communication equipment (Major only).

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d. other power generation

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Operation

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548.1 [Reserved]

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Maintenance

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553.1 Maintenance of computer hardware (Major only).
553.2 Maintenance of computer software (Major only).
553.3 Maintenance of communication equipment (Major only).

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f. solar generation

Operation

558.1 Operation supervision and engineering.
558.2 Solar panel generation and other plant operating expenses (Major only).
558.3 [Reserved]
558.4 Rents.
558.5 Operation supplies and expenses (Nonmajor only).

Maintenance

558.6 Maintenance supervision and engineering (Major only).
558.7 Maintenance of structures (Major only).
558.8 Maintenance of solar panels (Major only).
558.9 Maintenance of collector systems (Major only).
558.10 Maintenance of generator step-up transformers (Major only).
558.11 Maintenance of inverter expenses (Major only).
558.12 Maintenance of other accessory electrical equipment (Major only).
558.13 Maintenance of computer hardware (Major only).
558.14 Maintenance of computer software (Major only).
558.15 Maintenance of communication equipment (Major only).
558.16 Maintenance of miscellaneous solar generation plant (Major only).
558.17 Maintenance of solar generation plant (Nonmajor only).

g. wind generation

Operation

558.20 Operation supervision and engineering.
558.21 Wind turbine generation and other plant operating expenses (Major only).
558.22 [Reserved]
558.23 Rents.
558.24 Operation supplies and expenses (Nonmajor only).

Maintenance

558.25 Maintenance supervision and engineering (Major only).
558.26 Maintenance of structures (Major only).
558.27 Maintenance of wind turbines, towers and fixtures (Major only).
558.28 [Reserved]
558.29 Maintenance of collector systems (Major only).
558.30 Maintenance of generator step-up transformers (Major only).
558.31 Maintenance of inverter expenses (Major only).
558.32 Maintenance of other accessory electrical equipment (Major only).
558.33 Maintenance of computer hardware (Major only).
558.34 Maintenance of computer software (Major only).
558.35 Maintenance of communication equipment (Major only).
558.36 Maintenance of miscellaneous wind generation plant (Major only).
558.37 Maintenance of wind generation plant (Nonmajor only).

h. other non-hydro renewable generation

Operation

559.1 Operation supervision and engineering.
559.2 Other miscellaneous generation and other plant operating expenses (Major only).
559.3 Fuel.
559.4 Rents.
559.5 Operation supplies and expenses (Nonmajor only).

Maintenance

559.6 Maintenance supervision and engineering (Major only).
559.7 Maintenance of structures (Major only).
559.8 [Reserved]
559.9 Maintenance of boilers (Major only).
559.10 Maintenance of generating and electric equipment (Major only).
559.11 [Reserved]
559.12 Maintenance of computer hardware (Major only).
559.13 Maintenance of computer software (Major only).
559.14 Maintenance of communication equipment (Major only).
559.15 Maintenance of miscellaneous other non-hydro renewable generation plant (Major only).
559.16 Maintenance of other non-hydro renewable generation plant (Nonmajor only).

2. Transmission Expenses

Operation

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562.1 [Reserved]

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Maintenance

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569.1 Maintenance of computer hardware (Major only).
569.2 Maintenance of computer software (Major only).
569.3 Maintenance of communication equipment (Major only).

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570.1 [Reserved]

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4. Energy Storage Expenses

Operation

577.1 Operation supervision and engineering.
577.2 Operation of energy storage equipment (Major only).
577.3 Storage fuel.
577.4 Rents.
577.5 Operation supplies and expenses (Nonmajor only).

Maintenance

578.1 Maintenance supervision and engineering (Major only).
578.2 Maintenance of structures (Major only).
578.3 Maintenance of energy storage equipment (Major only).
578.4 Maintenance of collector systems (Major only).
578.5 Maintenance of generator step-up transformers (Major only).
578.6 Maintenance of inverter expenses (Major only).
578.7 Maintenance of computer hardware (Major only).
578.8 Maintenance of computer software (Major only).
578.9 Maintenance of communication equipment (Major only).
578.10 Maintenance of miscellaneous other energy storage plant (Major only).
578.11 Maintenance of other energy storage plant (Nonmajor only).

5. Distribution Expenses

Operation

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584.1 [Reserved]

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Maintenance

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592.2 Maintenance of computer hardware (Major only).
592.3 Maintenance of computer software (Major only).
592.4 Maintenance of communication equipment (Major only).

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9. Administrative and General Expenses

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Maintenance

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935.1 Maintenance of computer hardware (Major only).
935.2 Maintenance of computer software (Major only).
935.3 Maintenance of communication equipment (Major only).

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Operation and Maintenance Expense Accounts

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509.1 Allowances.

This account shall include the cost of allowances expensed concurrent with the monthly emissions. (See General Instruction No. 21.)

509.2 Bundled renewable energy credits.

For RECs that were bundled with energy, this account shall include the cost of RECs expensed concurrent with the monthly usage. (See General Instruction No. 21.)

509.3 Unbundled renewable energy credits.

For RECs that were unbundled from energy, this account shall include the cost of RECs expensed concurrent with the monthly usage. (See General Instruction No. 21.)

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513.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the steam power generation subfunction. (See operating expense instruction 2.)

513.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the steam power generation subfunction. (See operating expense instruction 2.)

513.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the steam power generation subfunction. (See operating expense instruction 2.)

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531.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the nuclear power generation subfunction. (See operating expense instruction 2.)

531.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the nuclear power generation subfunction. (See operating expense instruction 2.)

531.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the nuclear power generation subfunction. (See operating expense instruction 2.)

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544.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the hydraulic power generation subfunction. (See operating expense instruction 2.)

544.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the hydraulic power generation subfunction. (See operating expense instruction 2.)

544.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses

incurred in the maintenance of communication equipment serving the hydraulic power generation subfunction. (See operating expense instruction 2.)

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548.1 [Reserved]

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553.1 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the other power generation subfunction. (See operating expense instruction 2.)

553.2 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the other power generation subfunction. (See operating expense instruction 2.)

553.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the other power generation subfunction. (See operating expense instruction 2.)

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558.1 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of solar power generating stations. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of solar power generating stations.

Labor

1. Supervising solar production.

2. Operating solar panels, auxiliary apparatus and switching and other electric equipment.

3. Operating switchboards, switch gear and electric control and protective equipment.

4. Keeping electric plant log and records and preparing reports on electric plant operations.

5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.

6. Cleaning electric plant equipment when not incidental to maintenance work.

558.2 Solar panel generation and other plant operating expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating solar generation and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other solar generation operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.

2. Operating solar generators and auxiliary apparatus and switching and other electric equipment.

3. Keeping electric plant log and records and preparing reports on electric plant operations.

4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.

5. Cleaning electric plant equipment when not incidental to maintenance work.

6. General clerical work.

7. Guarding and patrolling plant and yard.

8. Building service.

9. Care of grounds including snow removal, cutting grass, etc.

10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.

12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.

13. First-aid supplies and safety equipment.

14. Employees' service facilities expenses.

15. Building service supplies.

16. Communication service.

17. Miscellaneous office supplies and expenses, printing and stationery.

18. Transportation expenses.

19. Meals, traveling and incidental expenses.

20. Water for fire protection or general use.

21. Research, development, and demonstration expenses.

558.3 [Reserved]

558.4 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with solar power generation. (See operating expense instruction 3.)

558.5 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of solar power generating stations.

Items

1. Lubricants and control system oils.

2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.

3. First-aid supplies and safety equipment.

4. Employees' service facilities expenses.

5. Building service supplies.

6. Communication service.

7. Miscellaneous office supplies and expenses, printing and stationery.

8. Transportation expenses.

9. Meals, traveling and incidental expenses.

10. Water for fire protection or general use.

558.6 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of solar generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

558.7 Maintenance of structures (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of solar structures, the book cost of which is includible in account 338.2, Structures and Improvements. (See operating expense instruction 2.)

558.8 Maintenance of solar panels (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of solar plant, the book cost of which is includible in account 338.4, Solar Panels. (See operating expense instruction 2.)

558.9 Maintenance of collector systems (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of collector

systems, the book cost of which is includible in account 338.5, Collector Systems. (See operating expense instruction 2.)

Items

1. Work of the following character on poles, towers, and fixtures:
a. Installing additional clamps or removing clamps or strain insulators on guys in place.
b. Painting poles, towers, crossarms, or pole extensions.
c. Readjusting and changing position of guys or braces.
d. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.
f. Relocating crossarms, racks, brackets, and other fixtures on poles.
g. Shaving, cutting rot, or treating poles or crossarms.
h. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacements.
2. Work of the following character on overhead conductors and devices:
a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.
b. Cleaning insulators and bushings.
c. Refusing line cutouts.
d. Repairing line oil circuit breakers and associated relays and control wiring.
e. Repairing grounds.
f. Resagging, retying, or rearranging position or spacing of conductors.
g. Sampling, testing, changing, purifying, and replenishing insulating oil.
h Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.
i. Repairing line testing equipment.
j. Trimming trees and clearing brush.

558.10 Maintenance of generator step-up transformers (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of generator step-up transformers, the book cost of which is includible in account 338.6, Generator Step-up Transformers. (See operating expense instruction 2.)

558.11 Maintenance of inverter expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of inverter expenses, the book cost of which is includible in account 338.7, Inverters. (See operating expense instruction 2.)

558.12 Maintenance of other accessory electrical equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of other electrical accessory equipment, the book cost of which is includible in account 338.8 Other Accessory Electrical Equipment. (See operating expense instruction 2.)

558.13 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the solar generation subfunction. (See operating expense instruction 2.)

558.14 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the solar generation subfunction. (See operating expense instruction 2.)

558.15 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the solar generation subfunction. (See operating expense instruction 2.)

558.16 Maintenance of miscellaneous solar generation plant (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous solar generation plant, the book cost of which is includible in account 338.12, Miscellaneous Power Plant Equipment. (See operating expense instruction 2.)

558.17 Maintenance of solar generation plant (Nonmajor only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of solar generation plant the book cost of which is includible in plant accounts 338.1 to 338.12, inclusive. (See operating expense instruction 2.)

558.20 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of wind power generating stations. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of wind power generating stations.

Labor

1. Supervising wind production.
2. Operating wind turbines, generators and auxiliary apparatus and switching and other electric equipment.
3. Operating switchboards, switch gear and electric control and protective equipment.
4. Keeping electric plant log and records and preparing reports on electric plant operations.
5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
6. Cleaning electric plant equipment when not incidental to maintenance work.

558.21 Wind turbine generation and other plant operating expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating wind generation and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other wind generation operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.
2. Operating wind turbines, generators and auxiliary apparatus and switching and other electric equipment.
3. Keeping electric plant log and records and preparing reports on electric plant operations.
4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
5. Cleaning electric plant equipment when not incidental to maintenance work.
6. General clerical work.
7. Guarding and patrolling plant and site.
8. Building service.
9. Care of grounds including snow removal, cutting grass, etc.
10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.
12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
13. First-aid supplies and safety equipment.

14. Employees' service facilities expenses.
15. Building service supplies.
16. Communication service.
17. Miscellaneous office supplies and expenses, printing and stationery.
18. Transportation expenses.
19. Meals, traveling and incidental expenses.
20. Water for fire protection or general use.
21. Research, development, and demonstration expenses.

558.22 [Reserved]

558.23 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with wind power generation. (See operating expense instruction 3.)

558.24 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of wind power generating stations.

Items

1. Lubricants and control system oils.
2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.
3. First-aid supplies and safety equipment.
4. Employees' service facilities expenses.
5. Building service supplies.
6. Communication service.
7. Miscellaneous office supplies and expenses, printing and stationery.
8. Transportation expenses.
9. Meals, traveling and incidental expenses.
10. Water for fire protection or general use.

558.25 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of wind generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

558.26 Maintenance of structures (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of wind structures, the book cost of which is includible in account 338.21, Structures and Improvements. (See operating expense instruction 2.)

558.27 Maintenance of wind turbines, towers and fixtures (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of wind turbines, the book cost of which is includible in account 338.23, Wind Turbines and in account 338.24, Wind Towers and Fixtures. (See operating expense instruction 2.)

558.28 [Reserved]

558.29 Maintenance of collector systems (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of collector systems, the book cost of which is includible in account 338.26, Collector Systems. (See operating expense instruction 2.)

Items

1. Work of the following character on poles, towers, and fixtures:
a. Installing additional clamps or removing clamps or strain insulators on guys in place.
b. Painting poles, towers, crossarms, or pole extensions.
c. Readjusting and changing position of guys or braces.
d. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.
f. Relocating crossarms, racks, brackets, and other fixtures on poles.
g. Shaving, cutting rot, or treating poles or crossarms.
h. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacements.
2. Work of the following character on overhead conductors and devices:
a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.
b. Cleaning insulators and bushings.
c. Refusing line cutouts.
d. Repairing line oil circuit breakers and associated relays and control wiring.
e. Repairing grounds.
f. Resagging, retying, or rearranging position or spacing of conductors.
g. Sampling, testing, changing, purifying, and replenishing insulating oil.
h Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.
i. Repairing line testing equipment.
j. Trimming trees and clearing brush.

558.30 Maintenance of generator step-up transformers (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of generator step-up transformers, the book cost of which is includible in account 338.27, Generator Step-up Transformers. (See operating expense instruction 2.)

558.31 Maintenance of inverter expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of inverter expenses, the book cost of which is includible in account 338.28, Inverters. (See operating expense instruction 2.)

558.32 Maintenance of other accessory electrical equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of other accessory electrical equipment, the book cost of which is includible in account 338.29, Other Accessory Electrical Equipment. (See operating expense instruction 2.)

558.33 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the wind generation subfunction. (See operating expense instruction 2.)

558.34 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the wind generation subfunction. (See operating expense instruction 2.)

558.35 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the wind generation subfunction. (See operating expense instruction 2.)

558.36 Maintenance of miscellaneous wind generation (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous wind generation plant, the book cost of which is includible in account 338.33, Miscellaneous Power Plant Equipment. (See operating expense instruction 2.)

558.37 Maintenance of wind generation (Nonmajor only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of wind

generation plant the book cost of which is includible in plant accounts 338.20 to 338.33, inclusive. (See operating expense instruction 2.)

559.1 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of other non-hydro renewable power generating stations. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of other non-hydro renewable power generating stations.

Labor

1. Supervising other non-hydro renewable production.
2. Operating other non-hydro renewable prime movers, generators and auxiliary apparatus and switching and other electric equipment.
3. Operating switchboards, switch gear and electric control and protective equipment.
4. Keeping electric plant log and records and preparing reports on electric plant operations.
5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
6. Cleaning electric plant equipment when not incidental to maintenance work.

559.2 Other miscellaneous generation and other plant operating expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating other non-hydro renewable generation and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other non-hydro renewable generation operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.
2. Operating other non-hydro renewable prime movers, generators and auxiliary apparatus and switching and other electric equipment.
3. Keeping electric plant log and records and preparing reports on electric plant operations.
4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
5. Cleaning electric plant equipment when not incidental to maintenance work.
6. General clerical work.
7. Guarding and patrolling plant and yard.
8. Building service.
9. Care of grounds including snow removal, cutting grass, etc.
10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.
12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
13. First-aid supplies and safety equipment.
14. Employees' service facilities expenses.
15. Building service supplies.
16. Communication service.
17. Miscellaneous office supplies and expenses, printing and stationery.
18. Transportation expenses.
19. Meals, traveling and incidental expenses.
20. Water for fire protection or general use.
21. Research, development, and demonstration expenses.

559.3 Fuel.

This account shall include the cost delivered at the station (see account 151, Fuel Stock, for Major utilities, and account 154, Plant Materials and Operating Supplies, for Nonmajor utilities) of all fuel, such as electrolytes, hydrogen, renewable natural gas, algae, etc., used in other power generation.

559.4 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with other non-hydro renewable power generation. (See operating expense instruction 3.)

559.5 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of other non-hydro renewable power generating stations.

Items

1. Lubricants and control system oils.
2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.
3. First-aid supplies and safety equipment.
4. Employees' service facilities expenses.
5. Building service supplies.
6. Communication service.
7. Miscellaneous office supplies and expenses, printing and stationery.
8. Transportation expenses.
9. Meals, traveling and incidental expenses.
10. Water for fire protection or general use.

559.6 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of other non-hydro renewable power generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

559.7 Maintenance of structures (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of wind structures, the book cost of which is includible in account 339.2, Structures and Improvements, and account 339.3 Fuel holders. (See operating expense instruction 2.)

559.8 [Reserved]

559.9 Maintenance of boilers (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of steam plant, the book cost of which is includible in account 339.4, Boiler Plant Equipment. (See operating expense instruction 2.)

559.10 Maintenance of generating and electric equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant, the book cost of which is includible in account 339.6. Generators, and account 339.8, Other Accessory Electric Equipment. (See operating expense instruction 2.)

559.11 [Reserved]

559.12 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the other non-hydro renewable generation subfunction. (See operating expense instruction 2.)

559.13 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses

incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the other non-hydro renewable generation subfunction. (See operating expense instruction 2.)

559.14 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the other non-hydro renewable generation subfunction. (See operating expense instruction 2.)

559.15 Maintenance of miscellaneous other non-hydro renewable generation plant (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous other non-hydro renewable generation plant, the book cost of which is includible in account 339.12, Miscellaneous Power Plant Equipment. (See operating expense instruction 2.)

559.16 Maintenance of other non-hydro renewable generation plant (Nonmajor only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of other non-hydro renewable generation plant the book cost of which is includible in plant accounts 339.1 to 339.12, inclusive. (See operating expense instruction 2.)

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562.1 [Reserved]

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569.1 Maintenance of computer hardware (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the transmission function. (See operating expense instruction 2.)

569.2 Maintenance of computer software. (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the transmission function. (See operating expense instruction 2.)

Items

1. Telephone support.
2. Onsite support.
3. Software updates and minor revisions.

569.3 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the transmission function. (See operating expense instruction 2.)

* * * * *

570.1 [Reserved]

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577.1 Operation supervision and engineering.

A. For Major Utilities, this account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of energy storage plant. Direct supervision of specific activities shall be charged to the appropriate account. (See operating expense instruction 1.)

B. For Nonmajor Utilities, this account shall include the cost of supervision and labor in the operation of energy storage equipment.

Labor

1. Supervising energy storage equipment operation.
2. Operating energy storage equipment and auxiliary apparatus and switching and other electric equipment.
3. Operating switchboards, switch gear and electric control and protective equipment.
4. Keeping electric plant log and records and preparing reports on electric plant operations.
5. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
6. Cleaning electric plant equipment when not incidental to maintenance work.

577.2 Operation of energy storage equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in operating energy storage plant and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution, or are not readily assignable to other energy storage operation expense accounts.

Labor

1. Operating switchboards, switch gear and electric control and protective equipment.
2. Operating energy storage and auxiliary apparatus and switching and other electric equipment.
3. Keeping electric plant log and records and preparing reports on electric plant operations.
4. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in the electric plant.
5. Cleaning electric plant equipment when not incidental to maintenance work.
6. General clerical work.
7. Guarding and patrolling plant and yard.
8. Building service.
9. Care of grounds including snow removal, cutting grass, etc.
10. Miscellaneous labor.

Materials and Expenses

11. Lubricants and control system oils.
12. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
13. First-aid supplies and safety equipment.
14. Employees' service facilities expenses.
15. Building service supplies.
16. Communication service.
17. Miscellaneous office supplies and expenses, printing and stationery.
18. Transportation expenses.
19. Meals, traveling and incidental expenses.
20. Water for fire protection or general use.
21. Research, development, and demonstration expenses.

577.3 Storage fuel.

This account shall include the cost delivered at the station (see account 151, Fuel Stock, for Major utilities, and account 154, Plant Materials and Operating Supplies, for Nonmajor utilities) of all fuel, such as electrolytes, hydrogen, renewable natural gas, algae, etc., used in energy storage.

577.4 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with energy storage. (See operating expense instruction 3.)

577.5 Operation supplies and expenses (Nonmajor only).

This account shall include the cost of materials used and expenses incurred in the operation of energy storage equipment.

Items

1. Lubricants and control system oils.

2. General operating supplies, such as tools, packing waste, hose, indicating lamps, record and report forms, etc.
3. First-aid supplies and safety equipment.
4. Employees' service facilities expenses.
5. Building service supplies.
6. Communication service.
7. Miscellaneous office supplies and expenses, printing and stationery.
8. Transportation expenses.
9. Meals, traveling and incidental expenses.
10. Water for fire protection or general use.

578.1 Maintenance supervision and engineering (Major only).

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of energy storage facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See operating expense instruction 1.)

578.2 Maintenance of structures (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of energy storage structures, the book cost of which is includible in account 387.2, Structures and Improvements. (See operating expense instruction 2.)

578.3 Maintenance of energy storage equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant, the book cost of which is includible in account 387.3. Energy Storage Equipment. (See operating expense instruction 2.)

578.4 Maintenance of collector systems (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of collector systems, the book cost of which is includible in account 387.5, Collector Systems. (See operating expense instruction 2.)

Items

1. Work of the following character on poles, towers, and fixtures:
a. Installing additional clamps or removing clamps or strain insulators on guys in place.
b. Painting poles, towers, crossarms, or pole extensions.
c. Readjusting and changing position of guys or braces.
d. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.
f. Relocating crossarms, racks, brackets, and other fixtures on poles.
g. Shaving, cutting rot, or treating poles or crossarms.
h. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacements.
2. Work of the following character on overhead conductors and devices:
a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.
b. Cleaning insulators and bushings.
c. Refusing line cutouts.
d. Repairing line oil circuit breakers and associated relays and control wiring.
e. Repairing grounds.
f. Resagging, retying, or rearranging position or spacing of conductors.
g. Sampling, testing, changing, purifying, and replenishing insulating oil.
h. Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.
i. Repairing line testing equipment.
j. Trimming trees and clearing brush.

578.5 Maintenance of generator step-up transformers (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of generator step-up transformers, the book cost of which is includible in account 387.6, Generator Step-up Transformers. (See operating expense instruction 2.)

578.6 Maintenance of inverter expenses (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of inverter expenses, the book cost of which is includible in account 387.7, Inverters. (See operating expense instruction 2.)

578.7 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the energy storage function. (See operating expense instruction 2.)

578.8 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the energy storage function. (See operating expense instruction 2.)

578.9 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the energy storage function. (See operating expense instruction 2.)

578.10 Maintenance of miscellaneous other energy storage plant (Major only).

This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous other non-hydro renewable plant, the book cost of which is includible in account 387.11, Miscellaneous Energy Storage Equipment. (See operating expense instruction 2.)

578.11 Maintenance of other energy storage plant (Nonmajor only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of energy storage plant the book cost of which is includible in plant accounts 387.1 to 387.11, inclusive. (See operating expense instruction 2.)

584.1 [Reserved]

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592.2 Maintenance of computer hardware (Major only).

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware serving the distribution function.

592.3 Maintenance of computer software (Major only).

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products serving the distribution function. (See operating expense instruction 2.)

592.4 Maintenance of communication equipment (Major only).

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment serving the distribution function. (See operating expense instruction 2.)

* * * * *

935.1 Maintenance of computer hardware.

The account shall include the cost of labor, materials used and expenses incurred in the maintenance of computer hardware used for administrative and general purposes. (See operating expense instruction 2.)

935.2 Maintenance of computer software.

This account shall include the cost of labor, materials used and expenses incurred for annual computer software license renewals, annual software update services and the cost of ongoing support for software products used for administrative and general purposes. (See operating expense instruction 2.)

935.3 Maintenance of communication equipment.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment used for administrative and general purposes. (See operating expense instruction 2.)

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Proposed Changes to the USofA

Appendix A is a copy of the proposed changes to the regulatory text with deletions and additions marked as a courtesy to industry to make it easier to see the proposed changes. You can find the text of appendix A at *https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220728-3045.*

Appendix B—New and Amended Form 1/1F/3–Q (Electric)

(The form changes were done considering a PDF format but would ultimately be configured for XBRL presentation. The following forms schedules represent an option for implementation and do not necessarily represent how the schedule will appear once designed, developed, and deployed.)

Note: Proposed deletions are in brackets and proposed additions are in italics.

As indicated in the labels at the bottom of each schedule, the first schedules show changes to the pages of FERC Form No. 1 as well as pages that are the same in FERC Form Nos. 1–F and 3–Q (stating where page numbers differ), followed by schedules that have changes that only affect FERC Form No. 1–F, and lastly schedule changes to FERC Form No. 60.

BILLING CODE 6717–01–P

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of

LIST OF SCHEDULES (Electric Utility)

Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Line No.	Title of Schedule (a)	Reference Page No.(b)	Remarks (c)
1	General Information		
2	Control Over Respondent		
3	Corporations Controlled by Respondent		
4	Officers		
5	Directors		
6	Information on Formula Rates		
7	Important Changes During the Year		
8	Comparative Balance Sheet		
9	Statement of Income for the Year		
10	Statement of Retained Earnings for the Year		
11	Statement of Cash Flows		
12	Notes to Financial Statements		
13	Statement of Accum Comp Income, Comp Income, and Hedging Activities		
14	Summary of Utility Plant & Accumulated Provisions for Dep, Amort & Dep		
15	Nuclear Fuel Materials		
16	Electric Plant in Service		
17	Electric Plant Leased to Others		
18	Electric Plant Held for Future Use		
19	Construction Work in Progress-Electric		
20	Accumulated Provision for Depreciation of Electric Utility Plant		
21	Investment of Subsidiary Companies		
22	Materials and Supplies		
23	Allowances *and RECs*		
24	Extraordinary Property Losses		
25	Unrecovered Plant and Regulatory Study Costs		
26	Transmission Service and Generation Interconnection Study Costs		
27	Other Regulatory Assets		
28	Miscellaneous Deferred Debits		
29	Accumulated Deferred Income Taxes		
30	Capital Stock		
31	Other Paid-in Capital		
32	Capital Stock Expense		
33	Long-Term Debt		
34	Reconciliation of Reported Net Income with Taxable Inc for Fed Inc Tax		
35	Taxes Accrued, Prepaid and Charged During the Year		

36	Accumulated Deferred Investment Tax Credits			
Name of Respondent		This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of
LIST OF SCHEDULES (Electric Utility) (continued)				
Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".				
Line No.	Title of Schedule (a)		Reference Page No.(b)	Remarks (c)
37	Other Deferred Credits			
38	Accumulated Deferred Income Taxes-Accelerated Amortization Property			
39	Accumulated Deferred Income Taxes-Other Property			
40	Accumulated Deferred Income Taxes-Other			
41	Other Regulatory Liabilities			
42	Electric Operating Revenues			
43	Regional Transmission Service Revenues (Account 457.1)			
44	Sales of Electricity by Rate Schedules			
45	Sales for Resale			
46	Electric Operation and Maintenance Expenses			
47	Purchased Power			
48	Transmission of Electricity for Others			
49	Transmission of Electricity by ISO/RTOs			
50	Transmission of Electricity by Others			
51	Miscellaneous General Expenses-Electric			
52	Depreciation and Amortization of Electric Plant			
53	Regulatory Commission Expenses			
54	Research, Development and Demonstration Activities			
55	Distribution of Salaries and Wages			
56	Common Utility Plant and Expenses			
57	Amounts included in ISO/RTO Settlement Statements			
58	Purchase and Sale of Ancillary Services			
59	Monthly Transmission System Peak Load			
60	Monthly ISO/RTO Transmission System Peak Load			
61	Electric Energy Account			
62	Monthly Peaks and Output			
63	[Steam] Electric Generating Plant Statistics			
64	[Hydroelectric Generating Plant Statistics]			
65	Pumped Storage Generating Plant Statistics			
66	Generating Plant Statistics Pages			
66.1	Energy Storage Operations (Large Plants)			
66.2	Energy Storage Operations (Small Plants)			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of

LIST OF SCHEDULES (Electric Utility) (continued)

Enter in column (c) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Line No.	Title of Schedule (a)	Reference Page No.(b)	Remarks (c)
67	Transmission Line Statistics Pages		
68	Transmission Lines Added During the Year		
69	Substations		
70	Transactions with Associated (Affiliated) Companies		
71	Footnote Data		
	Stockholders' Reports Check appropriate box: Two copies will be submitted No annual report to stockholders is prepared		

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year/Period of Report End of _____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
1	**UTILITY PLANT**			
2	Utility Plant (101-106, 114)	200-201		
3	Construction Work in Progress (107)	200-201		
4	TOTAL Utility Plant (Enter Total of lines 2 and 3)			
5	(Less) Accum. Prov. for Depr. Amort. Depl. (108, 110, 111, 115)	200-201		
6	Net Utility Plant (Enter Total of line 4 less 5)			
7	Nuclear Fuel in Process of Ref., Conv.,Enrich., and Fab. (120.1)	202-203		
8	Nuclear Fuel Materials and Assemblies-Stock Account (120.2)			
9	Nuclear Fuel Assemblies in Reactor (120.3)			
10	Spent Nuclear Fuel (120.4)			
11	Nuclear Fuel Under Capital Leases (120.6)			
12	(Less) Accum. Prov. for Amort. of Nucl. Fuel Assemblies (120.5)	202-203		
13	Net Nuclear Fuel (Enter Total of lines 7-11 less 12)			
14	Net Utility Plant (Enter Total of lines 6 and 13)			
15	Utility Plant Adjustments (116)			
16	Gas Stored Underground - Noncurrent (117)			
17	**OTHER PROPERTY AND INVESTMENTS**			
18	Nonutility Property (121)			
19	(Less) Accum. Prov. for Depr. and Amort. (122)			
20	Investments in Associated Companies (123)			
21	Investment in Subsidiary Companies (123.1)	224-225		
22	(For Cost of Account 123.1, See Footnote Page 224, line 42)			
23	Noncurrent Portion of Allowances *and RECs*	228-229		
24	Other Investments (124)			
25	Sinking Funds (125)			
26	Depreciation Fund (126)			
27	Amortization Fund - Federal (127)			
28	Other Special Funds (128)			
29	Special Funds (Non Major Only) (129)			
30	Long-Term Portion of Derivative Assets (175)			
31	Long-Term Portion of Derivative Assets – Hedges (176)			
32	TOTAL Other Property and Investments (Lines 18-21 and 23-31)			
33	**CURRENT AND ACCRUED ASSETS**			
34	Cash and Working Funds (Non-major Only) (130)			
35	Cash (131)			
36	Special Deposits (132-134)			
37	Working Fund (135)			
38	Temporary Cash Investments (136)			
39	Notes Receivable (141)			
40	Customer Accounts Receivable (142)			
41	Other Accounts Receivable (143)			
42	(Less) Accum. Prov. for Uncollectible Acct.-Credit (144)			
43	Notes Receivable from Associated Companies (145)			
44	Accounts Receivable from Assoc. Companies (146)			
45	Fuel Stock (151)	227		
46	Fuel Stock Expenses Undistributed (152)	227		
47	Residuals (Elec) and Extracted Products (153)	227		
48	Plant Materials and Operating Supplies (154)	227		
49	Merchandise (155)	227		
50	Other Materials and Supplies (156)	227		
51	Nuclear Materials Held for Sale (157)	202-203/227		
52	Allowances *and RECs* (158.1, [and] 158.2, *158.3, and 158.4*)	228-229		

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report *(Mo, Da, Yr)*	Year/Period of Report End of _____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)(Continued)

Line No.	Title of Account (a)	Ref. Page No. (b)	Current Year End of Quarter/Year Balance (c)	Prior Year End Balance 12/31 (d)
53	(Less) Noncurrent Portion of Allowances *and RECs*			
54	Stores Expense Undistributed (163)	227		
55	Gas Stored Underground - Current (164.1)			
56	Liquefied Natural Gas Stored and Held for Processing (164.2-164.3)			
57	Prepayments (165)			
58	Advances for Gas (166-167)			
59	Interest and Dividends Receivable (171)			
60	Rents Receivable (172)			
61	Accrued Utility Revenues (173)			
62	Miscellaneous Current and Accrued Assets (174)			
63	Derivative Instrument Assets (175)			
64	(Less) Long-Term Portion of Derivative Instrument Assets (175)			
65	Derivative Instrument Assets - Hedges (176)			
66	(Less) Long-Term Portion of Derivative Instrument Assets - Hedges (176			
67	Total Current and Accrued Assets (Lines 34 through 66)			
68	**DEFERRED DEBITS**			
69	Unamortized Debt Expenses (181)			
70	Extraordinary Property Losses (182.1)	230a		
71	Unrecovered Plant and Regulatory Study Costs (182.2)	230b		
72	Other Regulatory Assets (182.3)	232		
73	Prelim. Survey and Investigation Charges (Electric) (183)			
74	Preliminary Natural Gas Survey and Investigation Charges 183.1)			
75	Other Preliminary Survey and Investigation Charges (183.2)			
76	Clearing Accounts (184)			
77	Temporary Facilities (185)			
78	Miscellaneous Deferred Debits (186)	233		
79	Def. Losses from Disposition of Utility Plt. (187)			
80	Research, Devel. and Demonstration Expend. (188)	352-353		
81	Unamortized Loss on Reaquired Debt (189)			
82	Accumulated Deferred Income Taxes (190)	234		
83	Unrecovered Purchased Gas Costs (191)			
84	Total Deferred Debits (lines 69 through 83)			
85	TOTAL ASSETS (lines 14-16, 32, 67, and 84)			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

STATEMENT OF INCOME

Quarterly

1. Report in column (c) the current year to date balance. Column (c) equals the total of adding the data in column (g) plus the data in column (i) plus the data in column (k). Report in column (d) similar data for the previous year. This information is reported in the annual filing only.
2. Enter in column (e) the balance for the reporting quarter and in column (f) the balance for the same three month period for the prior year.
3. Report in column (g) the quarter to date amounts for electric utility function; in column (i) the quarter to date amounts for gas utility, and in column (k) the quarter to date amounts for other utility function for the current year quarter.
4. Report in column (h) the quarter to date amounts for electric utility function; in column (j) the quarter to date amounts for gas utility, and in column (l) the quarter to date amounts for other utility function for the prior year quarter.
5. If additional columns are needed, place them in a footnote.

Annual or Quarterly if applicable

6. Do not report fourth quarter data in columns (e) and (f)
7. Report amounts for accounts 412 and 413, Revenues and Expenses from Utility Plant Leased to Others, in another utility column in a similar manner a utility department. Spread the amount(s) over lines 2 thru 26 as appropriate. Include these amounts in columns (c) and (d) totals.
8. Report amounts in account 414, Other Utility Operating Income, in the same manner as accounts 412 and 413 above.

Line No.	Title of Account(a)	(Ref.) Page No. (b)	Total Current Year to Date Balance for Quarter/Year (c)	Total Prior Year to Date Balance for Quarter/Year (d)	Current 3 Months Ended Quarterly OnlyNo 4th Quarter (e)	Prior 3 Months Ended Quarterly OnlyNo 4th Quarter (f)
1	UTILITY OPERATING INCOME					
2	Operating Revenues (400)					
3	Operating Expenses					
4	Operation Expenses (401)					
5	Maintenance Expenses (402)					
6	Depreciation Expense (403)					
7	Depreciation Expense for Asset Retirement Costs (403.1)					
8	Amort. & Depl. of Utility Plant (404-405)					
9	Amort. of Utility Plant Acq. Adj. (406)					
10	Amort. Property Losses, Unrecov Plant and Regulatory Study Costs (407)					
11	Amort. of Conversion Expenses (407)					
12	Regulatory Debits (407.3)					
13	(Less) Regulatory Credits (407.4)					
14	Taxes Other Than Income Taxes (408.1)					
15	Income Taxes - Federal (409.1)					
16	- Other (409.1)					
17	Provision for Deferred Income Taxes (410.1)					
18	(Less) Provision for Deferred Income Taxes-Cr. (411.1)					
19	Investment Tax Credit Adj. - Net (411.4)					
20	(Less) Gains from Disp. of Utility Plant (411.6)					
21	Losses from Disp. of Utility Plant (411.7)					
22	(Less) Gains from Disposition of Allowances (411.8)					
23	Losses from Disposition of Allowances (411.9)					
24	Accretion Expense (411.10)					
24.1	*(Less) Gains from Disposition of RECs (411.11)*					
24.2	*Losses from Disposition of RECs (411.12)*					
25	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 24.2)					
26	Net Util Oper Inc (Enter Tot line 2 less 25) Carry to Pg117,line 27					

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

STATEMENT OF INCOME FOR THE YEAR (Continued)

9. Use page 122 for important notes regarding the statement of income for any account thereof.
10. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in material refund to the utility with respect to power or gas purchases. State for each year effected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power or gas purchases.
11. Give concise explanations concerning significant amounts of any refunds made or received during the year resulting from settlement of any rate proceeding affecting revenues received or costs incurred for power or gas purches, and a summary of the adjustments made to balance sheet, income, and expense accounts.
12. If any notes appearing in the report to stokholders are applicable to the Statement of Income, such notes may be included at page 122.
13. Enter on page 122 a concise explanation of only those changes in accounting methods made during the year which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding year. Also, give the appropriate dollar effect of such changes.
14. Explain in a footnote if the previous year's/quarter's figures are different from that reported in prior reports.
15. If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles report the information in a footnote to schedule.

ELECTRIC UTILITY		GAS UTILITY		OTHER UTILITY		
Current Year to Date (in dollars) (g)	Previous Year to Date (in dollars) (h)	Current Year to Date (in dollars) (i)	Previous Year to Date (in dollars) (j)	Current Year to Date (in dollars) (k)	Previous Year to Date (in dollars) (l)	Line No.
						1
						2
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						22
						23
						24
						24.1
						24.2
						25
						26

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

STATEMENT OF CASH FLOWS

(1) Codes to be used:(a) Net Proceeds or Payments;(b)Bonds, debentures and other long-term debt; (c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.
(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Period" with related amounts on the Balance Sheet.
(3) Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.
(4) Investing Activities: Include at Other (line 31) net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized per the USofA General Instruction 20; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

Line No.	Description (See Instruction No. 1 for Explanation of Codes) (a)	Current Year to Date Quarter/Year(b)	Previous Year to Date Quarter/Year(c)
1	Net Cash Flow from Operating Activities:		
2	Net Income (Line 78(c) on page 117)		
3	Noncash Charges (Credits) to Income:		
4	Depreciation and Depletion		
5	Amortization of Limited Plant		
6	Impairment of long-lived asset and losses on regulatory assets		
7	Amortization of regulatory debits/credits		
8	Deferred Income Taxes (Net)		
9	Investment Tax Credit Adjustment (Net)		
10	Net (Increase) Decrease in Receivables		
11	Net (Increase) Decrease in Inventory		
12	Net (Increase) Decrease in Allowances *and RECs* Inventory		
13	Net Increase (Decrease) in Payables and Accrued Expenses		
14	Net (Increase) Decrease in Other Regulatory Assets		
15	Net Increase (Decrease) in Other Regulatory Liabilities		
16	(Less) Allowance for Other Funds Used During Construction		
17	(Less) Undistributed Earnings from Subsidiary Companies		
18	Other (provide details in footnote):		
19	Pension		
20	Gain on disposal of noncurrent assets		
21			
22	Net Cash Provided by (Used in) Operating Activities (Total 2 thru 21)		
23			
24	Cash Flows from Investment Activities:		
25	Construction and Acquisition of Plant (including land):		
26	Gross Additions to Utility Plant (less nuclear fuel)		
27	Gross Additions to Nuclear Fuel		
28	Gross Additions to Common Utility Plant		
29	Gross Additions to Nonutility Plant		
30	(Less) Allowance for Other Funds Used During Construction		
31	Other (provide details in footnote):		
32			
33			
34	Cash Outflows for Plant (Total of lines 26 thru 33)		
35			
36	Acquisition of Other Noncurrent Assets (d)		
37	Proceeds from Disposal of Noncurrent Assets (d)		
38			
39	Investments in and Advances to Assoc. and Subsidiary Companies		
40	Contributions and Advances from Assoc. and Subsidiary Companies		
41	Disposition of Investments in (and Advances to)		
42	Associated and Subsidiary Companies		
43			
44	Purchase of Investment Securities (a)		
45	Proceeds from Sales of Investment Securities (a)		

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STATEMENT OF CASH FLOWS

(1) Codes to be used:(a) Net Proceeds or Payments;(b)Bonds, debentures and other long-term debt; (c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.
(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Period" with related amounts on the Balance Sheet.
(3) Operating Activities - Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.
(4) Investing Activities: Include at Other (line 31) net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized per the USofA General Instruction 20; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

Line No.	Description (See Instruction No. 1 for Explanation of Codes) (a)	Current Year to Date Quarter/Year(b)	Previous Year to Date Quarter/Year(c)
46	Loans Made or Purchased		
47	Collections on Loans		
48			
49	Net (Increase) Decrease in Receivables		
50	Net (Increase) Decrease in Inventory		
51	Net (Increase) Decrease in Allowances *and RECs* Held for Speculation		
52	Net Increase (Decrease) in Payables and Accrued Expenses		
53	Other (provide details in footnote):		
54			
55			
56	Net Cash Provided by (Used in) Investing Activities		
57	Total of lines 34 thru 55)		
58			
59	Cash Flows from Financing Activities:		
60	Proceeds from Issuance of:		
61	Long-Term Debt (b)		
62	Preferred Stock		
63	Common Stock		
64	Other (provide details in footnote):		
65			
66	Net Increase in Short-Term Debt (c)		
67	Other (provide details in footnote):		
68			
69			
70	Cash Provided by Outside Sources (Total 61 thru 69)		
71			
72	Payments for Retirement of:		
73	Long-term Debt (b)		
74	Preferred Stock		
75	Common Stock		
76	Other (provide details in footnote):		
77			
78	Net Decrease in Short-Term Debt (c)		
79	Bond Issuance Costs		
80	Dividends on Preferred Stock		
81	Dividends on Common Stock		
82	Net Cash Provided by (Used in) Financing Activities		
83	(Total of lines 70 thru 81)		
84			
85	Net Increase (Decrease) in Cash and Cash Equivalents		
86	(Total of lines 22,57 and 83)		
87			
88	Cash and Cash Equivalents at Beginning of Period		
89			
90	Cash and Cash Equivalents at End of period		

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d)

Line No.	Account (a)	Balance Beginning of Year (b)	Additions (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Turbogenerator Units		
13	(315) Accessory Electric Equipment		
13.1	*(315.1) Computer Hardware*		
13.2	*(315.2) Computer Software*		
13.3	*(315.3) Communication Equipment*		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbogenerator Units		
22	(324) Accessory Electric Equipment		
22.1	*(324.1) Computer Hardware*		
22.2	*(324.2) Computer Software*		
22.3	*(324.3) Communication Equipment*		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
31.1	*(334.1) Computer Hardware*		
31.2	*(334.2) Computer Software*		
31.3	*(334.3) Communication Equipment*		
32	(335) Misc. Power PLant Equipment		
33	(336) Roads, Railroads, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of lines 27 thru 34)		
35.1	*D. Solar Production Plant*		
35.2	*(338.1) Land and Land Rights*		
35.3	*(338.2) Structures and Improvements*		
35.5	*(338.4) Solar Panels*		
35.6	*(338.5) Collector System*		
35.7	*(338.6) Generator Step-up Transformers (GSU)*		

35.8	*(338.7) Inverters*		
35.9	*(338.8) Other Accessory Electrical Equipment*		
35.10	*(338.9) Computer Hardware*		
35.11	*(338.10) Computer Software*		
35.12	*(338.11) Communication Equipment*		
35.13	*(338.12) Miscellaneous Power Plant Equipment*		
35.14	*(338.13) Asset Retirement Costs for Solar Production*		
35.15	*TOTAL Solar Prod Plant (Enter Total of lines 35.2 thru 35.14)*		
35.16	*E. Wind Production Plant*		
35.17	*(338.20) Land and Land Rights*		
35.18	*(338.21) Structures and Improvements*		
35.20	*(338.23) Wind Turbines*		
35.21	*(338.24) Wind Towers and Fixtures*		
35.23	*(338.26) Collector System*		
35.24	*(338.27) Generator Step-up Transformers (GSU)*		
35.25	*(338.28) Inverters*		
35.26	*(338.29) Other Accessory Electrical Equipment*		
35.27	*(338.30) Computer Hardware*		
35.28	*(338.31) Computer Software*		
35.29	*(338.32) Communication Equipment*		
35.30	*(338.33) Miscellaneous Power Plant Equipment*		
35.31	*(338.34) Asset Retirement Costs for Wind Production*		
35.32	*TOTAL Wind Prod Plant (Enter Total of lines 35.17 thru 35.31)*		
35.33	*F. Other Non-hydro Renewable Production Plant*		
35.34	*(339.1) Land and Land Rights*		
35.35	*(339.2) Structures and Improvements*		
35.36	*(339.3) Fuel Holders*		
35.37	*(339.4) Boilers*		
35.39	*(339.6) Generators*		
35.41	*(339.8) Other Accessory Electrical Equipment*		
35.42	*(339.9) Computer Hardware*		
35.43	*(339.10) Computer Software*		
35.44	*(339.11) Communication Equipment*		
35.45	*(339.12) Miscellaneous Power Plant Equipment*		
35.46	*(338.13) Asset Retirement Costs for Other Non-hydro Renewable Production*		
35.47	*TOTAL Other Non-hydro Renew Prod Plant (Enter Total of lines 35.34 thru 35.46)*		
36	[D]G. Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		
42.1	*(345.1) Computer Hardware*		
42.2	*(345.2) Computer Software*		
42.3	*(345.3) Communication Equipment*		
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
[44.1]	[(348) Energy Storage Equipment – Production]		
45	TOTAL Other Prod. Plant (Enter Total of lines 37 thru 44)		
46	TOTAL Prod. Plant (Enter Total of lines 16, 25, 35, *35.15*, *35.32*, *35.47*, and 45)		

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ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Line No.	Account (a)	Balance Beginning of Year (b)	Additions (c)
47	3. TRANSMISSION PLANT		
48	(350) Land and Land Rights		
[48.1]	[(351) Energy Storage Equipment – Transmission]		
48.2	*(351.1) Computer Hardware*		
48.3	*(351.2) Computer Software*		
48.4	*(351.3) Communication Equipment*		
49	(352) Structures and Improvements		
50	(353) Station Equipment		
51	(354) Towers and Fixtures		
52	(355) Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground Conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of lines 48 thru 57)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
[63]	[(363) Energy Storage Equipment - Distribution]		
63.1	*(363.1) Computer Hardware*		
63.2	*(363.2) Computer Software*		
63.3	*(363.3) Communication Equipment*		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	TOTAL Distribution Plant (Enter Total of lines 60 thru 74)		
76	5. REGIONAL TRANSMISSION AND MARKET OPERATION PLANT		
77	(380) Land and Land Rights		
78	(381) Structures and Improvements		
79	(382) Computer Hardware		
80	(383) Computer Software		
81	(384) Communication Equipment		
82	(385) Miscellaneous Regional Transmission and Market Operation Plant		
83	(386) Asset Retirement Costs for Regional Transmission and Market Oper		
84	TOTAL Transmission and Market Operation Plant (Total lines 77 thru 83)		
84.1	*6. Energy Storage Plant*		
84.2	*(387.1) Land and Land Rights*		
84.3	*(387.2) Structures and Improvements*		
84.4	*(387.3) Energy Storage Equipment*		
84.6	*(387.5) Collector System*		
84.7	*(387.6) Generator Step-up Transformers (GSU)*		
84.8	*(387.7) Inverters*		
84.9	*(387.8) Computer Hardware*		
84.10	*(387.9) Computer Software*		
84.11	*(387.10) Communication Equipment*		
84.12	*(387.11) Miscellaneous Energy Storage Equipment*		

84.13	*(387.12) Asset Retirement Costs for Energy Storage*		
84.14	*TOTAL Energy Storage Plant (Total lines 84.2 thru 84.13)*		
85	[6]7. GENERAL PLANT		
86	(389) Land and Land Rights		
87	(390) Structures and Improvements		
88	(391) Office Furniture and Equipment		
89	(392) Transportation Equipment		
90	(393) Stores Equipment		
91	(394) Tools, Shop and Garage Equipment		
92	(395) Laboratory Equipment		
93	(396) Power Operated Equipment		
94	(397.*1*) [Communication Equipment] *Computer Hardware*		
94.1	*(397.2) Computer Software*		
94.2	*(397.3) Communication Equipment*		
95	(398) Miscellaneous Equipment		
96	SUBTOTAL (Enter Total of lines 86 thru 95)		
97	(399) Other Tangible Property		
98	(399.1) Asset Retirement Costs for General Plant		
99	TOTAL General Plant (Enter Total of lines 96, 97 and 98)		
100	TOTAL (Accounts 101 and 106)		
101	(102) Electric Plant Purchased (See Instr. 8)		
102	(Less) (102) Electric Plant Sold (See Instr. 8)		
103	(103) Experimental Plant Unclassified		
104	TOTAL Electric Plant in Service (Enter Total of lines 100 thru 103)		

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ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year(g)		Line No.
					1
					2
					3
					4
					5
					6
					7
					8
					9
					10
					11
					12
					13
					13.1
					13.2
					13.3
					14
					15
					16
					17
					18
					19
					20
					21
					22
					22.1
					22.2
					22.3
					23
					24
					25
					26
					27
					28
					29
					30
					31
					31.1
					31.2
					31.3
					32
					33
					34
					35
					35.1
					35.2
					35.3
					35.5
					35.6
					35.7
					35.8

					35.9
					35.10
					35.11
					35.12
					35.13
					35.14
					35.15
					35.16
					35.17
					35.18
					35.20
					35.21
					35.22
					35.23
					35.24
					35.25
					35.26
					35.27
					35.28
					35.29
					35.30
					35.31
					35.32
					35.33
					35.34
					35.35
					35.36
					35.38
					35.40
					35.41
					35.42
					35.43
					35.44
					35.45
					35.46
					35.47
					35.48
					35.49
					36
					37
					38
					39
					40
					41
					[44.1]
					42
					42.1
					42.2
					42.3
					43
					44
					45
					46

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ELECTRIC PLANT IN SERVICE (Account 101, 102, 103 and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year(g)		Line No.
					47
					48
					[48.1]
					48.2
					48.3
					48.4
					49
					50
					51
					52
					53
					54
					55
					56
					57
					58
					59
					60
					61
					62
					[63]
					63.1
					63.2
					63.3
					64
					65
					66
					67
					68
					69
					70
					71
					72
					73
					74
					75
					76
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					78
					79
					80
					81
					82
					83
					84
					84.1
					84.2
					84.3
					84.4
					84.6
					84.7
					84.8
					84.9
					84.10
					84.11
					85
					86
					87
					88
					89
					90
					91

					92
					93
					94
					94.1
					94.2
					95
					96
					97
					98
					99
					100
					101
					102
					103
					104

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ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 12, column (c), and that reported for electric plant in service, pages 204-207, column d), excluding retirements of non-depreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No.	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Heldfor Future Use (d)	Electric Plant Leased to Others(e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Exp. of Elec. Plt. Leas. to Others				
6	Transportation Expenses-Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify, details in footnote):				
9					
10	TOTAL Deprec. Prov for Year (Enter Total of lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Chrgs. for Plant Ret. (Enter Total of lines 12 thru 14)				
16	Other Debit or Cr. Items (Describe, details in footnote):				
17	ARO Depr Reclassed to Reg Asset				
18	Book Cost or Asset Retirement Costs Retired				
19	Balance End of Year (Enter Totals of lines 1, 10, 15, 16, and 18)				
	Section B. Balances at End of Year According to Functional Classification				
20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
23.1	*Solar Production*				
23.2	*Wind Production*				
23.3	*Other Non-hydro Renewable Production*				
24	Other Production				
25	Transmission				
26	Distribution				
27	Regional Transmission and Market Operation				
27.1	*Energy Storage*				
28	General				
29	TOTAL (Enter Total of lines 20 thru 28)				

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of _____

ELECTRIC PRODUCTION, OTHER POWER SUPPLY EXPENSES, TRANSMISSION AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional control and market operation, energy storage, and distribution expenses through the reporting period.

Line No.	Account (a)	Year to Date Quarter (b)
1	1. POWER PRODUCTION AND OTHER SUPPLY EXPENSES	
2	Steam Power Generation - Operation (500-509)	
3	Steam Power Generation - Maintenance (510-515)	
4	Total Power Production Expenses - Steam Power	
5	Nuclear Power Generation - Operation (517-525)	
6	Nuclear Power Generation – Maintenance (528-532)	
7	Total Power Production Expenses - Nuclear Power	
8	Hydraulic Power Generation - Operation (535-540.1)	
9	Hydraulic Power Generation – Maintenance (541-545.1)	
10	Total Power Production Expenses – Hydraulic Power	
10.1	*Solar Generation – Operation (558.1-558.5)*	
10.2	*Solar Generation – Maintenance (558.6-558.16)*	
10.3	*Total Power Production Expenses – Solar*	
10.4	*Wind Generation – Operation (558.20-558.24)*	
10.5	*Wind Renewables Generation – Maintenance (558.25-558.35)*	
10.6	*Total Power Production Expenses – Wind*	
10.7	*Other Non-hydro Renewable Generation – Operation (559.1-559.5)*	
10.8	*Other Non-hydro Renewable Generation – Maintenance (559.6-559.15)*	
10.9	*Total Power Production Expenses – Other Non-hydro Renewable*	
11	Other Power Generation - Operation (546-550.1)	
12	Other Power Generation - Maintenance (551-554.1)	
13	Total Power Production Expenses - Other Power	
14	Other Power Supply Expenses	
15	Purchased Power (555)	
16	System Control and Load Dispatching (556)	
17	Other Expenses (557)	
18	Total Other Power Supply Expenses (line 15-17)	
19	Total Power Production Expenses (Total of lines 4, 7, 10, *10.3*, *10.6*, *10.9*, 13 and 18)	
20	2. TRANSMISSION EXPENSES	
21	Transmission Operation Expenses	
22	(560) Operation Supervision and Engineering	
23		
24	(561.1) Load Dispatch-Reliability	
25	(561.2) Load Dispatch-Monitor and Operate Transmission System	
26	(561.3) Load Dispatch-Transmission Service and Scheduling	
27	(561.4) Scheduling, System Control and Dispatch Services	
28	(561.5) Reliability, Planning and Standards Development	
29	(561.6) Transmission Service Studies	
30	(561.7) Generation Interconnection Studies	
31	(561.8) Reliability, Planning and Standards Development Services	
32	(562) Station Expenses	
33	(563) Overhead Line Expenses	
34	(564) Underground Line Expenses	
35	(565) Transmission of Electricity by Others	
36	(566) Miscellaneous Transmission Expenses	
37	(567) Rents	
38	(567.1) Operation Supplies and Expenses (Non-Major)	

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ELECTRIC PRODUCTION, OTHER POWER SUPPLY EXPENSES, TRANSMISSION AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission, regional control and market operation, *energy storage*, and distribution expenses through thereporting period.

Line No.	Account (a)	Year to Date Quarter (b)
39	TOTAL Transmission Operation Expenses (Lines 22 - 38)	
40	Transmission Maintenance Expenses	
41	(568) Maintenance Supervision and Engineering	
42	(569) Maintenance of Structures	
43	(569.1) Maintenance of Computer Hardware	
44	(569.2) Maintenance of Computer Software	
45	(569.3) Maintenance of Communication Equipment	
46	(569.4) Maintenance of Miscellaneous Regional Transmission Plant	
47	(570) Maintenance of Station Equipment	
48	(571) Maintenance Overhead Lines	
49	(572) Maintenance of Underground Lines	
50	(573) Maintenance of Miscellaneous Transmission Plant	
51	(574) Maintenance of Transmission Plant	
52	TOTAL Transmission Maintenance Expenses (Lines 41 - 51)	
53	Total Transmission Expenses (Lines 39 and 52)	
54	3. REGIONAL MARKET EXPENSES	
55	Regional Market Operation Expenses	
56	(575.1) Operation Supervision	
57	(575.2) Day-Ahead and Real-Time Market Facilitation	
58	(575.3) Transmission Rights Market Facilitation	
59	(575.4) Capacity Market Facilitation	
60	(575.5) Ancillary Services Market Facilitation	
61	(575.6) Market Monitoring and Compliance	
62	(575.7) Market Facilitation, Monitoring and Compliance Services	
63	Regional Market Operation Expenses (Lines 55 - 62)	
64	Regional Market Maintenance Expenses	
65	(576.1) Maintenance of Structures and Improvements	
66	(576.2) Maintenance of Computer Hardware	
67	(576.3) Maintenance of Computer Software	
68	(576.4) Maintenance of Communication Equipment	
69	(576.5) Maintenance of Miscellaneous Market Operation Plant	
70	Regional Market Maintenance Expenses (Lines 65-69)	
71	TOTAL Regional Control and Market Operation Expenses (Lines 63,70)	
71.1	*4. ENERGY STORAGE EXPENSES*	
71.2	*Energy Storage Operation Expenses (577.1-577.4)*	
71.3	*Energy Storage Maintenance Expenses (578.1-578.7)*	
71.4	*Total Energy Storage Expenses (Lines 71.2 and 71.3)*	
72	4-5. DISTRIBUTION EXPENSES	
73	Distribution Operation Expenses (580-589)	
74	Distribution Maintenance Expenses (590-598)	
75	Total Distribution Expenses (Lines 73 and 74)	

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of _____

ELECTRIC CUSTOMER ACCOUNTS, SERVICE, SALES, ADMINISTRATIVE AND GENERAL EXPENSES

Report the amount of expenses for customer accounts, service, sales, and administrative and general expenses year to date.

Line No.	Account (a)	Year to Date Quarter (b)
1	(901-905) Customer Accounts Expenses	
2	(907-910) Customer Service and Information Expenses	
3	(911-917) Sales Expenses	
4	~~8~~9. ADMINISTRATIVE AND GENERAL EXPENSES	
5	Operations	
6	920 Administrative and General Salaries	
7	921 Office Supplies and Expenses	
8	(Less) 922 Administrative Expenses Transferred-Credit	
9	923 Outside Services Employed	
10	924 Property Insurance	
11	925 Injuries and Damages	
12	926 Employee Pensions and Benefits	
13	927 Franchise Requirements	
14	928 Regulatory Commission Expenses	
15	(Less) 929 Duplicate Charges-Credit	
16	930.1General Advertising Expenses	
17	930.2Miscellaneous General Expenses	
18	931 Rents	
19	TOTAL Operation (Total of lines 6 thru 18)	
20	Maintenance	
21	935 Maintenance of General Plant	
21.1	*935.1 Maintenance of Computer Hardware*	
21.2	*935.2 Maintenance of Computer Software*	
21.3	*935.3 Maintenance of Communication Equipment*	
21.4	*TOTAL Maintenance (Enter Total of lines 21 thru 21.4)*	
22	TOTAL Administrative and General Expenses (Total of lines 19 and 21.4)	

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of _____

MATERIALS AND SUPPLIES

1. For Account 154, report the amount of plant materials and operating supplies under the primary functional classifications as indicated in column (a); estimates of amounts by function are acceptable. In column (d), designate the department or departments which use the class of material.
2. Give an explanation of important inventory adjustments during the year (in a footnote) showing general classes of material and supplies and the various accounts (operating expenses, clearing accounts, plant, etc.) affected debited or credited. Show separately debit or credits to stores expense clearing, if applicable.

Line No.	Account (a)	Balance Beginning of Year (b)	Balance End of Year (c)	Department or Departments which Use Material(d)
1	Fuel Stock (Account 151)			
2	Fuel Stock Expenses Undistributed (Account 152)			
3	Residuals and Extracted Products (Account 153)			
4	Plant Materials and Operating Supplies (Account 154)			
5	Assigned to - Construction (Estimated)			
6	Assigned to - Operations and Maintenance			
7	Production Plant (Estimated)			
8	Transmission Plant (Estimated)			
9	Distribution Plant (Estimated)			
10	Regional Transmission and Market Operation Plant (Estimated)			
10.1	*Energy Storage Plant (Estimated)*			
11	Assigned to - Other (provide details in footnote)			
12	TOTAL Account 154 (Enter Total of lines 5 thru 11)			
13	Merchandise (Account 155)			
14	Other Materials and Supplies (Account 156)			
15	Nuclear Materials Held for Sale (Account 157) (Not applic to Gas Util)			
16	Stores Expense Undistributed (Account 163)			
17	Stored (Account 164)			
18				
19				
20	TOTAL Materials and Supplies (Per Balance Sheet)			

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Allowances *and RECs* (Accounts 158.1, [and] 158.2, *158.3, and 158.4*)

1. Report below the particulars (details) called for concerning allowances *(list by the type of allowances, i.e. SO2, NOx, etc.) and RECs.*
2. Report all acquisitions of allowances *and RECs* at cost.
3. Report allowances *and RECs* in accordance with a weighted average cost allocation method and other accounting as prescribed by General Instruction No. 21 in the Uniform System of Accounts.
4. Report the allowances *and RECs* transactions by the period they are first eligible for use: the current year's allowances *and RECs* in columns (b)-(c), allowances *and RECs* for the three succeeding years in columns (d)-(i), starting with the following year, and allowances *and RECs* for the remaining succeeding years in columns (j)-(k).
5. Report on line 4 [the]*authoritative agency* [Environmental Protection Agency (EPA)]issued allowances. Report withheld portions Lines 36-40.

Line No.	[SO2]Allowances Inventory *and RECs* (Accounts 158.1, *158.3, and 158.4*) (a)	Current Year No. (b)	Current Year Amt. (c)	No. (d)	Amt. (e)
1	Balance-Beginning of Year				
2					
3	Acquired During Year:				
4	Issued (Less Withheld Allow)				
5	Returned by [EPA] *authoritative agency*				
6					
7					
8	Purchases/Transfers:				
9					
10					
11					
12					
13					
14					
15	Total				
16					
17	Relinquished During Year:				
18	Charges to Account 509.*1, 509.2, and 509.3*				
19	Other:				
20	Allowances Used				
21	Cost of Sales/Transfers:				
22					
23					
24					
25					
26					
27					
28	Total				
29	Balance-End of Year				
30					
31	Sales:				
32	Net Sales Proceeds(Assoc. Co.)				
33	Net Sales Proceeds (Other)				
34	Gains				
35	Losses				
	Allowances Withheld (Acct 158.2)				
36	Balance-Beginning of Year				
37	Add: Withheld by [EPA] *authoritative agency*				
38	Deduct: Returned by [EPA] *authoritative agency*				
39	Cost of Sales				
40	Balance-End of Year				
41					
42	Sales:				
43	Net Sales Proceeds (Assoc. Co.)				
44	Net Sales Proceeds (Other)				
45	Gains				
46	Losses				

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

Allowances *and RECs* (Accounts 158.1, [and]158.2, *158.3, and 158.4*) (Continued)

6. Report on Lines 5 allowances returned by *an authoritative* agency[the EPA]. Report on Line 39 the *authoritative* agency[EPA]'s sales of the withheld allowances. Report on Lines 43-46 the net sales proceeds and gains/losses resulting from the *authoritative* agency[EPA]'s sale or auction of the withheld allowances.
7. Report on Lines 8-14 the names of vendors/transferors of allowances *and RECs* acquired and identify associated companies (See "associated company" under "Definitions" in the Uniform System of Accounts).
8. Report on Lines 22 - 27 the name of purchasers/ transferees of allowances *and RECs* disposed of and identify associated companies.
9. Report the net costs and benefits of hedging transactions on a separate line under purchases/transfers and sales/transfers.
10. Report on Lines 32-35 and 43-46 the net sales proceeds and gains or losses from allowance *and REC* sales.

				Future Years		Totals		Line
No. (f)	Amt. (g)	No. (h)	Amt. (i)	No. (j)	Amt. (k)	No. (l)	Amt. (m)	No.
								1
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								3
								4
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[Delete Pages 228b and 229b]

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
1	1. POWER PRODUCTION EXPENSES		
2	A. Steam Power Generation		
3	Operation		
4	(500) Operation Supervision and Engineering		
5	(501) Fuel		
6	(502) Steam Expenses		
7	(503) Steam from Other Sources		
8	(Less) (504) Steam Transferred-Cr.		
9	(505) Electric Expenses		
10	(506) Miscellaneous Steam Power Expenses		
11	(507) Rents		
12	(509.1) Allowances		
12.1	*(509.2) Bundled Renewable Energy Credits*		
12.2	*(509.3) Unbundled Renewable Energy Credits*		
13	TOTAL Operation (Enter Total of Lines 4 thru 12.2)		
14	Maintenance		
15	(510) Maintenance Supervision and Engineering		
16	(511) Maintenance of Structures		
17	(512) Maintenance of Boiler Plant		
18	(513) Maintenance of Electric Plant		
18.1	*(513.1) Maintenance of Computer Hardware*		
18.2	*(513.2) Maintenance of Computer Software*		
18.3	*(513.3) Maintenance of Communication Equipment*		
19	(514) Maintenance of Miscellaneous Steam Plant		
20	TOTAL Maintenance (Enter Total of Lines 15 thru 19)		
21	TOTAL Power Production Expenses-Steam Power (Entr Tot lines 13 & 20)		
22	B. Nuclear Power Generation		
23	Operation		
24	(517) Operation Supervision and Engineering		
25	(518) Fuel		
26	(519) Coolants and Water		
27	(520) Steam Expenses		
28	(521) Steam from Other Sources		
29	(Less) (522) Steam Transferred-Cr.		
30	(523) Electric Expenses		
31	(524) Miscellaneous Nuclear Power Expenses		
32	(525) Rents		
33	TOTAL Operation (Enter Total of lines 24 thru 32)		
34	Maintenance		
35	(528) Maintenance Supervision and Engineering		
36	(529) Maintenance of Structures		
37	(530) Maintenance of Reactor Plant Equipment		
38	(531) Maintenance of Electric Plant		
38.1	*(531.1) Maintenance of Computer Hardware*		
38.2	*(531.2) Maintenance of Computer Software*		
38.3	*(531.3) Maintenance of Communication Equipment*		
39	(532) Maintenance of Miscellaneous Nuclear Plant		
40	TOTAL Maintenance (Enter Total of lines 35 thru 39)		
41	TOTAL Power Production Expenses-Nuc. Power (Entr tot lines 33 & 40)		
42	C. Hydraulic Power Generation		
43	Operation		
44	(535) Operation Supervision and Engineering		
45	(536) Water for Power		
46	(537) Hydraulic Expenses		
47	(538) Electric Expenses		
48	(539) Miscellaneous Hydraulic Power Generation Expenses		
49	(540) Rents		
50	TOTAL Operation (Enter Total of Lines 44 thru 49)		
51	C. Hydraulic Power Generation (Continued)		
52	Maintenance		
53	(541) Main[en]te*n*ance Supervision and Engineering		

54	(542) Maintenance of Structures		
55	(543) Maintenance of Reservoirs, Dams, and Waterways		
56	(544) Maintenance of Electric Plant		
56.1	*(544.1) Maintenance of Computer Hardware*		
56.2	*(544.2) Maintenance of Computer Software*		
56.3	*(544.3) Maintenance of Communication Equipment*		
57	(545) Maintenance of Miscellaneous Hydraulic Plant		
58	TOTAL Maintenance (Enter Total of lines 53 thru 57)		
59	TOTAL Power Production Expenses-Hydraulic Power (tot of lines 50 & 58)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

LineNo.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
60	D. Other Power Generation		
61	Operation		
62	(546) Operation Supervision and Engineering		
63	(547) Fuel		
64	(548) Generation Expenses		
[64.1]	[(548.1) Operation of Energy Storage Equipment]		
65	(549) Miscellaneous Other Power Generation Expenses		
66	(550) Rents		
67	TOTAL Operation (Enter Total of lines 62 thru 66)		
68	Maintenance		
69	(551) Maintenance Supervision and Engineering		
70	(552) Maintenance of Structures		
71	(553) Maintenance of Generating and Electric Plant		
71.1	*(553.1) Maintenance of Computer Hardware [of Energy Storage Equipment]*		
71.2	*(553.2) Maintenance of Computer Software*		
71.3	*(553.3) Maintenance of Communication Equipment*		
72	(554) Maintenance of Miscellaneous Other Power Generation Plant		
73	TOTAL Maintenance (Enter Total of lines 69 thru 72)		
74	TOTAL Power Production Expenses-Other Power (Enter Tot of 67 & 73)		
75	E. Other Power Supply Expenses		
76	(555) Purchased Power		
76.1	(555.1) Power Purchased for Storage Operations		
77	(556) System Control and Load Dispatching		
78	(557) Other Expenses		
79	TOTAL Other Power Supply Exp (Enter Total of lines 76 thru 78)		
79.1	*F. Solar Generation*		
79.2	*Operation*		
79.3	*(558.1) Operation Supervision and Engineering*		
79.4	*(558.2) Solar Panel Generation and Other Plant Operating Expenses*		
79.6	*(558.4) Rents*		
79.7	*TOTAL Operation (Enter Total of Lines 79.3 thru 79.6)*		
79.8	*Maintenance*		
79.9	*(558.6) Maintenance Supervision and Engineering*		
79.10	*(558.7) Maintenance of Structures*		
79.11	*(558.8) Maintenance of Solar Panels*		
79.12	*(558.9) Maintenance of Collector Systems*		
79.13	*(558.10) Maintenance of Generator Step-up Transformers*		
79.14	*(558.11) Maintenance of Inverter Expenses*		
79.15	*(558.12) Other Accessory Electrical Equipment*		
79.16	*(558.13) Maintenance of Computer Hardware*		
79.17	*(558.14) Maintenance of Computer Software*		
79.18	*(558.15) Maintenance of Communication Equipment*		
79.19	*(558.16) Maintenance of Miscellaneous Solar Generation Plant*		
79.20	*TOTAL Maintenance (Enter Total of lines 79.9 thru 79.19)*		
79.21	*TOTAL Power Production Expenses-Solar (total of lines 79.7 & 79.20)*		
79.22	*G. Wind Generation*		
79.23	*Operation*		
79.24	*(558.20) Operation Supervision and Engineering*		
79.25	*(558.21) Wind Turbine Generation and Other Plant Operating Expenses*		
79.26	*(558.23) Rents*		
79.27	*TOTAL Operation (Enter Total of Lines 79.24 thru 79.26)*		
79.28	*Maintenance*		
79.29	*(558.25) Maintenance Supervision and Engineering*		
79.30	*(558.26) Maintenance of Structures*		
79.31	*(558.27) Maintenance of Wind Turbines, Towers and Fixtures*		
79.33	*(558.29) Maintenance of Collector Systems*		
79.34	*(558.30) Maintenance of Generator Step-up Transformers*		
79.35	*(558.31) Maintenance of Inverter Expenses*		
79.36	*(558.32) Maintenance of Accessory Electrical Equipment*		
79.37	*(558.31) Maintenance of Computer Hardware*		
79.38	*(558.32) Maintenance of Computer Software*		

79.39	*(558.33) Maintenance of Communication Equipment*		
79.40	*(558.34) Maintenance of Miscellaneous Wind Generation Plant*		
79.41	*TOTAL Maintenance (Enter Total of lines 79.29 thru 79.40)*		
79.42	*TOTAL Power Production Expenses-Wind (total of lines 79.27 & 79.41)*		
79.43	*H. Other Non-hydro Renewable Generation*		
79.44	*Operation*		
79.45	*(559.1) Operation Supervision and Engineering*		
79.46	*(559.2) Other Miscellaneous Generation and Other Plant Operating Expenses*		
79.47	*(559.3) Fuel*		
79.48	*(559.4) Rents*		
79.49	*TOTAL Operation (Enter Total of Lines 79.45 thru 79.48)*		
79.50	*Maintenance*		
79.51	*(559.6) Maintenance Supervision and Engineering*		
79.52	*(559.7) Maintenance of Structures*		
79.54	*(559.9) Maintenance of Boilers*		
79.55	*(559.10) Maintenance of Generating and Electric Equipment*		
79.57	*(559.12) Maintenance of Computer Hardware*		
79.58	*(559.13) Maintenance of Computer Software*		
79.59	*(559.14) Maintenance of Communication Equipment*		
79.60	*(559.15) Maintenance of Miscellaneous Non-hydro Renewable Production Plant*		
79.61	*TOTAL Maintenance (Enter Total of lines 79.51 thru 79.60)*		
79.62	*TOTAL Power Prod Exp-Other Non-hydro Renew (total of lines 79.49 & 79.61)*		
80	TOTAL Power Prod Exp (Total of lines 21, 41, 59, 74, [&]79, *79.21, 79.42, & 79.62)*		
81	2. TRANSMISSION EXPENSES		
82	Operation		
83	(560) Operation Supervision and Engineering		
84			
85	(561.1) Load Dispatch-Reliability		
86	(561.2) Load Dispatch-Monitor and Operate Transmission System		
87	(561.3) Load Dispatch-Transmission Service and Scheduling		
88	(561.4) Scheduling, System Control and Dispatch Services		
89	(561.5) Reliability, Planning and Standards Development		
90	(561.6) Transmission Service Studies		
91	(561.7) Generation Interconnection Studies		
92	(561.8) Reliability, Planning and Standards Development Services		
93	(562) Station Expenses		
[93.1]	[(562.1) Operation of Energy Storage Equipment]		
94	(563) Overhead Lines Expenses		
95	(564) Underground Lines Expenses		
96	(565) Transmission of Electricity by Others		
97	(566) Miscellaneous Transmission Expenses		
98	(567) Rents		
99	TOTAL Operation (Enter Total of lines 83 thru 98)		
100	Maintenance		
101	(568) Maintenance Supervision and Engineering		
102	(569) Maintenance of Structures		
103	(569.1) Maintenance of Computer Hardware		
104	(569.2) Maintenance of Computer Software		
105	(569.3) Maintenance of Communication Equipment		
106	(569.4) Maintenance of Miscellaneous Regional Transmission Plant		
107	(570) Maintenance of Station Equipment		
[107.1]	[(570.1) Maintenance of Energy Storage Equipment]		
108	(571) Maintenance of Overhead Lines		
109	(572) Maintenance of Underground Lines		
110	(573) Maintenance of Miscellaneous Transmission Plant		
111	TOTAL Maintenance (Total of lines 101 thru 110)		
112	TOTAL Transmission Expenses (Total of lines 99 and 111)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

LineNo.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
113	3. REGIONAL MARKET EXPENSES		
114	Operation		
115	(575.1) Operation Supervision		
116	(575.2) Day-Ahead and Real-Time Market Facilitation		
117	(575.3) Transmission Rights Market Facilitation		
118	(575.4) Capacity Market Facilitation		
119	(575.5) Ancillary Services Market Facilitation		
120	(575.6) Market Monitoring and Compliance		
121	(575.7) Market Facilitation, Monitoring and Compliance Services		
122	(575.8) Rents		
123	Total Operation (Lines 115 thru 122)		
124	Maintenance		
125	(576.1) Maintenance of Structures and Improvements		
126	(576.2) Maintenance of Computer Hardware		
127	(576.3) Maintenance of Computer Software		
128	(576.4) Maintenance of Communication Equipment		
129	(576.5) Maintenance of Miscellaneous Market Operation Plant		
130	Total Maintenance (Lines 125 thru 129)		
131	TOTAL Regional Transmission and Market Op Expns (Total 123 and 130)		
131.1	*4. ENERGY STORAGE EXPENSES*		
131.2	*Operation*		
131.3	*(577.1) Operation Supervision and Engineering*		
131.4	*(577.2) Operation of Energy Storage Equipment*		
131.5	*(577.3) Storage Fuel*		
131.6	*(577.4) Rents*		
131.7	*Total Operation (Lines 131.3 thru 131.6)*		
131.8	*Maintenance*		
131.9	*(578.1) Maintenance Supervision and Engineering*		
131.10	*(578.2) Maintenance of Structures*		
131.11	*(578.3) Maintenance of Energy Storage Equipment*		
131.12	*(578.4) Maintenance of Collector Systems*		
131.13	*(578.5) Maintenance of Generator Step-up Transformers*		
131.14	*(578.6) Maintenance of Inverter Expenses*		
131.15	*(578.7) Maintenance of Computer Hardware*		
131.16	*(578.8) Maintenance of Computer Software*		
131.17	*(578.9) Maintenance of Communication Equipment*		
131.18	*(578.10) Maintenance of Miscellaneous Other Energy Storage Plant*		
131.19	*Total Maintenance (Lines 131.9 thru 131.18)*		
131.20	*TOTAL Energy Storage Expenses (Total of 131.7 and 131.19)*		
132	[4.]5. DISTRIBUTION EXPENSES		
133	Operation		
134	(580) Operation Supervision and Engineering		
135	(581) Load Dispatching		
136	(582) Station Expenses		
137	(583) Overhead Line Expenses		
138	(584) Underground Line Expenses		
[138.1]	[(584.1) Operation of Energy Storage Equipment]		
139	(585) Street Lighting and Signal System Expenses		
140	(586) Meter Expenses		
141	(587) Customer Installations Expenses		
142	(588) Miscellaneous Expenses		
143	(589) Rents		
144	TOTAL Operation (Enter Total of lines 134 thru 143)		
145	Maintenance		
146	(590) Maintenance Supervision and Engineering		
147	(591) Maintenance of Structures		
148	(592) Maintenance of Station Equipment		
148.1	*(592.2) Maintenance of Computer Hardware [Energy Storage Equipment]*		
148.2	*(592.3) Maintenance of Computer Software*		
148.3	*(592.4) Maintenance of Communication Equipment*		

149	(593) Maintenance of Overhead Lines		
150	(594) Maintenance of Underground Lines		
151	(595) Maintenance of Line Transformers		
152	(596) Maintenance of Street Lighting and Signal Systems		
153	(597) Maintenance of Meters		
154	(598) Maintenance of Miscellaneous Distribution Plant		
155	TOTAL Maintenance (Total of lines 146 thru 154)		
156	TOTAL Distribution Expenses (Total of lines 144 and 155)		
157	[5.]*6.* CUSTOMER ACCOUNTS EXPENSES		
158	Operation		
159	(901) Supervision		
160	(902) Meter Reading Expenses		
161	(903) Customer Records and Collection Expenses		
162	(904) Uncollectible Accounts		
163	(905) Miscellaneous Customer Accounts Expenses		
164	TOTAL Customer Accounts Expenses (Total of lines 159 thru 163)		

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ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)

If the amount for previous year is not derived from previously reported figures, explain in footnote.

Line No.	Account (a)	Amount for Current Year(b)	Amount for Previous Year(c)
165	[6.]*7.* CUSTOMER SERVICE AND INFORMATIONAL EXPENSES		
166	Operation		
167	(907) Supervision		
168	(908) Customer Assistance Expenses		
169	(909) Informational and Instructional Expenses		
170	(910) Miscellaneous Customer Service and Informational Expenses		
171	TOTAL Customer Service and Information Expenses (Total 167 thru 170)		
172	[7.]*8.* SALES EXPENSES		
173	Operation		
174	(911) Supervision		
175	(912) Demonstrating and Selling Expenses		
176	(913) Advertising Expenses		
177	(916) Miscellaneous Sales Expenses		
178	TOTAL Sales Expenses (Enter Total of lines 174 thru 177)		
179	[8.]*9.* ADMINISTRATIVE AND GENERAL EXPENSES		
180	Operation		
181	(920) Administrative and General Salaries		
182	(921) Office Supplies and Expenses		
183	(Less) (922) Administrative Expenses Transferred-Credit		
184	(923) Outside Services Employed		
185	(924) Property Insurance		
186	(925) Injuries and Damages		
187	(926) Employee Pensions and Benefits		
188	(927) Franchise Requirements		
189	(928) Regulatory Commission Expenses		
190	(929) (Less) Duplicate Charges-Cr.		
191	(930.1) General Advertising Expenses		
192	(930.2) Miscellaneous General Expenses		
193	(931) Rents		
194	TOTAL Operation (Enter Total of lines 181 thru 193)		
195	Maintenance		
196	(935) Maintenance of General Plant		
196.1	*(935.1) Maintenance of Computer Hardware*		
196.2	*(935.2) Maintenance of Computer Software*		
196.3	*(935.3) Maintenance of Communication Equipment*		
196.4	*TOTAL Maintenance (Enter Total of lines 196 thru 196.3)*		
197	TOTAL Administrative & General Expenses (Total of lines 194 and 196.*4*)		
198	TOTAL Elec Op and Maint Expns (Total 80,112,131,*131.20*,156,164,171,178,197)		

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DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Account 403, 404, 405)
(Except amortization of acquisition adjustments)

1. Report in section A for the year the amounts for : (b) Depreciation Expense (Account 403; (c) Depreciation Expense for Asset Retirement Costs (Account 403.1; (d) Amortization of Limited-Term Electric Plant (Account 404); and (e) Amortization of Other Electric Plant (Account 405).
2. Report in Section 8 the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.
3. Report all available information called for in Section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.
Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of Section C the type of plant included in any sub-account used.
In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used.
For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), if available, the weighted average remaining life of surviving plant. If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.
4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of the provisions and the plant items to which related.

A. Summary of Depreciation and Amortization Charges

Line No.	Functional Classification(a)	Depreciation Expense (Account 403)(b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization of Limited Term Electric Plant (Account 404) (d)	Amortization of Other Electric Plant (Acc 405) (e)	Total(f)
1	Intangible Plant					
2	Steam Production Plant					
3	Nuclear Production Plant					
4	Hydraulic Production Plant-Conventional					
5	Hydraulic Production Plant-Pumped Storage					
5.1	*Solar Production Plant*					
5.2	*Wind Production Plant*					
5.3	*Other Non-hydro Renewable Prod Plant*					
6	Other Production Plant					
7	Transmission Plant					
8	Distribution Plant					
9	Regional Transmission and Market Operation					
9.1	*Energy Storage Plant*					
10	General Plant					
11	Common Plant-Electric					
12	TOTAL					

B. Basis for Amortization Charges

[The amortization charges shown in Column (d), Line 1 - Intangible Plant, represent the straight line amortization of the development costs related to software. See note for Column (d), Line 1 for additional details regarding the system software included in Intangible Plant. Note that software is typically amortized over a 5 year period unless another life is deemed more appropriate.]

[The amortization charges shown in Column (d), Line 11 - Common Plant-Electric, represent the straight line amortization of the development costs related to software. See note for Column (d), Line 11 for additional details regarding the system software included in Common Plant. Note that software is typically amortized over a 5 year period unless another life is deemed more appropriate.]

This schedule excludes all amortized Limited Term Plant ([software,] leasehold improvements, right of ways, etc.).

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

RESEARCH, DEVELOPMENT, AND DEMONSTRATION ACTIVITIES

1. Describe and show below costs incurred and accounts charged during the year for technological research, development, and demonstration (R, D & D) project initiated, continued or concluded during the year. Report also support given to others during the year for jointly-sponsored projects.(Identify recipient regardless of affiliation.) For any R, D & D work carried with others, show separately the respondent's cost for the year and cost chargeable to others (See definition of research, development, and demonstration in Uniform System of Accounts).
2. Indicate in column (a) the applicable classification, as shown below:

Classifications:

A. Electric R, D & D Performed Internally:
(1) Generation
a. hydroelectric
i. Recreation fish and wildlife
ii Other hydroelectric
b. Fossil-fuel steam
c. Internal combustion or gas turbine
d. Nuclear
e. *Solar*
f. *Wind*
g. *Other Non-hydro renewable*
h. [e.]Unconventional generation
i. [f.]Siting and heat rejection
(2) Transmission
a. Overhead
b. Underground
(3) Distribution
(4) Regional Transmission and Market Operation
(5) Energy Storage
([5]*6*) Environment (other than equipment)
([6]*7*) Other (Classify and include items in excess of $50,000.)
([7]*8*) Total Cost Incurred
B. Electric, R, D & D Performed Externally:
(1) Research Support to the electrical Research Council or the Electric Power Research Institute

Line No.	Classification(a)	Description (b)
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Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

DISTRIBUTION OF SALARIES AND WAGES

Report below the distribution of total salaries and wages for the year. Segregate amounts originally charged to clearing accounts to Utility Departments, Construction, Plant Removals, and Other Accounts, and enter such amounts in the appropriate lines and columns provided. In determining this segregation of salaries and wages originally charged to clearing accounts, a method of approximation giving substantially correct results may be used.

Line No.	Classification (a)	Direct Payroll Distribution (b)	Allocation of Payroll charged forClearing Accounts (c)	Total (d)
1	Electric			
2	Operation			
3	Production			
4	Transmission			
5	Regional Market			
5.1	*Energy Storage*			
6	Distribution			
7	Customer Accounts			
8	Customer Service and Informational			
9	Sales			
10	Administrative and General			
11	TOTAL Operation (Enter Total of lines 3 thru 10)			
12	Maintenance			
13	Production			
14	Transmission			
15	Regional Market			
15.1	*Energy Storage*			
16	Distribution			
17	Administrative and General			
18	TOTAL Maintenance (Total of lines 13 thru 17)			
19	Total Operation and Maintenance			
20	Production (Enter Total of lines 3 and 13)			
21	Transmission (Enter Total of lines 4 and 14)			
22	Regional Market (Enter Total of Lines 5 and 15)			
22.1	*Energy Storage (Enter Total of Lines 5.1 and 15.1)*			
23	Distribution (Enter Total of lines 6 and 16)			
24	Customer Accounts (Transcribe from line 7)			
25	Customer Service and Informational (Transcribe from line 8)			
26	Sales (Transcribe from line 9)			
27	Administrative and General (Enter Total of lines 10 and 17)			
28	TOTAL Oper. and Maint. (Total of lines 20 thru 27)			
29	Gas			
30	Operation			
31	Production-Manufactured Gas			
32	Production-Nat. Gas (Including Expl. and Dev.)			
33	Other Gas Supply			
34	Storage, LNG Terminaling and Processing			
35	Transmission			
36	Distribution			
37	Customer Accounts			
38	Customer Service and Informational			
39	Sales			
40	Administrative and General			
41	TOTAL Operation (Enter Total of lines 31 thru 40)			
42	Maintenance			
43	Production-Manufactured Gas			
44	Production-Natural Gas (Including Exploration and Development)			
45	Other Gas Supply			
46	Storage, LNG Terminaling and Processing			
47	Transmission			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

ELECTRIC ENERGY ACCOUNT

Report below the information called for concerning the disposition of electric energy generated, purchased, exchanged and wheeled during the year.

Line No.	Item (a)	MegaWatt Hours(b)	Line No.	Item (a)	MegaWatt Hours (b)
1	SOURCES OF ENERGY		21	DISPOSITION OF ENERGY	
2	Generation (Excluding Station Use):		22	Sales to Ultimate Consumers (Including Interdepartmental Sales)	
3	Steam				
4	Nuclear		23	Requirements Sales for Resale (See instruction 4, page 311.)	
5	Hydro-Conventional				
6	Hydro-Pumped Storage		24	Non-Requirements Sales for Resale (See instruction 4, page 311.)	
6.1	*Solar*				
6.2	*Wind*				
6.3	*Other Non-hydro Renewable*				
7	Other				
8	Less Energy for Pumping		25	Energy Furnished Without Charge	
9	Net Generation (Enter Total of lines 3 through 8)		26	Energy Used by the Company (Electric Dept Only, Excluding Station Use)	
10	Purchases (other than for Energy Storage)		27	Total Energy Losses	
10.1	Purchases for Energy Storge		27.1	Total Energy Stored	
11	Power Exchanges:		28	TOTAL (Enter Total of Lines 22 Through 27.1) (MUST EQUAL LINE 20)	
12	Received				
13	Delivered				
14	Net Exchanges (Line 12 minus line 13)				
15	Transmission For Other (Wheeling)				
16	Received				
17	Delivered				
18	Net Transmission for Other (Line 16 minus line 17)				
19	Transmission By Others Losses				
20	TOTAL (Enter Total of lines 9, 10, 10.1, 14, 18 and 19)				

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year/Period of Report End of _____

[STEAM-]ELECTRIC GENERATING PLANT STATISTICS (Large Plants)

1. Report data for plant in Service only. 2. Large plants are steam plants with installed capacity (name plate rating) of 25,000 Kw or more. Report in this page gas-turbine [and]internal combustion, *hydro, and non-hydro renewable* plants of 10,000 Kw or more, and nuclear plants. 3. Indicate by a footnote any plant leased or operated as a joint facility. 4. If net peak demand for 60 minutes is not available, give data which is available, specifying period. 5. If any employees attend more than one plant, report on line 11 the approximate average number of employees assignable to each plant. 6. If gas is used and purchased on a therm basis report the Btu content or the gas and the quantity of fuel burned converted to Mct. 7. Quantities of fuel burned (Line 38) and average costper unit of fuel burned (Line 41) must be consistent with charges to expense accounts 501 and 547 (Line 42) as show on Line 20. 8. If more than one fuel is burned in a plant furnish only the composite heat rate for all fuels burned.

Line No.	Item (a)	Plant Name: (b)	Plant Name: (c)
1	Kind of Plant (Int[ernal] Comb, Gas Turb. Nuclear, *Solar, Wind,etc)*		
2	Type of Constr (Conventional, Outdoor, Boiler, etc)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total Installed Cap (Max Gen Name Plate Ratings-MW)		
6	Net Peak Demand on Plant - MW (60 minutes)		
7	Plant Hours Connected to Load		
8	Net Continuous Plant Capability (Megawatts)		
9	When Not Limited by Condenser Water		
10	When Limited by Condenser Water		
11	Average Number of Employees		
12	Net Generation, Exclusive of Plant Use - KWh		
13	Cost of Plant: Land and Land Rights		
14	Structures and Improvements		
14.1	*Reservoir, Dams, and Waterways*		
15	Equipment Costs		
15.1	*Roads, Railroads, and Bridges*		
15.2	*Collector System*		
15.3	*Inverters*		
16	Asset Retirement Costs		
17	Total Cost		
18	Cost per KW of Installed Capacity (line 17/5) Including		
19	Production Expenses: Oper, Supv, & Engr		
20	Fuel/*Water for power*		
21	Coolants and Water (Nuclear Plants Only)		
22	Steam/*Hydraulic* Expenses		
23	Steam From Other Sources		
24	Steam Transferred (Cr)		
25	Electric Expenses		
26	Misc [Steam (or Nuclear)] Power Expenses		
27	Rents		
28	Allowances		
28.1	*RECs*		
29	Maintenance Supervision and Engineering		
30	Maintenance of Structures		
31	Maintenance of Boiler (or reactor) Plant		
32	Maintenance of Electric Plant		
32.1	*Maintenance of Hydraulic Plant*		
32.2	*Maintenance of Collector System*		
32.3	*Maintenance of Inverters*		
33	Maintenance of Misc [Steam (or Nuclear)] Plant		
34	Total Production Expenses		
35	Expenses per Net KWh		
36	Fuel: Kind (Coal, Gas, Oil, or Nuclear)		
37	Unit (Coal-tons/Oil-barrel/Gas-mcf/Nuclear-indicate)		
38	Quantity (Units) of Fuel Burned		
39	Avg Heat Cont - Fuel Burned (btu/indicate if nuclear)		
40	Avg Cost of Fuel/unit, as Delvd f.o.b. during year		
41	Average Cost of Fuel per Unit Burned		
42	Average Cost of Fuel Burned per Million BTU		
43	Average Cost of Fuel Burned per KWh Net Gen		
44	Average BTU per KWh Net Generation		

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of Report End of _____

[STEAM-]*ELECTRIC* GENERATING PLANT STATISTICS (Large Plants) *(Continued)*

9. Items under Cost of Plant are based on U. S. of A. Accounts. Production expenses do not include Purchased Power, System Control and Load Dispatching, and Other Expenses Classified as Other Power Supply Expenses. 10. For IC and GT plants, report Operating Expenses, Account Nos. 547 and 549 on Line 25 "Electric Expenses," and Maintenance Account Nos. 553 and 554 on Line 32, "Maintenance of Electric Plant." Indicate plants designed for peak load service. Designate automatically operated plants. 11. For a plant equipped with combinations of fossil fuel steam, nuclear steam, hydro, internal combustion or gas-turbine equipment, report each as a separate plant. However, if a gas-turbine unit functions in a combined cycle operation with a conventional steam unit, include the gas-turbine with the steam plant. 12. If a nuclear power generating plant, briefly explain by footnote (a) accounting method for cost of power generated including any excess costs attributed to research and development; (b) types of cost units used for the various components of fuel cost; and (c) any other informative data concerning plant type fuel used, fuel enrichment type and quantity for the report period and other physical and operating characteristics of plant.

Plant Name: (d)	Plant Name: (e)	Plant Name: (f)	Line No.
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			28.1
			29
			30
			31
			32
			32.1
			32.2
			32.3
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[Delete Pages 406–407]

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

GENERATING PLANT STATISTICS (Small Plants)

1. Small generating plants are steam plants of, less than 25,000 Kw; internal combustion and gas turbine-plants, conventional hydro plants, [~~and~~] pumped storage plants, *and non-hydro renewable plants* of less than 10,000 Kw installed capacity (name plate rating). 2. Designate any plant leased from others, operated under a license fromthe Federal Energy Regulatory Commission, or operated as a joint facility, and give a concise statement of the facts in a footnote. If licensed project, give project number in footnote.

Line No.	Name of Plant(a)	Year Orig. Const. (b)	Installed Capacity Name Plate Rating (In MW) (c)	Net Peak Demand MW (60 min.)(d)	Net Generation Excluding Plant Use (e)	Cost of Plant(f)
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Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report(Mo, Da, Yr)	Year/Period of ReportEnd of _____

GENERATING PLANT STATISTICS (Small Plants) (Continued)

3. List plants appropriately under subheadings for steam, hydro, nuclear, *non-hydro renewable*, internal combustion and gas turbine plants. For nuclear, see instruction 11, Page 403. 4. If net peak demand for 60 minutes is not available, give the which is available, specifying period. 5. If any plant is equipped with combinations of steam, hydro internal combustion or gas turbine equipment, report each as a separate plant. However, if the exhaust heat from the gasturbine is utilized in a steam turbine regenerative feed water cycle, or for preheated combustion air in a boiler, report as one plant.

Plant Cost (Incl Asset Retire. Costs) Per MW (g)	OperationExc'l. Fuel (h)	Production Expenses		Kind of Fuel(k)	Fuel Costs (in cents (per Million Btu) (l)	Line No.
		Fuel (i)	Maintenance (j)			
						1
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of

ENERGY STORAGE OPERATIONS (Large Plants)

1. Large Plants are plants of 10,000 KW or more.
2. In columns (a) *and* (b) [and (c)] report the name of the energy storage project[, functional classification (Production, Transmission, Distribution)], and location.
3. In column ([d] *c*), report Megawatt hours (MWH) purchased, generated, or received in exchange transactions for storage.
4. In columns [(e)] *(d), (e) and (f)*[(f) and (g)] report MWHs delivered to the grid to support production, transmission and distribution. The amount reported in column [(d)] *(c)* should include MWHs delivered/provided to a generator's own load requirements or used for the provision of ancillary services.
5. In columns [(h), (i), and (j)] *(g), (h), and (i),* report MWHs lost during conversion, storage and discharge of energy.
6. In column [(k)] *(j)* report the MWHs sold.
7. In column [(l)]*(k),* report revenues from energy storage operations. In a footnote, disclose the revenue accounts and revenue amounts related to the income generating activity.
8. In column [(m)] *(l),* report the cost of power purchased for storage operations and reported in Account 555.1, Power Purchased for Storage Operations. If power was purchased from an affiliated seller specify how the cost of the power was determined. In columns [(n) and (o)] *(m) and (n),* report fuel costs for storage operations associated with self-generated power included in Account 501 and other costs associated with self-generated power.
9. In column[s (q), (r) and (s)] *(p)* report the total project plant costs including but not exclusive of land and land rights, structures and improvements, energy storage equipment, turbines, compressors, generators, switching and conversion equipment, lines and equipment whose primary purpose is to integrate or tie energy storage assets into the power grid, and any other costs associated with the energy storage project included in the property accounts listed.

Line No.	Name of the Energy Storage Project (a)	[Functional Classification (b)]	Location of the Project ([c]*b*)	MWHs ([d]*c*)
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34				
35	TOTAL			

Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Large Plants) (Continued)

Line No.	MWHs delivered to the grid to support			MWHs Lost During Conversion, Storage and Discharge of Energy			MWHs Sold ([k]*j*)	Revenues from Energy Storage Operations ([l]*k*)
	Production ([e]*d*)	Transmission ([f]*e*)	Distribution ([g]*f*)	Production ([h]*g*)	Transmission ([i]*h*)	Distribution ([j]*i*)		
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Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Large Plants) (Continued)

Line No.	Power Purchased for Storage Operations (555.1) (Dollars) ([m]*l*)	Fuel Costs from associated fuel accounts for Storage Operations Associated with Self-Generated Power (Dollars) ([n]*m*)	Other Costs Associated with Self-Generated Power (Dollars) ([o]*n*)	Project Costs included in ([p]*o*)	[Production (Dollars) (q)] *Total Project Plant Costs (p)*	[Transmission (Dollars) (r)]	[Distribution (Dollars) (s)]
1				Account 101		Delete col	Delete col
2				Account 103			
3				Account 106			
4				Account 107			
5				Other			
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30				Total			

Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Small Plants)

1. Small Plants are plants less than 10,000 KW.
2. In columns (a)[,] *and* (b) [and (c)] report the name of the energy storage project, [functional classification (Production, Transmission, Distribution)], and location.
3. In column ([d]*c*), report project plant cost including but not exclusive of land and land rights, structures and improvements, energy storage equipment and any other costs associated with the energy storage project.
4. In column ([e]*d*), report operation expenses excluding fuel, ([f]*e*), maintenance expenses, ([g]*f*) fuel costs for storage operations and ([h]g) cost of power purchased for storage operations and reported in Account 555.1, Power Purchased for Storage Operations. If power was purchased from an affiliated seller specify how the cost of the power was determined.
5. If any other expenses, report in column ([i]*h*) and footnote the nature of the item(s).

Line No.	Name of the Energy Storage Project (a)	[Functional Classification (b)]	Location of the Project ([c]*b*)	Project Cost ([d]*c*)
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36	TOTAL			

Name of Respondent	This Report is: (1) □ An Original (2) □ A Resubmission	Date of Report (Mo., Da., Yr.)	Year/Period of Report End of _____

ENERGY STORAGE OPERATIONS (Small Plants)(Continued)

	Plant Operating Expenses				
Line No.	Operations (Excluding Fuel used in Storage Operations) ([e]*d*)	Maintenance ([f]*e*)	Cost of fuel used in storage operations ([g]*f*)	Account No. 555.1, Power Purchased for Storage Operations ([h]*g*)	Other Expenses ([I]*h*)
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INDEX (continued)

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INSTRUCTIONS FOR FILING FERC Form No. 1-F

GENERAL INFORMATION

1. Purpose

FERC Forms 1-F and 3-Q are designed to collect financial and operational information from nonmajor public utilities and licensees subject to the jurisdiction of the Federal Energy Regulatory Commission

II. Who Must Submit

Each Nonmajor Public Utility or Licensee, as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (18 CFR Part 101 (U.S. of A.) must submit FERC Form 1-F (18 C.F.R. § 141.2) Filers required to submit FERC Form 1-F must also submit FERC Form 3-Q (18 C.F.R. § 141.400).

Each Nonmajor public utility or licensee classified as Class C or Class D prior to January 1, 1984, may continue to file only the basic financial statements -Parts III, IV and V.

Note: Nonmajor means having total annual sales of 10,000 megawatt-hours or more in the previous calendar year and not classified as "Major."

Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART III: COMPARATIVE BALANCE SHEET

	Assets and Other Debits *(a)*	Balance at Beginning of Year *(b)*	Balance at End of Year *(c)*
01	Utility plant *(101 - 107, 114, 118)*		
02	Accumulated Provision for Depreciation and Amortization *(110, 119)*		
03	NET UTILITY PLANT *(Enter total of line 01 less 02)*		
04	Utility Plant Adjustments *(116)*		
05	Gas Stored Underground - Noncurrent		
06	Nonutility Property *(121)*		
07	Less Accumulated Provision For Depreciation and Amortization - Credit *(122)*		
08	Noncurrent Portion of Allowances *and RECs*		
09	Other Investments and Special Funds *(124-129)*		
10	Current and Accrued Assets:		
11	Cash and Working Funds *(130)*		
12	Temporary Cash Investments *(136)*		
13	Notes and Accounts Receivable *(141, 142, 143, 145, 146)* *(Report amounts applicable to associated companies in a footnote)*		
14	Accumulated provision for Uncollectible Accounts - Credit *(144)*		
15	Plant Materials and Operating Supplies *(154)*		
16	Allowances *and RECs (158.1, [and]158.2, and 158.3)*		
17	(Less) Noncurrent Portion of Allowances *and RECs*		
18	Gas Stored *(164.1, 164.2)*		
19	Prepayments *(165)*		
20	Miscellaneous Current and Accrued Assets *(174)*		
21	Derivative Instrument Assets (175)		
22	Derivative Instruments Assets - Hedges (176)		
23	TOTAL CURRENT AND ACCRUED ASSETS *(Enter total of lines 11 thru 22)*		
24	Deferred Debits:		
25	Unamortized Debt Expense *(181)*		
26	Extraordinary Property Losses *(182.1)*		
27	Unrecovered Plant and Regulatory Study Costs *(182.2)*		
28	Other Regulatory Assets *(182.3)*		
29	Miscellaneous Deferred Debits *(186)*		
30	Deferred Losses from Disposition of Utility Plant *(187)*		
31	Unamortized Loss on Reacquired Debt *(189)*		
32	Accumulated Deferred Income Taxes *(190)*		
33	Unrecovered Purchased Gas Costs *(191)*		
34	TOTAL DEFERRED DEBITS *(Enter total of Lies 25 thru 33)*		
35	TOTAL ASSETS AND OTHER DEBITS *(Enter total lines 03 thru 09, 23 and 34)*		

Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART IV: STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts 412 and 413, Revenues and expenses from Utility Plant Leased to Others, in the Other Utility column (h, I or j, k) in a similar manner to a utility department. Spread the amount(s) over lines 01 to 22 as appropriate. Include these amounts in column (b) and (c) totals.

2. Report amounts for acc ount 414, Other Utility Operating Income, in the same manner as accounts 412 and 413.

3. Provide an explanation in Part VII. Notes to Financial Statements, of such unsettled rate proceedings where a contingency exists that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects; include an explanation for the major factors which affect the rights of the utility to retain such revenues or to recover amounts paid with respect to power or gas purchases.

	Accou nt (a)	Total (d to k)		Electric Utility	
		Current Year *(b)*	Change From Previous Year (c)	Current Year *(d)*	Change From previous Year (e)
01	UTILITY OPERATING INCOME				
02	Operating Revenues *(400)*				
03	Operating Expenses:				
04	Operating Expenses (401)				
05	Maintenance Expense (402)				
06	Depreciation Expense (403)				
07	Depreciation Expense for Asset Retirement Costs (403.1)				
08	Amortization Expense (Specify by account)				
09					
10	Regulatory Debits (407.3)				
11	(Less) Regulatory Credits (407.4)				
12	Taxes Other Than Income Taxes (408.1)				
13	Federal Income Taxes (409.1)				
14	Other Income Taxes (409. 1)				
15	Provision For Deferred Income Taxes (410.1)				
16	Provision For Deferred Income Taxes - Credit (411.1)				
17	Investment Tax Credit Adjustments - Net (411.4)				
18	Gains From Disposition of Utility Plant (411.6)				
19	Losses From Disposition of Utility Plant (411.7)				
20	Gains From Disposition of Allowances (411.8)				
21	Losses From Disposition of Allowances (411.9)				
22	Accretion Expense (411.10)				
22.1	*Gains From Disposition of RECs (411.11)*				
22.2	*Losses From Disposition of RECs (411.12)*				
23	TOTAL UTILITY OPERATING EXPENSES *(Enter total of lines 04 thru 22.2)*				
24	Net Utility Operating Income *(Enter total of* line 02 less 23)				

Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART IX: ALLOWANCES *AND RECS* (Accounts 158.1, [and]158.2, *158.3, and 158.4*)

1. Report below the particulars (details) called for concerning allowances *(list by the type of allowances, i.e. SO2, NOx, etc.) and RECs.*
2. Report all acquisitions of allowances *and RECs* at cost.
3. Report allowances *and RECs* in accordance with a weighted average cost allocation method and other accounting as prescribed by General Instruction No. 21 in the Uniform System of Accounts.
4. Report the allowances *and RECs* transactions by the period they are first eligible for use: the current year's allowances *and RECs* in columns (b)-(c), allowances *and RECs* for the three succeeding years in columns (d)-(I), starting with the following year, and allowances *and RECs* for the remaining succeeding years in columns (j)-(k).
5. Report on line 4 the *authoritative agency* [Environmental Protection Agency (EPA)] issued allowances. Report withheld portions on lines 36-40.

Line No	Allowance Inventory *and RECs* (Accounts 158.1, 158.3, *and 158.4*) (a)	Current Year		20____	
		No (b)	Amt. (c)	No. (d)	Amt. (e)
01	Balance--Beginning of Year				
02 03 04	Acquired During Year: Issued (Less Withheld Allow.)				
05	Returned by [EPA] *authoritative agency*				
06 07 08	Purchases/Transfers:				
09					
10					
11					
12					
13					
14					
15	Total				
16 17 18	Relinquished During Year: Charges to Account 509.*1, 509.2, and 509.3*				
19	Other.				
20					
21 22	Cost of Sales Transfers:				
23					
24					
25					
26					
27					
28	Total				
29	Balance-End of Year				
30 31 32	Sales: Net Sales Proceeds (Assoc. Co.)				
33	Net Sales Proceeds (Other)				
34	Gains				
35	Losses				
	Allowances Withheld Account 158.2)				
36	Balance-Beginning of Year				
37	Add: Withheld by [EPA] *authoritative agency*				
38	Deduct: Returned by [EPA] *authoritative agency*				
39	Cost of Sales				
40	Balance-End of Year				
41 42 43	Sales: Net Sales Proceeds (Assoc. Co.)				
44	Net Sale Proceeds (Other)				
45	Gains				
46	Losses				

Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART IX: ALLOWANCES AND RECS (Accounts 158.1 [and]158.2, 158.3, and 158.4)
(Continued)

6. Report on line 5 allowances returned by an *authoritative agency* [the EPA]. Report on line 39 the *authoritative agency* [EPA]'s sales of the withheld allowances. Report on lines 43-46 the net sales proceeds and gains/losses resulting from the *authoritative agency*[EPA]'s sale or auction of the withheld allowances.
7. Report on lines 8-14 the names of vendors/transferors of allowances *and RECs* acquired and identify associated companies (See "associated company" under "Definitions" in the Uniform System of Accounts).
8. Report lines 22-27 the names of purchasers/transferees of allowances *and RECs* disposed of and identify associated companies.
9. Report the net costs and benefit s of hedging transactions on a separate line under purchases/transfers and sales/transfers.
10. Report on lines 32-35 & 43-46 the net sales proceeds and gains or losses from allowance *and RECs* sales.

20____		19____		Future Years		Totals		
No. (f)	Amt. (g)	No. (h)	Amt. (I)	No. (j)	Amt. (k)	No. (l)	Amt. (m)	Line No.
								01
								02 03 04
								05
								06 07 08
								09
								10
								11
								12
								13
								14
								15
								16 17 18
								19
								20
								21 22
								23
								24
								25
								26
								27
								28
								29
								30 31 32
								33
								34
								35
								36
								37
								38
								39
								40
								41 42 43
								44
								45
								46

PART XVII: ELECTRIC OPERATION AND MAINTENANCE EXPENSES		
LINE NO	ITEM (a)	OPERATION & MAINTENANCE EXPENSES (b)
		$
1	Production expenses:	
2	Steam generation	
3	Hydraulic generation	
4	Other generation	
5	Purchased power (including power exchanges)	
6	Other power supply expenses	
6.1	*Solar generation*	
6.2	*Wind generation*	
6.3	*Other non-hydro renewable generation*	
7	Total production expenses	$
8	Transmission expenses	
8.1	*Energy storage expenses*	
9	Distribution expenses	
10	Customer accounts expenses	
11	Customer service and informational expenses	
12	Sales expenses	
13	Administrative and general expenses	
14	Total electric operation and maintenance expenses	$

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Name of Respondent	This Report is: (1) G An Original (2) G A Resubmission	Date of Report *(Mo, Da, Yr)*	Year of Report Dec 31, _____

PART XX: UTILITY PLANT DATA

Line No.	Item (a)	Balance at Beginning of Year (b)	Additions During Year (c)	Retirements During Year (d)	Transfers and Adjustments (e)	Balance at End of Year (f)
1	Electric utility plant					
2	Electric plant in service:					
3	Intangible plant					
4	Production Plant:					
5	Steam production					
6	Hydraulic production					
6.1	*Solar production*					
6.2	*Wind production*					
6.3	*Other non-hydro renew*					
7	Other production					
8	Transmission plant					
9	Distribution plant					
10	*Energy storage plant*					
11	General plant					
12	Total electric plant in Service[s]					
13	Property Under Capital Leases					
14	Electric plant purchased . . .					
15	Electric plant sold					
16	Electric plant in process of reclassification					
17	Electric plant leased to others					
18	Electric plant held for future use					
19	Construction work in progress -Electric					
20	Electric plant acquisition adjustments					
21	Other electric plant adjustments (explain)					
22	. . . . .					
23	Total electric plant . . .					
24	Plant of other utility departments (specify)					
25						
26						
27						
28						
29						
30						
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
41						

42						
43						
44						
45						
46						
47	Total Utility Plant....					

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Line No.	Account Number (a)	Title of Account (b)	Associate Company Direct Cost (c)	Associate Company Indirect Cost (d)	Associate Company Total Cost (e)	Nonassociate Company Direct Cost (f)	Nonassociate Company Indirect Cost (g)	Nonassociate Company Total Cost (h)
35	517-525	Total Nuclear Power Generation Operation Expenses						
36	528-532	Total Nuclear Power Generation Maintenance Expenses						
37	535-540.1	Total Hydraulic Power Generation Operation Expenses						
38	541-545.1	Total Hydraulic Power Generation Maintenance Expenses						
39	546-550.1	Total Other Power Generation Operation Expenses						
40	551-554.1	Total Other Power Generation Maintenance Expenses						
41	555-557	Total Other Power Supply Operation Expenses						
41.1	*558.1-558.5*	*Total Solar Power Generation Operation Expenses*						
41.2	*558.6-558.17*	*Total Solar Power Generation Maintenance Expenses*						
41.3	*558.20 - 558.24*	*Total Wind Power Generation Operation Expenses*						
41.4	*558.25 - 558.37*	*Total Wind Power Generation Maintenance Expenses*						
41.5	*559.1-559.5*	*Total Other Non-hydro Renewable Power Generation Operation Expenses*						
41.6	*559.6-559.16*	*Total Other Non-hydro Renewable Power Generation Maintenance Expenses*						
42	560	Operation Supervision and Engineering						
43	561.1	Load Dispatch-Reliability						
44	561.2	Load Dispatch-Monitor and Operate Transmission System						
45	561.3	Load Dispatch-Transmission Service and Scheduling						
46	561.4	Scheduling, System Control and Dispatch Services						
47	561.5	Reliability Planning and Standards Development						
48	561.6	Transmission Service Studies						
49	561.7	Generation Interconnection Studies						
50	561.8	Reliability Planning and Standards Development Services						
51	562	Station Expenses (Major Only)						
52	563	Overhead Line Expenses (Major Only)						
53	564	Underground Line Expenses (Major Only)						
54	565	Transmission of Electricity by Others (Major Only)						
55	566	Miscellaneous Transmission Expenses (Major Only)						
56	567	Rents						

57	567.1	Operation Supplies and Expenses (Nonmajor Only)						
58		Total Transmission Operation Expenses						
59	568	Maintenance Supervision and Engineering (Major Only)						
60	569	Maintenance of Structures (Major Only)						
61	569.1	Maintenance of Computer Hardware						

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Line No.	Account Number (a)	Title of Account (b)	Associate Company Direct Cost (c)	Associate Company Indirect Cost (d)	Associate Company Total Cost (e)	Nonassociate Company Direct Cost (f)	Nonassociate Company Indirect Cost (g)	Nonassociate Company Total Cost (h)
69	574	Maintenance of Transmission Plant (Nonmajor Only)						
70		Total Transmission Maintenance Expenses						
71	575.1-575.8	Total Regional Market Operation Expenses						
72	576.1-576.5	Total Regional Market Maintenance Expenses						
72.1	*577.1-577.5*	*Total Energy Storage Operation Expenses*						
72.2	*578.1-578.11*	*Total Energy Storage Maintenance Expenses*						
73	580-589	Total Distribution Operation Expenses						
74	590-598	Total Distribution Maintenance Expenses						
75		Total Electric Operation and Maintenance Expenses						
76	700-798	Production Expenses (Provide selected accounts in a footnote)						
77	800-813	Total Other Gas Supply Operation Expenses						
78	814-826	Total Underground Storage Operation Expenses						
79	830-837	Total Underground Storage Maintenance Expenses						
80	840-842.3	Total Other Storage Operation Expenses						
81	843.1-843.9	Total Other Storage Maintenance Expenses						
82	844.1-846.2	Total Liquefied Natural Gas Terminaling and Processing Operation Expenses						
83	847.1-847.8	Total Liquefied Natural Gas Terminaling and Processing Maintenance Expenses						
84	850	Operation Supervision and Engineering						
85	851	System Control and Load Dispatching.						
86	852	Communication System Expenses						
87	853	Compressor Station Labor and Expenses						
88	854	Gas for Compressor Station Fuel						
89	855	Other Fuel and Power for Compressor Stations						
90	856	Mains Expenses						
91	857	Measuring and Regulating Station Expenses						
92	858	Transmission and Compression of Gas By Others						
93	859	Other Expenses						
94	860	Rents						
95		Total Gas Transmission Operation Expenses						
96	861	Maintenance Supervision and Engineering						

97	862	Maintenance of Structures and Improvements						
98	863	Maintenance of Mains						
99	864	Maintenance of Compressor Station Equipment						
100	865	Maintenance of Measuring And Regulating Station Equipment						
101	866	Maintenance of Communication Equipment						
102	867	Maintenance of Other Equipment						
103		Total Gas Transmission Maintenance Expenses						
104	870-881	Total Distribution Operation Expenses						

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Line No.	Account Number (a)	Title of Account (b)	Associate Company Direct Cost (c)	Associate Company Indirect Cost (d)	Associate Company Total Cost (e)	Nonassociate Company Direct Cost (f)	Nonassociate Company Indirect Cost (g)	Nonassociate Company Total Cost (h)
105	885-894	Total Distribution Maintenance Expenses						
106		Total Natural Gas Operation and Maintenance Expenses						
107	901	Supervision						
108	902	Meter reading expenses						
109	903	Customer records and collection expenses						
110	904	Uncollectible accounts						
111	905	Miscellaneous customer accounts expenses						
112	906	Total Customer Accounts Operation Expenses						
113	907	Supervision						
114	908	Customer assistance expenses						
115	909	Informational And Instructional Advertising Expenses						
116	910	Miscellaneous Customer Service And Informational Expenses						
117		Total Service and Informational Operation Accounts						
118	911	Supervision						
119	912	Demonstrating and Selling Expenses						
120	913	Advertising Expenses						
121	916	Miscellaneous Sales Expenses						
122		Total Sales Operation Expenses						
123	920	Administrative and General Salaries						
124	921	Office Supplies and Expenses						
125	923	Outside Services Employed						
126	924	Property Insurance						
127	925	Injuries and Damages						
128	926	Employee Pensions and Benefits						
129	928	Regulatory Commission Expenses						
130	930.1	General Advertising Expenses						
131	930.2	Miscellaneous General Expenses						
132	931	Rents						
133		Total Administrative and General Operation Expenses						
134	935	Maintenance of Structures and Equipment						
135		Total Administrative and General Maintenance Expenses						
136		Total Cost of Service						

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Schedule XVI- Analysis of Charges for Service- Associate and Non-Associate Companies (continued)

Line No.	Account Number (a)	Title of Account (b)	Total Charges for Services Direct Cost (i)	Total Charges for Services Indirect Cost (j)	Total Charges for Services Total Cost (k)
35	517-525	Total Nuclear Power Generation Operation Expenses			
36	528-532	Total Nuclear Power Generation Maintenance Expenses			
37	535-540.1	Total Hydraulic Power Generation Operation Expenses			
38	541-545.1	Total Hydraulic Power Generation Maintenance Expenses			
39	546-550.1	Total Other Power Generation Operation Expenses			
40	551-554.1	Total Other Power Generation Maintenance Expenses			
41	555-557	Total Other Power Supply Operation Expenses			
41.1	*558.1-558.5*	*Total Solar Power Generation Operation Expenses*			
41.2	*558.6-558.17*	*Total Solar Power Generation Maintenance Expenses*			
41.3	*558.20-558.24*	*Total Wind Power Generation Operation Expenses*			
41.4	*558.25-558.37*	*Total Wind Power Generation Maintenance Expenses*			
41.5	*559.1-559.5*	*Total Other Non-hydro Renewable Power Generation Operation Expenses*			
41.6	*559.6-559.16*	*Total Other Non-hydro Renewable Power Generation Maintenance Expenses*			
42	560	Operation Supervision and Engineering			
43	561.1	Load Dispatch-Reliability			
44	561.2	Load Dispatch-Monitor and Operate Transmission System			
45	561.3	Load Dispatch-Transmission Service and Scheduling			
46	561.4	Scheduling, System Control and Dispatch Services			
47	561.5	Reliability Planning and Standards Development			
48	561.6	Transmission Service Studies			
49	561.7	Generation Interconnection Studies			
50	561.8	Reliability Planning and Standards Development Services			
51	562	Station Expenses (Major Only)			
52	563	Overhead Line Expenses (Major Only)			
53	564	Underground Line Expenses (Major Only)			
54	565	Transmission of Electricity by Others (Major Only)			
55	566	Miscellaneous Transmission Expenses (Major Only)			

56	567	Rents			
57	567.1	Operation Supplies and Expenses (Nonmajor Only)			
58		Total Transmission Operation Expenses			
59	568	Maintenance Supervision and Engineering (Major Only)			
60	569	Maintenance of Structures (Major Only)			
61	569.1	Maintenance of Computer Hardware			
62	569.2	Maintenance of Computer Software			
63	569.3	Maintenance of Communication Equipment			
64	569.4	Maintenance of Miscellaneous Regional Transmission Plant			
65	570	Maintenance of Station Equipment (Major Only)			
66	571	Maintenance of Overhead Lines (Major Only)			
67	572	Maintenance of Underground Lines (Major Only)			
68	573	Maintenance of Miscellaneous Transmission Plant (Major Only)			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Schedule XVI- Analysis of Charges for Service- Associate and Non-Associate Companies (continued)

Line No.	Account Number (a)	Title of Account (b)	Total Charges for Services Direct Cost (i)	Total Charges for Services Indirect Cost (j)	Total Charges for Services Total Cost (k)
69	574	Maintenance of Transmission Plant (Nonmajor Only)			
70		Total Transmission Maintenance Expenses			
71	575.1-575.8	Total Regional Market Operation Expenses			
72	576.1-576.5	Total Regional Market Maintenance Expenses			
72.1	*577.1-577.5*	*Total Energy Storage Operation Expenses*			
72.2	*578.1-578.11*	*Total Energy Storage Maintenance Expenses*			
73	580-589	Total Distribution Operation Expenses			
74	590-598	Total Distribution Maintenance Expenses			
75		Total Electric Operation and Maintenance Expenses			
76	700-798	Production Expenses (Provide selected accounts in a footnote)			
77	800-813	Total Other Gas Supply Operation Expenses			
78	814-826	Total Underground Storage Operation Expenses			
79	830-837	Total Underground Storage Maintenance Expenses			
80	840-842.3	Total Other Storage Operation Expenses			
81	843.1-843.9	Total Other Storage Maintenance Expenses			
82	844.1-846.2	Total Liquefied Natural Gas Terminaling and Processing Operation Expenses			
83	847.1-847.8	Total Liquefied Natural Gas Terminaling and Processing Maintenance Expenses			
84	850	Operation Supervision and Engineering			
85	851	System Control and Load Dispatching.			
86	852	Communication System Expenses			
87	853	Compressor Station Labor and Expenses			
88	854	Gas for Compressor Station Fuel			
89	855	Other Fuel and Power for Compressor Stations			
90	856	Mains Expenses			
91	857	Measuring and Regulating Station Expenses			
92	858	Transmission and Compression of Gas By Others			
93	859	Other Expenses			
94	860	Rents			
95		Total Gas Transmission Operation Expenses			

96	861	Maintenance Supervision and Engineering			
97	862	Maintenance of Structures and Improvements			
98	863	Maintenance of Mains			
99	864	Maintenance of Compressor Station Equipment			
100	865	Maintenance of Measuring And Regulating Station Equipment			
101	866	Maintenance of Communication Equipment			
102	867	Maintenance of Other Equipment			
103		Total Gas Transmission Maintenance Expenses			
104	870-881	Total Distribution Operation Expenses			

Name of Respondent	This Report Is: (1) An Original (2) A Resubmission	Resubmission Date(Mo, Da, Yr)	Year/Period of Report Dec 31,

Schedule XVI- Analysis of Charges for Service- Associate and Non-Associate Companies (continued)

Line No.	Account Number (a)	Title of Account (b)	Total Charges for Services Direct Cost (i)	Total Charges for Services Indirect Cost (j)	Total Charges for Services Total Cost (k)
105	885-894	Total Distribution Maintenance Expenses			
106		Total Natural Gas Operation and Maintenance Expenses			
107	901	Supervision			
108	902	Meter reading expenses			
109	903	Customer records and collection expenses			
110	904	Uncollectible accounts			
111	905	Miscellaneous customer accounts expenses			
112	906	Total Customer Accounts Operation Expenses			
113	907	Supervision			
114	908	Customer assistance expenses			
115	909	Informational And Instructional Advertising Expenses			
116	910	Miscellaneous Customer Service And Informational Expenses			
117		Total Service and Informational Operation Accounts			
118	911	Supervision			
119	912	Demonstrating and Selling Expenses			
120	913	Advertising Expenses			
121	916	Miscellaneous Sales Expenses			
122		Total Sales Operation Expenses			
123	920	Administrative and General Salaries			
124	921	Office Supplies and Expenses			
125	923	Outside Services Employed			
126	924	Property Insurance			
127	925	Injuries and Damages			
128	926	Employee Pensions and Benefits			
129	928	Regulatory Commission Expenses			
130	930.1	General Advertising Expenses			
131	930.2	Miscellaneous General Expenses			
132	931	Rents			
133		Total Administrative and General Operation Expenses			
134	935	Maintenance of Structures and Equipment			
135		Total Administrative and General Maintenance Expenses			
136		Total Cost of Service			

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[FR Doc. 2022–16610 Filed 9–30–22; 8:45 am]

BILLING CODE 6717–01–C

FEDERAL REGISTER

Vol. 87 Monday,
No. 190 October 3, 2022

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635
Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries Management; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 220919–0193]

RIN 0648–BI08

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries Management

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

ACTION: Final rule.

SUMMARY: This final action will modify Atlantic highly migratory species (HMS) bluefin tuna (bluefin) management measures applicable to the incidental and directed bluefin fisheries through an amendment to the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP). Specifically, this rule will change several aspects of the Individual Bluefin Quota (IBQ) Program, including the distribution of IBQ shares to active vessels only, implementation of a cap on IBQ shares that may be held by an entity, and implementation of a cost recovery program. This rule will also modify bluefin fisheries by discontinuing the Purse Seine category and reallocating that bluefin quota to all of the other bluefin quota categories; capping Harpoon category daily bluefin landings; modifying the recreational trophy bluefin areas and subquotas; modifying regulations regarding electronic monitoring of the pelagic longline fishery as well as green-stick use; and modifying the regulation regarding permit category changes.

DATES: This final rule is effective on January 1, 2023.

ADDRESSES: Copies of the supporting documents, including the final environmental impact statement (FEIS), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), the Three-Year Review of the IBQ Program, and the 2006 Consolidated HMS FMP and amendments are available from the HMS website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the HMS Management Division and to *www.reginfo.gov/public/do/PRAMain.* Find these particular information collections by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Tom Warren—(978) 281–9260 (*Thomas.Warren@noaa.gov*); Larry Redd—(301) 427–8503 (*Larry.Redd@noaa.gov*); Ian Miller—(301) 427–8503 (*Ian.Miller@noaa.gov*); or Karyl Brewster-Geisz—(301) 427–8503 (*Karyl.Brewster-Geisz@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefin fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. This final rule implements changes to the bluefin fishery under Amendment 13 to the 2006 Consolidated HMS FMP (Amendment 13). Additional information regarding bluefin management can be found in the Final Amendment 13 (which includes an FEIS, RIR and FRFA); Draft Amendment 13 (which includes a draft environmental impact statement (DEIS), draft RIR, and Initial Regulatory Flexibility Analysis (IRFA)) and proposed rule (86 FR 27686; May 21, 2021); the 2006 Consolidated HMS FMP and its amendments; the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at: *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species.*

In 2015, NMFS published a final rule implementing Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510; December 2, 2014). That final rule implemented substantial changes to the regulation of bluefin fisheries including the creation of the IBQ Program. In 2019, NMFS completed its Three-Year Review of the IBQ Program (referred to hereafter as the ''Three-Year Review''). The Three-Year Review found that the IBQ Program was successful in limiting bluefin incidental catch in the pelagic longline fishery, and providing flexibility in the IBQ system; however, it is likely that the IBQ Program also contributed to reduced revenue and fishing effort during 2015 to 2017. Further, the Three-Year Review noted that a different method of IBQ share distribution may warrant consideration. After releasing the Three-Year Review and considering other changes throughout the fishery, NMFS conducted scoping to consider addition changes to the bluefin fishery (84 FR 23020, May 21, 2019).

On May 21, 2021, NMFS published a proposed rule (86 FR 27686) and released Draft Amendment 13, which included a Draft Environmental Impact Statement (DEIS), and the Environmental Protection Agency (EPA) published a Notice of Availability of the DEIS (86 FR 27593). The proposed rule and Draft Amendment 13 contain background information on the potential changes to the fishery that are not repeated here. The original comment period on the proposed rule ended on July 20, 2021. Based on public requests, the comment period was extended until September 20, 2021 (86 FR 38262, July 20, 2021). NMFS held three public hearing webinars between June 8 and July 14, 2021 (86 FR 3087, June 7, 2021), and briefed the Gulf of Mexico, Mid-Atlantic, and New England Fishery Management Councils. NMFS held two discussions on Amendment 13 with the HMS Advisory Panel (May 25, 2021 and September 9, 2021). During the comment period, NMFS received 47 written comments from individual members of the public and a variety of entities including industry associations, environmental organizations, and states. A summary of these comments and NMFS' responses are found below.

Taking into consideration public comment, NMFS prepared Final Amendment 13, which included an FEIS, RIR, and FRFA, and which analyzed the anticipated environmental, social, and economic impacts of a range of alternatives. NMFS considered 29 alternatives and is implementing 21 measures in this final rule. A summary of the preferred alternatives is provided below. The full list of alternatives and their analyses are provided in Final Amendment 13 and are not repeated here.

Overall, the objectives of this final rule and Amendment 13 are to: (1) Evaluate and optimize the allocation of U.S. bluefin quota among bluefin quota categories considering historical allocations and use, and recent fishery characteristics and trends, to provide U.S. fishing vessels with a reasonable opportunity to harvest the U.S. quota established by ICCAT, facilitate the ability for active HMS directed permit categories to harvest their full bluefin quota allocations, and facilitate directed fishing for species other than bluefin in the pelagic longline fishery while accounting for incidental bluefin catch; (2) Maintain flexibility of the regulations to account for the highly variable nature of the bluefin fisheries, and maintain fairness among permit/

quota categories; (3) Continue to manage the Atlantic pelagic longline fishery consistent with the IBQ Program objectives in Amendment 7 and consistent with the conservation and management objectives of the 2006 Consolidated HMS FMP and its amendments, and consistent with all applicable laws; and (4) Modify the management of the pelagic longline fishery in response to the Three-Year Review and in response to important relevant prevailing trends (*e.g.,* declining fishing effort and revenue for target species). This final rule implements the preferred alternatives identified in the Final Amendment 13/FEIS.

In developing the final measures, NMFS considered these objectives, public comments on the proposed rule and Draft Amendment 13 (which included a DEIS, draft RIR, and IRFA); input from the HMS Advisory Panel; and the FEIS, RIR and FRFA analyses. In response to public comment on the proposed rule and Draft Amendment 13/DEIS, NMFS made numerous changes from the proposed rule in the final rule. The first change implements a dynamic determination of IBQ shares based upon each individual permitted vessel's fishing effort using the number of pelagic longline sets, relative to the total amount of pelagic longline sets fishery-wide, as the measure of fishing effort. A second change is the authorization of a potential, future set-aside of a *de minimis* amount of bluefin quota for new entrants as part of the IBQ Program. A third change includes a low ''Gulf of Mexico'' (GOM) designated IBQ share threshold of five percent. A fourth change is the requirement for vessel owners to pay for the cost of boom installation because funds are not available from the Agency. A fifth change is the reallocation of the Purse Seine category quota proportionally to all of the other bluefin categories, including Reserve, Longline, and Trap. A sixth change is the adoption of a slightly different Harpoon category daily retention limit measure than was in the proposed rule. A seventh change is a regulatory clarification: adding to the prohibition section an existing requirement that vessels with pelagic longline gear on board are required to retain and land all dead large medium or giant bluefin. All other proposed measures, as well as the proposed abbreviations for curved fork length, Northeast Distant Area, bluefin tuna, electronic monitoring and individual bluefin tuna program, definitions for ''vessel monitoring plan'' and ''curved fork length'', and elimination of the minimum 3-day period between filing a BFT inseason action with the Office of Federal Register and the effective date of the action (50 CFR 635.23(a)(4), (b)(3)) did not change between the proposed and final rules. Measures that are different from the proposed rule are described in detail in the section titled, ''Changes from the Proposed Rule.''

NMFS has determined that Amendment 13 and its final rule will not have new or different effects on Endangered Species Act (ESA)-listed endangered or threatened species or designated critical habitat beyond those analyzed in the May 2020 Biological Opinion on the Operation of the Atlantic Highly Migratory Species (HMS) Fisheries Excluding Pelagic Longline and the May 2020 Biological Opinion on the Atlantic HMS Pelagic Longline Fishery. However, in July 2022, NMFSNOAA Fisheries, requested reinitiation of consultation on the effects of the Atlantic HMS pelagic longline fishery due to new information on mortality of giant manta ray that exceeded the mortality anticipated in the 2020 Biological Opinion on that fishery. The anticipated consultation will consider the effects of the 2006 Consolidated HMS FMP and relevant amendments, including Amendment 13, and relevant implementing regulations. Pending completion of consultation, the fishery continues to operate consistent with the Reasonable and Prudent Measures (RPMs) and Terms and Conditions specified in the May 2020 Biological Opinion, and NMFSNOAA Fisheries will continue to monitor any take of giant manta rays in the fishery. Actions within the scope of the May 2020 Biological Opinion and consistent with the RPMs and Terms and Conditions are not likely to jeopardize the species during consultation, consistent with section 7(a)(2) of the ESA. Giant manta ray interactions with the Atlantic HMS pelagic longline fishery are low, with total takes estimated to be well below the levels of takes authorized under the incidental take statement in the 2020 Biological Opinion. In addition, the species is not thought to be in peril in the Atlantic, the level of potential mortalities is considered to be low, and extrapolated mortalities may overstate the fishery's effects on the species. In accordance with section 7(d) of the ESA, NMFS has determined that, during consultation, pelagic longline fishery activity consistent with the existing May 2020 Biological Opinion will not result in an irretrievable or irreversible commitment of resources which would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures and that continued compliance with the RPMs and Terms and Conditions in that biological opinion will avoid jeopardy to ESA-listed species, consistent with section 7(a)(2) of the ESA.

Final Management Measures

Below is a short description of the final management measures. More information can be found in Final Amendment 13/FEIS.

Pelagic Longline Fishery

Annual IBQ Share Determination

NMFS is changing from a static to a dynamic system for determining IBQ shares (expressed as percentages). Annually, using best available data from a recent 36-month period (three years), NMFS will determine IBQ shareholders' shares based upon each permitted, eligible vessel's number of pelagic longline sets legally made, relative to the total amount of pelagic longline sets legally made by all IBQ shareholders' vessels over that same period. For an IBQ shareholder's vessel to be considered ''eligible,'' it must have been issued a valid Atlantic Tunas Longline category limited access permit (LAP) when sets occurred during the relevant 36-month period. Based on public comment, this measure was modified from the proposed rule, which would have used landings of designated species and four percentile (tiers) for establishing IBQ shares. As described in § 635.15(c), best available data as determined by NMFS may include vessel monitoring system (VMS) reports, and may also include logbook, electronic monitoring (EM), or permit data. NMFS will only count one pelagic longline set per day, in order to discourage deployment of short sets for the purpose of influencing IBQ share determinations. Vessels may deploy as many sets per day as they wish, but only one set per day would count toward the IBQ share determination. After determining IBQ shares, NMFS will distribute IBQ allocations, but only to IBQ shareholders that have vessels with current, valid permits at the time of the annual distribution of IBQ allocation.

Under this measure, during the last quarter of each year, NMFS will notify Atlantic Tunas Longline permit holders via electronic methods (such as email) and/or letter to inform them of their IBQ shares, their IBQ allocations, and the regional designations of those shares and allocations for the subsequent fishing year; whether adjustments were made to GOM-designated shares due to the GOM shares cap; and whether the

low GOM-designated share threshold has been triggered. This notification will represent the initial administrative determination (IAD) of the permit holder's IBQ share and allocation. An Atlantic Tunas Longline category permit holder may submit a written petition of appeal of the following aspects of the IAD: (1) eligibility for quota shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit; (2) IBQ share percentage; and (3) IBQ allocations. A permit holder may also appeal NMFS' determination of the number of pelagic longline sets legally made by its permitted vessel. However, an adjustment of GOM shares (§ 635.15(c)(3)(ii)) or inseason quota adjustment (§ 635.15(e)(3)) is not subject to appeal. Appeals must be filed with the National Appeals Office (NAO) within 45 days after the date the IAD is issued, and will be governed by NAO rules of procedures at 15 CFR part 906.

Appeals based on permit history would be based on NMFS permit records. NMFS will only use the relevant 36 months of data described in § 635.15(c) to determine the numbers of pelagic longline sets made. No other proof of sets or permit history will be considered. Copies of written documents will be acceptable; NMFS may request the originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation. Appeals based on hardship factors will not be considered. Consistent with most limited effort and catch share programs, hardship will not be a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize some bluefin quota from the Reserve category to accommodate permitted vessels that are deemed eligible for shares through the appeals process, to provide a permitted vessel an increased quota share.

As described in Amendment 13, this measure provides separate consideration to participants in the Deepwater Horizon Oceanic Fish Restoration Project (OFRP) as appropriate. The Deepwater Horizon OFRP is a program conducted as a partnership between NMFS, the National Fish and Wildlife Foundation, and pelagic longline fishermen to restore damage caused by the Deepwater Horizon oil spill. The OFRP program began after Amendment 7, and was therefore not a consideration in the determination of IBQ shares in Amendment 7. More information about the Deepwater Horizon OFRP may be found at *https://www.nfwf.org/programs/deepwater-horizon-oceanic-fish-restoration-project.*

Based on public comment, Amendment 13 also adds to the framework provisions of the 2006 Consolidated HMS FMP the authority to set aside a *de minimis* amount of bluefin quota from the Longline category quota prior to calculating the annual IBQ allocations (based on the annual share determinations described above), and the final rule makes a parallel edit to 50 CFR 635.34(b) (framework procedures). NMFS is not implementing a set aside through the final rule, thus at this time, the provision will have no effect on the amount of Longline quota allocated to Longline category vessels. As needed, NMFS would conduct future rulemaking and associated analyses to set the precise amount of set aside, and the requirements, process, and conditions associated with distributing IBQ allocation to new entrants.

Regional Designations of IBQ Shares

In conjunction with the dynamic IBQ share and allocation measures, this final rule also modifies the regional Gulf of Mexico and Atlantic designations, while maintaining a cap on allowable bluefin catch from the Gulf of Mexico. Currently, IBQ shares and resultant allocations are designated as either GOM or ''Atlantic'' (ATL) based on the geographic location of sets used in the determination of those shares and allocations. Existing regulations provide that only GOM IBQ allocation may be used to account for bluefin incidentally caught in the Gulf of Mexico, while either ATL or GOM IBQ allocation may be used to account for bluefin in the Atlantic. Per Amendment 7, 35 percent of the total Longline category quota is designated as GOM, and 65 percent designated as ATL. This final rule continues to cap the amount of quota that can be designated as GOM at 35 percent and retain the accounting rules for regional IBQ allocations, but as explained below, provides for authority to reduce the 35-percent GOM cap, annual adjustment of regional designations, and a low GOM designed shares threshold. Under these regulations, if a vessel does not receive GOM designated IBQ shares and resulting allocation (because the vessel had no pelagic longline sets in the Gulf of Mexico during the relevant 36 month period), but wishes to fish in the Gulf of Mexico, they would need to lease GOM designated IBQ allocation initially. If the vessel fished in the Gulf of Mexico (using leased GOM IBQ allocation) it would subsequently be eligible for GOM designated IBQ shares (and allocation) the following year based on the number of sets fished in the Gulf of Mexico.

The final rule includes a regulatory mechanism for reducing the 35-percent default GOM cap, as needed to achieve conservation and management objectives. A determination to lower the cap would be based upon consideration of the existing determination criteria used in making inseason or annual adjustments to quota, which include a wide range of considerations including consistency with the FMP objectives (§ 635.27(a)(8)). A cap reduction may be for all of a calendar year, or a portion of it, as appropriate. NMFS would notify the public of changes to the 35-percent default cap and publish any modification to the cap in the **Federal Register**.

Annually, NMFS will determine the total amount of IBQ shares and resultant allocations for each region based on the geographic location of sets used in the determination of those shares and allocations. NMFS will use the relevant 36 months of best available data described above under *Annual IBQ Share Determination.* GOM-designated shares thus could be less than the default 35-percent GOM share cap. If NMFS calculates that the amount of GOM designated IBQ shares (based on sets) will be greater than the GOM share cap (*i.e.,* 35 percent (or lower if adjusted)), NMFS will reduce the GOM designated IBQ shares to equal the GOM share cap in effect. The reduction in total GOM share percentage would be achieved through equal proportional reductions among IBQ shareholders with GOM designated IBQ shares across the four share percentages. The ATL shares would be increased in an analogous manner, so that the total share percentages add up to 100 percent. NMFS will notify affected permit holders of any reductions in their IBQ share percentage resulting from this adjustment. This adjustment would not be subject to appeal, because it is not a determination based on the data associated with an individual shareholder, but based upon the need to reduce the total amount of IBQ shares across all shareholders, consistent with the applicable GOM share cap.

Another change since the proposed rule is the addition of a low GOM designated share threshold, in response to a concern that potential, future declines in effort in the Gulf of Mexico could result in a very low percentage of GOM-designated shares in some years and severely limit operation of the fishery. *See* comment 8 summary under Response to Comments below. NMFS

agrees that such a situation could result in poor functioning or disruption of the IBQ Program, result in further declines in fishing effort or participation in the fishery, or prevent utilization of available IBQ allocation. *See* response to comment 8 below. In response, the final rule provides: if the total amount of GOM-designated IBQ shares is 5 percent or less of the total IBQ shares (ATL plus GOM shares), NMFS will file an action with the Office of Federal Register for publication that suspends for that year the requirements to account for bluefin caught in the Gulf of Mexico with GOM IBQ shares and resultant allocations and to use GOM IBQ allocation to satisfy the minimum GOM IBQ allocation requirement. The maximum allowable bluefin catch from the Gulf of Mexico will be the weight of bluefin associated with the cap on GOM designated shares (*i.e.,* the default level of 35 percent, or lower if modified). If this level of catch were reached or projected to be reached, NMFS would prohibit vessels from fishing with pelagic longline gear in the Gulf of Mexico for the remainder of that year. When determining the percentage of IBQ shares, NMFS will use the relevant 36 months of best available data described above under *Annual IBQ Share Determination.* If this threshold is triggered, any vessels fishing in the Gulf of Mexico would still need to account for bluefin catch (landings or dead discards) and have the minimum IBQ allocation of 0.25 mt ww (551 lb ww) before departing on the first fishing trip in a calendar year quarter. However, they may use either GOM or ATL shares and resultant allocations, received through the dynamic allocation process or leasing. NMFS will notify vessel owners if the threshold is triggered when NMFS notifies them of their annual IBQ shares and allocations.

Cap on IBQ Shares Held or Acquired

This final rule caps the percentage of IBQ shares that an entity may hold or acquire at 25 percent of the total IBQ shares and the corresponding amount of IBQ allocation associated with the IBQ shares. The 25-percent cap applies whether the shares were accrued by an entity through the ownership of multiple Atlantic Tunas Longline permits and/or high fishing effort. The cap will apply to the sum of shares or IBQ allocations an entity controls, whether the entity is associated with a single or multiple Atlantic Tunas longline permits. The cap is not intended to restrict the use of IBQ allocation to account for bluefin catch or leasing of IBQ allocation. NMFS will implement this restriction based on the best available information such as data submitted in support of permit and IBQ Program requirements.

IBQ Program Dealer Reporting Requirements

This final rule modifies two aspects of the dealer reporting requirements for the IBQ Program. First, this measure will eliminate the reporting of bluefin dead discard information by the dealer. The dealer will continue to be required to enter the data on bluefin landings into the Catch Shares On-line System via the dealer account.

Second, this measure will eliminate the current requirement that vessel operators/owners confirm the landing information entered into the Catch Shares On-line System by the dealer is accurate by entering the personal identification number (PIN) associated with the vessel account. This measure will be combined with a new email notification by NMFS via the Catch Shares On-line System (or a message within the System) that will inform the vessel owner when a dealer conducts a bluefin landings transaction with that vessel's IBQ account. This notification will provide a means of vessel owner oversight of dealer transactions with their IBQ vessel account.

Measures Related to Electronic Monitoring (EM)

This final rule requires that the vessel operator mail the electronic monitoring system's hard drive(s) within 48 hours after the completion of every other trip (every second trip), instead of after each pelagic longline fishing trip. An exception to this requirement is that if the hard drive is at capacity (full) after one trip, as indicated by the EM system, the vessel operator must mail the hard drive at the end of that trip. And, vessel operators must ensure that hard drives have the capacity to record the full trip before departing on a trip. This final rule clarifies and expands the regulations to require installation of semi-permanent hardware, if necessary, to mount and install video cameras at locations on vessels to obtain optimal views. NMFS or its designees, working in conjunction with the vessel owner/operator, may require relatively minor modifications to the vessel structure to mount cameras in locations that provide views required under existing regulations of the vessel and adjacent areas (50 CFR 635.9(c)). In some cases, NMFS or its designees may require the installation of the rail camera in a particular location on the vessel's structure, or installation of hardware such as a boom on a structure near the vessel's rail for the purpose of obtaining a different camera angle with the side of the vessel to optimize the view of the area of the water surface and seaward of the rail, down to the water surface, where the gear and fish are hauled out of the water. A boom will likely be a customized piece of hardware that is fixed or movable (*e.g.,* extended or lowered prior to fishing activities starting). The details of any camera installation requirement or protocols will be recorded in the vessel's Vessel Monitoring Plan.

The cost associated with the installation of booms would be paid by vessel owners (approximately $1,000 or less). The Draft Amendment 13/DEIS stated that NMFS would pay the costs of boom installation, as funds are available. In the Final Amendment 13/FEIS, NMFS analyzed the impacts and determined that boom installation should be paid for by individual vessel owners, given that appropriated funds are not available for this purpose. This approach to industry-funded implementation is consistent with NMFS Service Procedure 04–115–02: Cost Allocation in Electronic Monitoring Programs for Federally Managed U.S. Fisheries, which generally specifies the transition of certain costs to the fishing industry.

The third change made to the electronic monitoring program by this final rule is a requirement for specific fish handling procedures and the installation/placement of a measuring grid on deck, in view of one of the cameras. As instructed and specified by NMFS, the vessel crew will be required to place retained fish on a mat or carpet with grid lines or a grid painted on deck in view of the processing camera, so the video recording included images of the fish on the grid. The grid may be customized to an individual vessel while also having lines of standard intervals. The specifications of the measuring grid will be provided in each individual vessel's Vessel Monitoring Plan (VMP). During the year following the effective date of this rule, NMFS or the NMFS-approved contractor will work with the vessel owner of each vessel to update the VMP. Once the VMP is approved and signed by NMFS or the NMFS-approved contractor, the vessel owner will have six months to install the measuring grid as specified in the VMP. The flexibility of the timing of the full implementation of this measure will provide time for NMFS and the NMFS-approved contractor to complete more detailed standardized specifications and the printing of measuring mats/carpets or customized painting.

Cost Recovery Program

The Magnuson-Stevens Act provides NMFS the authority for recovering fees paid by limited access privilege holders of up to three percent of the ex-vessel value of fish harvested under the limited access privilege program to cover the incremental costs (incurred by NMFS) directly related to and in support of management, data collection and analysis, and enforcement activities for the program (*e.g.,* the IBQ Program). This final rule implements a flexible cost recovery program. No fees will be charged if the costs of collecting the fees exceed estimated fees to be recovered. Annually, NMFS will estimate its incremental costs associated with the IBQ Program (including costs associated with administering the cost recovery program) and the total ex-vessel value of bluefin sold from the pelagic longline fishery (including bluefin caught with green-stick gear). NMFS will notify the public whether a cost recovery fee will be charged for the year. If NMFS determines the annual cost recovery fee is warranted, NMFS will notify the permit holders that landed bluefin under the IBQ Program, including those caught with green-stick gear (based on dealer landings data), of any fees to be charged. Permit holders will be billed based on the ex-vessel value of the bluefin sold. Permit holders would pay the cost recovery fee through the Catch Shares On-line System website and the associated *pay.gov* link.

Modification of Bluefin Quota Category Allocation Percentages

This final rule changes the mathematical method used in the annual quota allocation process to achieve a similar result through simpler means. Under current regulations, each quota category (including the Longline category) is annually allocated a percentage of the U.S. bluefin quota after 68 mt (*i.e.,* the historical 68-mt dead discard allowance, as described in Amendment 7) is subtracted from the baseline quota and allocated to the Longline category. This process was intended to have all bluefin quota categories contribute proportionally to the 68 mt provided to the Longline category annually. This final rule replaces the two-step process of subtracting the 68 mt from the U.S. baseline quota and then applying the category percentages, with a one-step process applying slightly revised category allocation percentages.

Purse Seine Category

This final rule discontinues the Purse Seine category and redistributes Purse Seine category quota. NMFS is removing purse seine from the list of authorized gears and removing other references in the regulations to the purse seine fishery, including references to Purse Seine category quota, permits, nets, sets, vessels, and participants. In the proposed rule, the Longline and Trap categories were not reallocated any Purse Seine quota. Based on public comment and a refined analysis, NMFS determined that these incidental quota categories should be reallocated Purse Seine quota. See response to comment 22 under Response to Comments (including Longline category in reallocation due to change in IBQ leasing market as a result of discontinuation of Purse Seine category and also including Trap category). As such, the Purse Seine category quota (18.6 percent of the total U.S. baseline bluefin quota, under current regulations) will be reallocated proportionally to all of the other bluefin quota categories (General, Angling, Harpoon, Longline, Trap, and the Reserve) (Table 1). The quota allocations associated with the revised percentages will be based on the bluefin quota implemented June 1, 2022 (87 FR 33049).

TABLE 1—BLUEFIN QUOTA CATEGORIES, CURRENT AND AMENDMENT 13 PERCENTAGES, AND 2023 ALLOCATIONS

[mt]

Bluefin quota category	Current percentage	Amendment 13 percentage	2023 Allocations (mt)
General	47.1	54	710.7
Angling	19.7	22.6	297.4
Harpoon	3.9	4.5	59.2
Longline	8.1	15.9	209.3
Trap	0.1	0.1	1.3
Reserve	2.5	2.9	38.2
Total U.S. Baseline Quota	.....	.....	1,316.14

Table 2 shows the subquotas for the General and Angling categories for 2023 based on this final rule and bluefin quota rule (87 FR 33049, June 1, 2022).

TABLE 2—BLUEFIN SUBQUOTAS FOR THE GENERAL AND ANGLING CATEGORIES FOR 2023

Category	Subquotas			
General	.....	710.7		
	January–March	.....	37.7.	
	June–August	.....	355.4.	
	September	.....	188.3.	
	October–November	.....	92.4.	
	December	.....	37.0.	
Angling	.....	297.4		
	School	134.1		
	.....	.....	Reserve	24.8
	.....	.....	North of 39° 18′ N. lat	51.6
	.....	.....	South of 39° 18′ N. lat	57.7
	Large School/Small Medium	154.1		
	.....	.....	North of 39° 18′ N. lat	72.7

TABLE 2—BLUEFIN SUBQUOTAS FOR THE GENERAL AND ANGLING CATEGORIES FOR 2023—Continued

Category				
	.....	.....	South of 39° 18′ N. lat	81.4
	Trophy	9.2		
	.....	.....	Gulf of Maine Trophy Area	2.3
	.....	.....	Southern New England	2.3
	.....	.....	Trophy South	2.3
	.....	.....	Gulf of Mexico	2.3

*Due to rounding, the sum of the General category sub-quota period values do not equal 710.7.

Angling Category

This final rule modifies the current Angling category Trophy North subquota areas and allocations specified at 50 CFR 635.27(a)(1), by dividing the northern area into two zones: north and south of 42° N. lat. (off Chatham, MA). These newly-formed areas are named the Gulf of Maine trophy area and the Southern New England trophy area, respectively. The net result is that the Trophy quota is divided among four geographic areas (in the Atlantic and Gulf of Mexico) and each area will receive an equal amount of quota (*i.e.,* the Angling category Trophy quota would be divided equally four ways).

To create the new trophy suballocation for the Gulf of Maine trophy area, NMFS is increasing the allocation for trophy bluefin. Because the amount of school bluefin (27″–<47″) is limited in the codified regulations, and in compliance with the ICCAT bluefin recommendation to limit take to no more than 10 percent of the annual U.S. bluefin quota, any increase to the trophy subquota will need to be balanced with an equivalent reduction of the subquota for large school/small medium bluefin subquota (47″–<73″), which is the remainder of the Angling category quota once the school bluefin subquota and trophy subquotas are subtracted. For example, referring to the current Angling category quota regulations, NMFS will increase the portion of the Angling category quota allocated for trophy bluefin from 2.3 percent to 3.1 percent. This results in a minor decrease in the amount of allocation for large school/small medium bluefin (measuring 47″–<73″). Creation of a Gulf of Maine area and an allocation equivalent to the allocations for the existing areas will provide additional opportunities for anglers fishing north of 42° N. lat. where bluefin are available in summer and fall, including those fishing on HMS Charter/Headboat-permitted vessels. In recent years the northern trophy area has closed between late May and early August, with the quota largely filled with bluefin caught off the states of New York and New Jersey, south of 42° N. lat.

Harpoon Category

This final rule implements a default overall Harpoon category daily retention limit of 10 commercial-sized bluefin per day or trip (*i.e.,* the combined limit of large medium (73″–<81″) and giant (81″ or greater) would be 10 fish). In addition, this final rule allows NMFS to adjust the combined daily retention limit between 5 to 10 fish, based on consideration of the determination criteria at 50 CFR 635.27(a)(8), in order to avoid closing the fishery. This final rule maintains the current regulations regarding retention of large medium bluefin (73″–<81″) (*i.e.,* the range of two (default) to four fish, adjustable through inseason action). For example, if the combined limit were 10 fish, and 2 large medium fish were retained, then the number of allowable giant bluefin would be 8.

Permit Category Change Restrictions

This final rule allows Atlantic Tunas permit holders in the General, Harpoon, or Trap category, or Atlantic HMS permit holders in the Angling or Charter/Headboat category, to change permit categories any time during the fishing year, provided the vessel has not landed a bluefin.

Green-Stick Gear by Pelagic Longline Vessels

This final rule clarifies retention and reporting requirements for bluefin caught with green-stick gear by vessels with valid Atlantic Tunas Longline category permits. Such a vessel is allowed the retention of one bluefin per trip (73″ or greater CFL) taken incidentally by green-stick gear while fishing for other target species. Vessels are required to submit a VMS set report for each green-stick retrieval that interacts with bluefin and report information on the location of the set and numbers and length of bluefin within 12 hours (in addition to the VMS reports for pelagic longline sets). This VMS requirement differs from the VMS requirement associated with the use of pelagic longline gear, which requires submission of a report after each pelagic longline set. Regardless of whether sets are made with green-stick gear or pelagic longline gear, vessels are required to comply with HMS logbook requirements and comply with the IBQ Program requirements regarding accounting for bluefin using IBQ allocation, quarterly accountability, and other applicable regulations. The use of EM Systems is not required for haulback with green-stick gear or to record an image of a bluefin caught with green-stick gear. This measure supports the minimization of dead discards by allowing the incidental retention of one green-stick caught bluefin per trip (73″ or greater CFL).

Other Regulatory Changes

As described below and in the proposed rule, Amendment 13 implements other regulatory changes that will improve the administration and enforcement of HMS regulations and that will not have any environmental, economic or social impacts. The corrections, clarifications, changes in definitions, and modifications to remove obsolete cross-references are consistent with the intent of previously analyzed and approved management measures.

Under 50 CFR 635.2, Definitions, abbreviations were added for curved fork length, northeast distant area, bluefin tuna, electronic monitoring and Individual bluefin tuna program. A definition for vessel monitoring plan is added, and the definition of curved fork length is clarified.

Under 50 CFR 635.23(a)(4) and (b)(3), which address the process for inseason changes to the bluefin retention limits, the minimum 3-day period between filing an action with the Office of Federal Register and the effective date of the action is eliminated to provide for additional flexibility, as warranted and supported. The 3-day period has been in regulations since at least 1999. This rule removes that minimum period to provide for greater flexibility in management response for the General category. The General category is very

dynamic: fish may swim from Massachusetts to Virginia in three days, there is limited quota and seasonal allocations, and there are high and variable levels of fishing pressure. Given all of this, NMFS may need flexibility to more swiftly implement an inseason action that may provide additional opportunity (in the case of an increased trip limit), or one to slow a catch rate (in the case of a lowered retention limit). NMFS will continue to consider each adjustment on a fact-specific basis, consistent with Administrative Procedure Act requirements and providing for as much notice as possible.

Under 50 CFR 635.27, the subquota period previously referred to as the ''January'' subquota period will be changed to ''January through March'' subquota period to reflect the actual duration of the January subquota period, which is not changing.

Response to Comments

NMFS received 47 written comments from individual members of the public, and a variety of entities including industry associations, environmental organizations, and states. All written comments can be found at *http://regulations.gov/* by searching for ''0648–BI08''. NMFS also received comments during the webinars and HMS AP meetings. Responses to those comments are below. Comments are organized according to subject.

'A' Alternatives: Modifications to Individual Bluefin Quota (IBQ) Share Eligibility, Distribution and Allocation Methods

Comment 1

NMFS received many comments supporting the preferred alternative of replacing the current system of 136 shareholders with a dynamic system where, annually, permit holders of active vessels would be defined as shareholders. Pelagic longline industry groups that represent pelagic longline vessels supported dynamic allocation, but had different opinions on whether pelagic longline sets or designated species landings should be the basis for IBQ shares. One commenter stated that the current shareholder system in place was punitive in that it provided more bluefin to vessels that had no interactions with bluefin and did not need bluefin quota. One commenter supported a dynamic system of determining shares, but was in favor of distributing IBQ shares and their associated allocations in equal amounts to active vessels.

Response

NMFS agrees that a dynamic determination of active shareholders will improve the distribution of shares among Atlantic Tunas Longline permit holders by more effectively putting shares where allocation is likely to be used. NMFS also agrees that the current share system may be overly restrictive, and the distribution of allocations may not be aligned with the need for quota. Allocating catch shares based on historical catch, which is typical of many catch share programs, may have disadvantages or limited relevance when implemented in the context of a catch share program for incidentally caught species such as bluefin. In contrast, a dynamic share determination, which adapts to changes in fishery participation over time, will better align shares with the need for IBQ allocation, will be perceived as fair, and will continue to provide incentives to reduce incidental catch of bluefin. The relatively small amount of IBQ allocation that shareholders will be distributed and the requirement that all bluefin landings and dead discards be accounted for using IBQ allocation, will continue to provide strong incentives for vessels to modify their fishing behavior to avoid and reduce interactions with bluefin. Based in part on public comment, NMFS has determined that a dynamic determination of shares based on sets would address the objective of providing shares only to vessels that have recently fished. NMFS' response to comments regarding the elements and details of a dynamic system are contained in the responses to comments 2 through 5.

Comment 2

Some commenters supported the use of designated species landings in general, but wanted to include dolphinfish (dolphin) as one of the species that count toward IBQ share determination, because of the importance of dolphin revenue, especially during May. Other commenters noted the exclusion of dolphin as one of the various reasons they did not support the use of designated species landings as the relevant metric upon which to base IBQ shares. They also commented that any species landed by the fleet should be considered as a designated species in the method of share determination. For example it was noted that traditionally, shortfin mako sharks have been a target species and therefore the landings should be credited to fishermen. Some commenters noted the importance of all species landed to the economic viability of the fishery, given the variable nature of species available to the fishery.

Response

NMFS agrees that dolphin is an economically important component of pelagic longline fishery landings, especially during certain time periods. NMFS did not propose inclusion of dolphin in the list of designated species (for the purpose of share determination) because dolphin comprises a relatively low portion of the total pelagic longline landings. Additionally, because of differences in management and data reporting due to the fact that dolphin is not managed under the 2006 Consolidated HMS FMP, it would be difficult for NMFS to compile and analyze the dolphin data annually in an accurate and timely manner. As explained further in the response to comment 3, NMFS is no longer preferring basing shares on designated species landings. In defining designated species, NMFS intended to create a standardized list of a limited number of target species that would be used as a metric of fishing effort in the annual determination of IBQ shares, and as such the availability and timeliness of data was a relevant factor. NMFS agrees that the pelagic longline fishery is a fishery that relies on many species for its revenue, due to the diversity of the fleet and the dynamic, migratory nature of the species it lands.

Comment 3

NMFS received a number of comments regarding the best method of determining shares (*i.e.,* based on hooks, sets, landing, or equal shares). An organization representing pelagic longline businesses stated that determining IBQ shares using designated species landings would incentivize vessels to retain smaller fish or juvenile fish, which they currently release, to enhance the total weight of landings. Vessels would be incentivized to land all swordfish or tunas that come to the vessel, rather than releasing lower quality fish or lower value small fish. Further they stated that landings are not a standardized metric due to differences among pelagic longline vessels in fishing strategy and skill level, and due to landings being driven by prices and dealer demands. A different organization representing pelagic longline businesses supported using designated species landings as reasonable because of the logical relationship between fishing effort, amount of landings and need for IBQ allocation. One commenter stated that basing shares on landings is not fair

because vessels have varied capacities for holding fish. NMFS received multiple comments stating that NMFS should prefer dynamic determination of IBQ shares based on pelagic longline sets because sets are a more reliable measure of the need for IBQ shares. Some commenters supported the use of sets, but suggested that only one set per day be allowed to count toward the determination of shares, because vessels might set multiple sets per day for the sole purpose of influencing their IBQ share percentage. Two commenters stated that hooks are harder to verify than sets. One commenter supported dividing up shares equally among active vessels. NMFS received multiple comments that the method used to determine IBQ shares is not a conservation issue and that NMFS should follow the industry's recommendations for efficient IBQ share distribution.

Response

NMFS acknowledges that each of the methods analyzed for determining IBQ shares annually (hooks, sets, landings, or equal shares) has strengths and weaknesses. Given the diversity of the fleet and the highly variable and migratory nature of bluefin, it is difficult to precisely align the distribution of IBQ shares among vessels with the need for IBQ shares. Although a commenter supported the use of equal shares as a method of distributing shares among active vessels, most commenters supported basing shares on a metric that reflects fishing effort. NMFS agrees with using fishing effort as the basis for determining IBQ shares, given that bluefin is an incidentally caught species, and there is a relationship between the amount of fishing effort and the number of bluefin a vessel is likely to encounter (and the need to account for bluefin using IBQ allocation). While NMFS proposed using designated species landings to determine IBQ shares, in this final rule NMFS is implementing regulations to determine IBQ shares based on the number of pelagic longline sets. The pelagic longline fleet is geographically diverse and includes a range of vessel sizes and fishing strategies. Using a metric of one set (a single deployment and retrieval of pelagic longline gear) per day provides a standardized, uniform method of determining IBQ shares and addresses the concern that a vessel operator might deploy speculative, short sets for the purpose of inflating the IBQ share determination. NMFS can determine the number of sets annually, in a timely manner, using a single data source (VMS or logbooks) and, if necessary, verify the accuracy of the reported data using EM data. A majority of active shareholders would have a larger share percentage under dynamic determination of shares based on sets than they would under the current system (No Action). In selecting the final preferred alternative, NMFS took into consideration public comments, which included different industry recommendations on the method to be applied; how the method of share distribution will influence various aspects of the IBQ Program, such as the IBQ allocation leasing market, vessel incentives to avoid bluefin, and the ability for vessels to account for bluefin catch; and ecological, economic and social impacts. NMFS believes that the preferred alternative is reasonably calculated to promote conservation, because it encourages a rational, well-managed use of fishery resources through a reasonable a balanced allocation approach.

Comment 4

NMFS received multiple comments that quartiles or tiers should not be used to determine IBQ shares, and instead custom IBQ share percentages should be given based on vessel fishing effort. As proposed, some shareholders would have shares that are either larger or smaller than the shares percentage corresponding directly to the number of sets. Commenters stated that due to the differences in the share percentage between adjacent tiers, vessel operators may increase fishing effort for the sole reason of subsequently being put in the next higher tier and increasing their share percentage. They stated that a small amount of additional effort can have a disproportionate impact on the IBQ share a vessel receives, since moving from one quartile to the next higher quartile (tier) results in a large increase in IBQ allocation received (in lb). Commenters also stated that the quartile system is unnecessarily complex. NMFS received comments in support of providing each active vessel at least a minimum amount of IBQ share that would allow them to depart on a fishing trip.

Response

NMFS agrees that tiers based on quartiles (which was proposed), should not be included in the share determination methods for the reasons noted by the commenters, and will instead implement 'customized' shares based on the number of pelagic longline sets in proportion to the total number of sets fleet-wide. Basically, this eliminates a step in the process and shares would correspond more directly to effort. Although NMFS proposed using tiers in order to eliminate shares with either a very high or very low percentage, NMFS agrees that 'customized' shares are simpler and more equitable than the use of tiers. Using customized shares, no shareholder would receive a share larger or smaller than that which corresponds directly to the number of sets made by the vessel (during the relevant three-year period). NMFS disagrees that each active vessel should receive a minimum percentage that would allow them to depart on a fishing trip. Under the current regulations, before departing on the first fishing trip in a calendar year quarter, a vessel with an eligible Atlantic Tunas Longline category permit that fishes with or has pelagic longline gear onboard must have the minimum IBQ allocation for either the Gulf of Mexico or Atlantic, depending on fishing location. Under a customized share determination method, vessels with a low number of sets may receive a share percentage that results in an IBQ allocation of less than the minimum IBQ allocation required to depart on a fishing trip. While understanding the logic of the commenter's suggestions to implement a minimum share, NMFS disagrees that it is warranted because it would complicate the determination of shares and would be inconsistent with the reasons for implementing customized shares. Adjustment of the lowest shares upward would erode the equitable nature of customized share determination. The shares that are adjusted upward would no longer represent the vessels' number of sets and all of the other shares would need to be adjusted downward slightly to derive the shares used to increase the size of the smallest shares. Vessels that receive a share that is smaller than the minimum IBQ allocation required can lease additional allocation in order to fish.

Comment 5

NMFS received a comment that the location and time of year of fishing activity should be taken into account when determining IBQ shares. The commenter stated that some fishing locations and times are not associated with interacting with bluefin, for example, in the Carolinas during August and September or in the Caribbean throughout the year. Two commenters supported maintaining the current regulations that include any data associated with fishing in the northeast distant gear restricted area (NED) as part of formulas that determine IBQ shares, and maintaining the current IBQ catch accounting rules for fishing in the NED. One commenter did not support

inclusion of trips in the NED, but suggested instead a complex system of rules for how such trips would factor into the determination of IBQ shares. Another commenter suggested that NMFS analyze the impact of dynamic determination of IBQ shares based upon designated species landings as the measure of fishing effort on leasing of IBQ allocation.

Response

NMFS disagrees that the location and time of year of fishing activity should be taken into account when determining IBQ shares. Although the abundance and distribution of bluefin are associated with particular geographic regions and seasons, taking into account patterns of bluefin availability would increase the complexity of the share determination, and may not result in a distribution of shares among vessels that aligns with the need for bluefin allocation. The pelagic longline fishery is dynamic, mobile, and adaptive, with some vessels opportunistically targeting multiple species over wide geographic areas. Inclusion of all fishing activity as the basis of allocation formulas increases fishing opportunity and flexibility for vessels to fish in multiple areas, as conditions warrant. The NED fishery is an intermittent fishery with only a few participating vessels and does not warrant the development of different allocation rules. NED accounting rules take into account the fact that a binding ICCAT recommendation specifies a separate 25-mt bluefin quota to account for bycatch from the NED. Exclusion of NED fishing activity from data used to determine shares may affect profitability of vessel operations or incentives to fish in the NED, and affect fishing for target species. Unless clearly warranted, constraints on fishing for target species are not desirable. Under current regulations, any pelagic longline vessel may fish in the NED. NMFS analyzed the impacts of dynamic determination of IBQ shares and concluded it would enhance the continued success of the IBQ allocation leasing program by the distribution of shares to active vessels. All active vessels would receive IBQ allocation, and the leasing market is likely to continue to function well, with a price similar to or lower than recent prices, because most vessel allocations would increase. Sixty-one of the 91 active vessels would have larger IBQ allocations than they would under the current static determination of IBQ shares.

Comment 6

NMFS received multiple comments expressing concern that the preferred alternative for determining IBQ shares would not facilitate new entrants joining the pelagic longline fishery, as it would be difficult for new entrants to lease IBQ allocation from active vessels and to increase that amount of IBQ share over time.

Response

NMFS has concluded that the determination of IBQ shares based on vessel sets will enhance the continued success of the IBQ allocation leasing market, and therefore IBQ allocation will be available to new entrants to the fishery that do not have IBQ shares at the time of entry into the fishery. Under dynamic share determination, a new entrant to the fishery would need to lease IBQ allocation during the first year of their participation in the pelagic longline fishery. During the second year of participation, the vessel's share percentage would be based on the number of pelagic longline sets relative to the total fishery (during the previous three years). Since 2015 there have been participants in the fishery that were not shareholders, who have relied on leased IBQ allocations from shareholders in order to fish and account for bluefin catch. In light of public comment though, this final rule adds to the framework provisions of the 2006 Consolidated HMS FMP the authority to set aside a *de minimis* amount of bluefin quota for new entrants. Neither the Amendment 13 DEIS nor the FEIS analyzes a full set-aside program. This final rule simply provides for the potential development of such a program in the future, if necessary, should the dynamic allocation provisions finalized in this action not facilitate new entrants. In that case, NMFS would conduct rulemaking to set the precise amount of set-aside, and the requirements, process, and conditions associated with distributing IBQ allocation to new entrants.

'B' Alternatives: Modifications to Rules Closely Linked to IBQ Allocations

Comment 7

NMFS received comments in support of the preferred alternative to determine regional designations of IBQ shares and allocations on an annual basis as part of the annual dynamic allocation process. They indicated that the preferred alternative would allow more flexibility for vessels to fish in the Gulf of Mexico without needing to lease GOM IBQ allocation. The need to lease IBQ allocation was particularly frustrating when vessels had to lease from vessels that were not actively fishing, but simply leasing their IBQ allocation to active vessels.

Response

NMFS agrees that the preferred alternative, which modifies the regional designations so that they are dynamic, would provide additional flexibility for vessels that are interested in fishing in the Gulf of Mexico. A vessel without any GOM IBQ shares during a particular year would need to lease GOM IBQ allocation to fish in the Gulf of Mexico that year, but in the subsequent year, in the context of the dynamic determination of IBQ shares, the vessels would have GOM IBQ shares in proportion to the number of pelagic longline sets in the Gulf of Mexico.

Comment 8

NMFS received a number of comments that did not support the preferred alternative to determine regional designations of IBQ shares and allocations on an annual basis as part of the annual dynamic allocation process. One commenter instead supported Alternative B2, which would remove regional designations altogether but retain the catch cap. Another commenter stated that the regional designations are an unnecessary barrier, an unjustified cost, and an impediment to attaining optimum yield in the fishery. Further, they stated that the preferred alternative did not provide a reasonable opportunity to catch the quota. A commenter stated that constraints in the Gulf of Mexico are not needed because the IBQ Program constrains the impacts of the fishery on bluefin. One commenter was concerned that, in the context of dynamic shares and regional designations, the potential for declining effort in the Gulf of Mexico could result in a low percentage of GOM IBQ shares that could severely limit the operation of the fishery. For example, a reduction in either the number of vessels fishing in the Gulf of Mexico, or reduction in the amount of fishing effort per vessel (or both) would result in a reduction in the amount of GOM designated shares (and IBQ allocation).

Response

NMFS disagrees that the preferred alternative for regional designations would represent an unwarranted barrier or cost to fishing, or that IBQ Program constraints for the Gulf of Mexico are unnecessary. The regional designation rules provide a balance between the need to cap bluefin catch in the Gulf of Mexico, provide equitable fishing opportunities, and modulate pelagic

longline fishing effort in the Gulf of Mexico. The Amendment 7 IBQ Program rules as modified by Amendment 13 are intended to address the fact that the Gulf of Mexico is the recognized spawning ground for western Atlantic bluefin tuna. Under this Amendment 13 final rule, a vessel without GOM designated IBQ shares, but fishing in the Gulf of Mexico would be required to lease GOM IBQ allocation during the first year of fishing in the Gulf of Mexico. However, in the following year the vessel would have GOM designated IBQ shares in proportion to the number of pelagic longline sets in the Gulf of Mexico. Over time, a vessel with increasing levels of fishing effort in the Gulf of Mexico would receive an increasing percentage of GOM designated IBQ shares. This method is a reasonable means of providing opportunities to fish in the Gulf of Mexico, while supporting the objectives of the regional designations. NMFS agrees that under dynamic determination of shares and regional designations, there could be a situation of reduced fishing effort and low GOM designated shares. Under conditions of low GOM shares and allocation, vessels with GOM IBQ shares may be reluctant to lease IBQ allocation to others. If unable to lease GOM IBQ allocation, prospective new entrants to the fishery (without any shares), or vessels with only Atlantic (ATL) designated shares, would be unable to meet the minimum IBQ allocation requirement, and thus be unable to fish in the Gulf of Mexico. Similarly, vessels with GOM designated IBQ shares may be unable to account for bluefin catch. Such serious constraints could result in poor function or disruption of the IBQ Program, and result in further declines in fishing effort or participation in the pelagic longline fishery, or prevent increases in fishing effort or participation. To address this, this final rule includes a GOM designated share percentage threshold. If the total amount of IBQ shares designated as GOM is five percent or less of the total IBQ allocations (ATL plus GOM designated shares), the requirement to account for bluefin caught in the Gulf of Mexico with GOM IBQ allocation, and use GOM IBQ allocation to satisfy the minimum IBQ allocation requirement would not apply. In other words, any vessel would be able to use GOM IBQ *or* ATL IBQ allocation to either account for bluefin catch (landings or dead discards) or satisfy the minimum requirements for IBQ allocation in the Gulf of Mexico. When this low share threshold provision is in effect, the maximum allowable bluefin catch from the Gulf of Mexico will be the weight of bluefin associated with the cap on GOM designated shares (*i.e.,* the default level of 35 percent, or lower if modified). If this level of bluefin catch (landings and dead discards) were reached in the Gulf of Mexico, NMFS would prohibit vessels from fishing with pelagic longline gear in the Gulf of Mexico for the remainder of that year.

Comment 9

NMFS received comments inquiring whether modifications to regional IBQ share designations would impact catch rates of bluefin in the Gulf of Mexico or impact the bluefin stock since spawning adults are found in the Gulf of Mexico.

Response

Amendment 7 established the 35-percent GOM/65-percent ATL regional designation approach for IBQ shares and allocations, in light of the fact that the Gulf of Mexico is recognized as the primary spawning ground for the western Atlantic bluefin tuna stock. Given the annual, dynamic determination of IBQ shares under Amendment 13 and inherent variability in the pelagic longline fishery (see response to comment 5), NMFS anticipates that catch rates of bluefin in the Gulf of Mexico could vary from year to year. However, NMFS does not anticipate that the regional designation approach, as modified under Amendment 13, will result in an increase in incidental catch of bluefin in the Gulf of Mexico above levels of such catch since 2015. To ensure continued protections in the spawning grounds, this final rule establishes a default cap (35 percent of total IBQ shares) on the maximum amount of bluefin that may be caught in the Gulf of Mexico, which could be adjusted downward to achieve conservation and management objectives per the criteria under § 635.27(a)(8). *See* response to comment 10 for further explanation. Further, when the low GOM share threshold provision is in effect, the maximum allowable bluefin catch from the Gulf of Mexico will be the weight of bluefin associated with the cap on GOM designated shares (*i.e.,* the default level of 35 percent, or lower if NMFS modifies the level consistent with other provisions in this Amendment). If this level of bluefin catch (landings and dead discards) were reached in the Gulf of Mexico, NMFS would prohibit vessels from fishing with pelagic longline gear in the Gulf of Mexico for the remainder of that year. The net ecological impact of the Amendment 13 measures on bluefin in the Gulf of Mexico is thus neutral.

Comment 10

NMFS received comments suggesting reduction of the cap on bluefin catch from the Gulf of Mexico from 35 percent to 25 percent due to the regulations not allowing targeted fishing for bluefin in the Gulf of Mexico. Another commenter suggested allowing the use of ATL designated IBQ allocation during the second half of the year.

Response

NMFS does not believe that a 25-percent cap on GOM-designated IBQ shares is needed to protect bluefin in the Gulf of Mexico. Under the measures implemented by this Amendment 13 final rule, the amount of bluefin incidental catch in the Gulf of Mexico would continue to be capped at a default level of 35 percent of total pelagic longline bluefin catch. The total amount of GOM-designated IBQ shares could be even less than 35 percent, as NMFS will annually calculate the total amount (not to exceed 35 percent) based on the percentage of pelagic longline sets in the GOM compared to total sets (using the most recent, three-year period for which NMFS has information). Moreover, if NMFS determines that a downward adjustment is needed to achieve conservation and management objectives, it may reduce the maximum amount of bluefin that can be caught in the Gulf of Mexico, based on the determination criteria at § 635.27(a)(8). There has not been a change in the status of the stock (no overfishing, overfished status unknown), and based on a 2021 stock assessment, ICCAT adopted a moderate increase in the western Atlantic bluefin total allowable catch. *See* 87 FR 33049, June 1, 2022 (final rule on Atlantic Bluefin Tuna and Northern Albacore Tuna Quotas). In addition, there has been no increase in fishing effort in the Gulf of Mexico, no increase in catch of bluefin from the Gulf of Mexico, nor other change in the fishery that would support consideration of a more conservative default cap level. As noted above, this final rule authorizes NMFS to reduce the cap, if necessary, for conservation and management reasons. NMFS disagrees that allowing the use of ATL designated IBQ allocation during the second half of the year is a practical means of providing flexibility in the fishery. The regional designation rules provide adequate flexibility and a reasonable opportunity to fish in the Gulf of Mexico, while limiting the amount of potential bluefin incidental catch. Furthermore, a mid-year change

to accounting rules would be impractical to administer in the Catch Shares Online System, the database accessible by dealers and vessel owners, which tracks bluefin catch and implements the relevant accounting rules.

'C' Alternatives: Sale of IBQ Shares

Comment 11

NMFS received several comments in support of the preferred No Action alternative, under which the sale of IBQ shares would continue to be prohibited.

Response

NMFS agrees that the sale of IBQ shares should continue to be prohibited. NMFS has not observed a need for Atlantic Tunas Longline permit holders to accumulate IBQ shares through purchase. For most shareholders, annual allocations combined with a minimal amount of leasing is likely to be sufficient for them to account for incidental bluefin catch. Additional rationale for preferring this alternative is in Chapter 2 of the Amendment 13 FEIS.

'D' Alternatives: Cap on IBQ Shareholder Percentage or IBQ Allocation Use

Comment 12

NMFS received several comments in support of the preferred alternative to cap the accumulated sum of IBQ shares at 25 percent.

Response

NMFS agrees that it is appropriate to cap the amount of shares an entity may hold or acquire at 25 percent of the total shares. The Magnuson-Stevens Act requires that NMFS must ensure that limited access privilege permit holders do not acquire an excessive share of the total limited access privileges.

Comment 13

A pelagic longline association supported the preferred alternative to maintain the current regulations that do not limit the amount of IBQ allocation a vessel may lease, based on the rationale in the DEIS.

Response

NMFS agrees that there should be no cap on the amount of IBQ allocation a vessel may lease. Long-term control of IBQ allocation by a single entity through leasing is not possible, because leasing of IBQ allocation occurs on an annual basis and expires at the end of each calendar year. The most likely reason a vessel might need to lease a large amount of IBQ allocation would be to account for an unusually large incidental catch of bluefin, which is consistent with the objectives of the IBQ Program. The limited amount of IBQ allocation available through annual distribution to shareholders, and the limited amount of IBQ allocation available via leasing (as well as the associated costs), provide strong incentives to avoid bluefin. Furthermore, there are other potential challenges associated with the incidental catch of bluefin by pelagic longline vessels including bluefin weighing down longline gear (which typically catch lighter species) and bluefin market limitations and volatility. Provided the IBQ Program continues to function in a manner consistent with its objectives, with individual vessel accountability for bluefin catch and incentives to reduce interactions with bluefin, there is no need for a cap on the amount of IBQ allocation that may be leased. During development of Final Amendment 13, NMFS became aware of concerns regarding recent, high bluefin landings by a small number of vessels. NMFS considers this to be an unusual event and not reflective of how the IBQ Program has functioned overall. A high bluefin landings event is unusual, and the risk of such an event will likely continue to be rare under Amendment 13.

Comment 14

Several commenters supported simplification of the dealer reporting requirements for the IBQ Program. A pelagic longline association stated that removal of the bluefin dead discard reporting and personal identification number (PIN) requirements would lead to more timely reporting and better data. One commenter expressed the opinion that the passwords associated with the Catch Shares Online System were too complex and had to be changed too often.

Response

NMFS agrees that the removal of the bluefin dead discard reporting and PIN requirements will streamline the dealer reporting requirements. NMFS did not propose or analyze any changes to the password requirements associated with the Catch Shares Online System. Passwords are required elements of computer systems to maintain a high level of data integrity and security.

'E' Alternatives: Adjustments to Other Aspects of the IBQ Program

Comment 15

NMFS received comments in support of the preferred alternative that would require vessels to mail in their EM hard drives after every two trips instead of after each trip, because it would reduce the burdens associated with the requirement to mail hard drives. NMFS received a comment stating that NMFS should implement flexibility in the EM regulations regarding the method of transferring data to the Agency, in order to allow the EM Program to evolve with changing technology without needing further rulemaking.

Response

NMFS agrees that this requirement to reduce the frequency of mailing hard drives to the third-party contractor would reduce the amount of time and costs required of vessel operators as associated with the EM Program. NMFS continually seeks to make its regulations more efficient and flexible, consistent with statutory requirements.

Comment 16

NMFS received comments that regulations for installation of EM cameras should not be expanded due to safety concerns with the installation of booms. Some commenters expressed support or conditional support for mounting one of the video cameras on a boom or telescoping device to obtain a better view of bycatch events as gear is removed from the water. Some commenters said that deployment of booms could be done in a manner that addresses safety concerns, provided NMFS works closely with the individual vessel owners/operators to minimize the chances of the boom interfering with any of the vessel operations. Two commenters supported revising EM regulations to improve vessel-level accountability by making the EM Program more robust.

Response

In 2015, the final rule for Amendment 7 authorized NMFS to ''require vessel owners to make minor modifications to vessel equipment to facilitate installation and operation of the EM system,'' including ''a mounting structure(s) for installation of the camera(s)'' (§ 635.9(b)(2)). This final rule clarifies that NMFS may require vessel owners to install permanent or semi-permanent hardware (*e.g.,* booms), if necessary, in order to mount and install video cameras at locations on vessels to obtain optimal views of fish and improve the accuracy of the resulting data. Not all vessels may need additional hardware. If needed, NMFS would coordinate closely with vessel operators to address any vessel operation or safety concerns, taking into consideration the unique layout and

operation of each vessel. A description of the boom configuration would be included in each vessel's Vessel Monitoring Plan, which is a customized description of the specifics of the EM components on each vessel. In addition to the safety aspect of installation, the vessel owner would have substantial input regarding the type and amount of materials used, because they would be paying for the installation. In Draft Amendment 13, NMFS stated that it would pay the costs of boom installation as funds are available. At this time, appropriated funds are not available, thus, if additional hardware is needed, vessel owners would be required to cover the costs of the hardware and installation. The video camera position will need to provide an optimal view of the area of the water surface and seaward of the rail, down to the water surface, where the gear and fish are hauled out of the water, while minimizing potential safety hazards and interference with vessel operations. The process of boom installation will include discussion with vessel owners/operators and looking at current or historical video footage of the views provided by the video camera. NMFS agrees that improvement of the elements of the EM Program may contribute to the continued success of the IBQ Program and vessel-level accountability.

Comment 17

NMFS received comments that additional fish handling protocols for EM should not be specified and that a measuring grid on the deck of the vessel is not needed. Some commenters were concerned that a measuring mat would be hazardous or difficult to secure, or that a painted grid would be impractical because decks are routinely resurfaced. Two commenters, including the EPA, supported the proposed expansion of EM requirements to improve vessel-level accountability. Two commenters supported the preferred alternative provided the grids accommodate individual vessel configurations and maintain safety.

Response

NMFS believes that additional fish handling protocols that incorporate a measuring grid are necessary in order to improve the data quality. The vessel crew will be required to place retained fish on a mat with grid lines or a grid painted on the deck in view of the processing camera, so the video recording includes images of the fish. The use of a standardized grid will enable the video analyst to have a size reference to aid in the estimation of fish size and determination of fish species. For example, the total length of a fish and the relative size of the pectoral fin are some of the characteristics used in species identification. With the use of a reference grid, size estimation would be less affected by camera placement and angle, and the estimation of size and species identification may be improved. Further, a standardized reference grid may facilitate the development and use of computer algorithms and automation of video analysis. NMFS or a NMFS-approved contractor will work with vessel owners/operators to specify a measuring grid that, to the extent practicable, accommodates the unique layout and operations of each fishing vessel. A description of the measuring grid will be included in each vessel's VMP, which is a customized description of the specifics of the EM components on each vessel. The vessel owner will have six months after the VMP is approved to install the measure grid specified in the VMP. NMFS changed its approach from Draft Amendment 13/DEIS, which stated that NMFS would pay the costs of grid installation as funds are available. At this time, appropriated funds are not available and NMFS is now requiring vessel owners to cover the cost of grid installation.

Comment 18

NMFS received a comment about the reasons for the proposed changes to the EM Program, and questioning whether the Program has been successful in corroborating the set-based self-reporting of bluefin catch.

Response

Under the EM Program, NMFS has been successful in corroborating set-based self-reported bluefin catch. NMFS released the Three-Year Review of the IBQ Program in 2019, which provides detailed information on the EM Program. VMS and EM data from 2015 through 2018 indicated that a high percentage of sets with bluefin catch reported via VMS that were audited by review of EM footage were confirmed. Likewise, a high percentage of sets that did not report bluefin catch via VMS did not show bluefin catch in audited EM footage. (Table 6.35 in Three-Year Review of the IBQ Program). Unpublished data from 2019 show a similarly high level of agreement between VMS reports and EM footage. Thus, there is high confidence in EM data on the number of retained fish when compared to VMS data; however, the EM data have relatively high variability in size estimation compared to self-reported data. In addition, the EM data on bluefin discards are less likely to match the VMS data due to discard events that occur outside the camera's field of view. Thus, NMFS is implementing regulations to improve data quality, as explained in response to comments 16 and 17.

Comment 19

NMFS received a comment questioning whether the proposed cost recovery program is consistent with other cost recovery programs administered by NMFS. Another commenter did not support implementation of a cost recovery program, because of the numerous reporting and monitoring costs that the pelagic longline fishery already incurs, and stated that Congress, in the Magnuson-Stevens Act, did not envision cost recovery for an incidental species.

Response

NMFS developed the IBQ cost recovery program in consultation with NMFS staff from other regions with cost recovery programs for limited access privilege programs (LAPP). Differences among cost recovery programs reflect the unique aspects of each fishery managed under a LAPP, consistent with relevant Magnuson-Stevens Act provisions (16 U.S.C. 1853a(e) and 1854(d)(2)). Recognizing that the IBQ Program is unique because bluefin is an incidental catch and not a targeted species, NMFS believes cost recovery for this program is consistent with the aforementioned provisions. As with other cost recovery programs, in the IBQ program, a fee would not exceed three percent of the ex-vessel value of fish harvested under the LAPP (bluefin). *See id.* § 1854(d)(2)(B). Because bluefin is an incidental species in the pelagic longline fishery, and the IBQ Program provides incentives to reduce interactions with bluefin, landings of bluefin are likely to remain low relative to targeted species. Given the relatively small total ex-vessel value of bluefin incidentally caught and landed by pelagic longline vessels, and the substantial incremental costs to NMFS associated with the IBQ Program, NMFS anticipates that the likely cost recovery fee would be three percent of the ex-vessel value of bluefin sold (or less). As such, three percent of the ex-vessel value of bluefin will likely be a small amount of recoverable costs compared to other cost recovery programs. Therefore, this final rule implements a flexible cost recovery program, under which NMFS would make an annual determination whether a cost recovery fee paid by permit holders participating in the IBQ Program is warranted. If the total fees that could be collected are similar to or less than the administrative

costs of the cost recovery program, no cost recovery fee would be collected.

'F' Alternatives: Purse Seine Category and Quota Allocation Process

Comment 20

Several commenters supported the preferred alternative to change the method of allocating bluefin quota among the quota categories to simplify the process. Two of the commenters stated that the proposed measure would not result in any net gains for the fishery and one commenter noted it was procedural in nature.

Response

NMFS agrees that the preferred alternative to change the mathematical method used in the annual quota allocation process to achieve a similar result through a simpler means is procedural in nature and would not meaningfully impact the net amount of bluefin quota allocated to the quota categories. Instead of a two-step process of subtracting the 68 mt from the U.S. baseline quota and then applying the category allocation percentages, there will be a one-step process applying slightly revised category allocation percentages.

Comment 21

NMFS received many comments in support of the preferred alternative to discontinue the Purse Seine category and reallocate the bluefin quota upon implementation of Amendment 13. Commenters were in agreement with the underlying logic that the purse seine fishery has not been active for many years and that bluefin quota is needed by the other bluefin quota categories that are actively fishing. Furthermore, commenters thought that Purse Seine category participants who are not fishing should not be able to continue to profit by leasing bluefin quota to Atlantic Tunas Longline permit holders.

Response

NMFS agrees that the discontinuation of the Purse Seine category is warranted. The Purse Seine category has been allocated 18.6 percent of the U.S. baseline bluefin quota. Discontinuation of the Purse Seine category and reallocation of its quota will provide additional quota to active fishing categories that are, at times, quota-limited, and increase the likelihood that more of the U.S. quota will be utilized. Bluefin quota allocated to the Purse Seine category has not been used in many years to harvest bluefin using purse seine gear, and a meaningful amount of that quota has not been leased to pelagic longline vessels. *See* response to comment 24 for further details. Quota that is allocated to Purse Seine category participants and then not used is a source of concern to participants of both the directed and incidental bluefin fisheries, who, as a result, may forego potential fishing opportunities. Reallocation of the Purse Seine category quota will also reduce various types of uncertainty that result from the inactive status of the Purse Seine category (see comment 23).

Comment 22

NMFS received comments opposed to the preferred alternative, because it does not reallocate Purse Seine category bluefin quota to the Longline category and would affect IBQ leasing. Commenters noted that pelagic longline vessels have depended on leasing currently available Purse Seine category quota to account for bluefin catch under the IBQ Program, and that Purse Seine category quota provides a safety net in case of unexpected bluefin catch. A pelagic longline association representative stressed the reliance of pelagic longline fishermen on leasing Purse Seine category quota, and stated that the IBQ Program would cease to function without that leasing opportunity. The representative stated that, in recent years, the agency has consistently reallocated 75 percent of the Purse Seine category quota to other categories, leaving 25 percent (4.4 percent of the U.S. baseline quota) available for leasing. Given that, 25 percent of the Purse Seine category quota should be reallocated to the Longline category. The State of Maryland's Department of Natural Resources supported including the Longline category in the reallocation due to their reliance on such quota for leasing. Another commenter stated that the increased IBQ allocation to many active pelagic longline vessels under the preferred IBQ share alternative would not make up for the loss of quota currently available from the Purse Seine category. Other commenters did not think that excluding the Longline category from the proposed reallocation was fair and equitable. One commenter said that an adequate amount of bluefin quota for pelagic longline vessels was very important due to a decrease in the bluefin market and revenue and the relative increase in the cost of leasing bluefin quota.

Response

NMFS agrees that pelagic longline vessels have depended on bluefin quota that they lease from Purse Seine category participants to fish under the restrictions of the IBQ Program. IBQ Program participants require adequate IBQ allocation in order to meet the accounting requirements, participate in the leasing market, and mitigate risk. Adequate IBQ allocation is important to achieve a balance between incentives to reduce bluefin interactions and the ability to fish for target species to maintain profitability and supply the seafood market. In the reallocation method described in the proposed rule, NMFS did not reallocate bluefin quota from the Purse Seine category to the Longline category. After considering public comment, NMFS re-analyzed data regarding the leasing program and concluded that the Longline category should receive reallocated Purse Seine category quota in order to increase the likelihood of maintaining a successful IBQ allocation leasing market in the future, including new entrants. As described in the Final Amendment 13/FEIS, pelagic longline vessels have been increasingly reliant on both the available Purse Seine category quota and inactive pelagic longline vessels as sources for bluefin quota leases. Because the incidental Trap category has a *de minimis* amount of quota and rare bluefin landings, NMFS is including the category in the reallocation too, to simplify the overall reallocation. Therefore, this final rule implements bluefin quota percentages that incorporate reallocation of the Purse Seine category quota to all of the other bluefin quota categories, including the Longline and Trap categories, in proportion to their baseline allocation percentages.

Reallocation of the Purse Seine category quota facilitates directed fishing by the Longline category while accounting for incidental bluefin catch and facilitates the ability for active HMS directed permit categories to catch their full bluefin allocations. Based on the current U.S. baseline quota, the Longline category will receive more quota (34.9 mt) under this final rule than the average amount of Purse Seine leases from 2016 through 2019 (23.9 mt). Given recent lease amounts, NMFS does not believe that reallocation of 25 percent of the Purse Seine category quota (54.88 mt) to the Longline category is needed in order to promote the effective functioning of the IBQ program. Moreover, leasing was not the reason Amendment 7 adopted the annual quota allocation mechanism that guaranteed that a minimum of 25 percent of the Purse Seine category quota would be available to the five historical participants. *See* response to comment 24 for more on the mechanism. Under Amendment 7 rules,

annual allocations to the Purse Seine category are not based on IBQ leasing, but on the previous year's bluefin catch by each individual purse seine vessel, as the intent of the mechanism is to encourage purse seine vessels to catch rather than lease quota. *See* Final Amendment 7 to the 2006 Consolidated HMS FMP at pp. 23–24 (explaining preferred Alternative A3a: Annual Reallocation of Bluefin Quota from Purse Seine Category).

Comment 23

NMFS received comments that supported maintaining the current status of the Purse Seine category and the associated quota rules under which, in recent years, 75 percent of the Purse Seine category quota has been reallocated annually to the Reserve category, and subsequently reallocated to the directed bluefin fishing quota categories. The commenters' view was that the current system of annual redistribution, which relies on the inactive status of the purse seine fishery, works well to meet the needs of the directed bluefin fisheries.

Response

NMFS agrees that there have been benefits for the directed categories due to the lack of purse seine vessels fishing activity and the annual Purse Seine category quota allocation mechanism under the Amendment 7 regulations. Notwithstanding these benefits, there has also been uncertainty each year about the amount of quota that will be in the Reserve category, the amount of quota that NMFS may transfer inseason from the Reserve category to other quota categories, and the timing of such potential transfers. These sources of uncertainty make it difficult for vessel owners to plan their fishing season and may create market uncertainty. Lastly, there is an administrative burden for NMFS associated with conducting inseason transfers. Reallocation of bluefin quota from the Purse Seine category would result in increases in the relative sizes of all of the remaining quota categories, larger baseline quotas, reduced uncertainties, and efficiencies in the management process by reducing the number of inseason actions.

Comment 24

NMFS received comments from a business that currently owns vessels that previously fished in the purse seine fishery that they do not support discontinuation of the Purse Seine category because the revenue from leasing bluefin quota contributes to the financial well-being of their company. They consider the business entities that lease Purse Seine category quota to pelagic longline vessels to be 'active', and stated that the proposed measures would render their vessels and permits worthless. One commenter felt that the purse seine fishery should be able to become active again if it wishes, because the purse seine fishery is currently inactive due to high regulatory burdens.

Response

The business that submitted the comments summarized above is not one of the five historical participants in the Purse Seine category. Since 1982, the Purse Seine category has been managed with non-transferrable limited entry permits, and limited to five participants who historically were financially dependent on the fishery. None of those participants uses purse seine gear any longer, nor have they recently. Although they continue to receive quota and may lease it, the current framework has inhibited maintaining and achieving, on a continuing basis, optimum yield in the fishery as a whole. Since Amendment 7 was implemented in 2015, 75 percent of Purse Seine category quota annually continues to not be used for bluefin fishing by purse seine vessels or not be available for leasing under the IBQ Program, and large amounts of quota are ultimately transferred to the Reserve category through an annual process. As a result, there is uncertainty each year about the timing and amount of quota to be transferred between the Purse Seine and Reserve and other categories, administrative burden on NMFS to administer the process, and uncertainty about the amount and price of bluefin quota that might be leased by Purse Seine category participants.

Limited entry was initiated due to the large harvesting capacity of purse seine gear and its ability to exceed U.S. quotas in very short periods of time. Limited entry was implemented with the intent of ensuring that only those persons who had depended on this fishery for all or part of their livelihood were allowed access and this approach was practical given the small pool of ownership in this sector of the fishery. Under this limited entry system, the use of purse seine gear was authorized, and equal baseline quotas of bluefin were assigned to five individual vessel owners. This enabled owners to replace older vessels they owned with newer ones. Thus, NMFS limited the Purse Seine category to only the five participants who historically were financially dependent on the fishery and their five purse seine vessels. Although new entrants are prohibited, an owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns per 50 CFR 635.4(d)(5).

NMFS does not consider the Purse Seine category to be currently active, even though some of the historical permit holders have been leasing bluefin quota to pelagic longline vessels as allowed under the Amendment 7 regulations. Promoting commercial and recreational fishing under sound conservation and management principles and achieving, on a continuing basis, optimum yield from a fishery are key purposes of the Magnuson-Stevens Act. From 2005 through 2012, there was no purse seine fishing activity. From 2013 through 2015, only one Purse Seine category participant fished, making only a few sets, and accounting for only a small percentage of total annual bluefin landings each year (six, five, and four percent in 2013, 2014, and 2015, respectively). Recognizing that there had been low (to no) fishing and consistent underutilization of the Purse Seine category quota, Amendment 7 established the annual allocation mechanism to, among other things, optimize the ability for all permit categories to harvest their full bluefin quota allocations. Under this mechanism, based on their prior year's catch, each of the five historical participants would receive a minimum of 25 percent of ⅕th of the Purse Seine category quota, even if they did not fish, and up to 100 percent. The goal was to assure some level of fishing opportunity and create incentives for purse seine vessels to remain active in the fishery. *See* Final Amendment 7 to the 2006 Consolidated HMS FMP at pp. 23–24. Since 2015, there has been no purse seine fishing activity. The historical participants sold the vessels that they used to fish for bluefin to new owners that are not historical participants. Currently, there is no entity that fishes for bluefin with purse seine gear. Vessels sold by the historical permit holders have been or may be earning revenue in fisheries for species other than bluefin, and NMFS did not receive public comment that indicates otherwise or that provides specific information related to impacts on permit values. With regard to leasing, it is unclear whether the commenter has in fact been leasing Purse Seine quota, and if so, how. The commenter is not one of the five historical participants and accounts used for leasing are issued to the historical participants. In any event, NMFS did analyze the effect of the amendment on harvesting privileges by estimating potential revenue loss

from leasing bluefin quota and from potential future fishing/landings, and did not receive any public comments or new information since Draft Amendment 13/DEIS that is relevant to, or warrants a change in, these estimates. Even assuming the historical participants no longer obtain the financial benefits of leasing their quota, they have no property interest or other right to an ongoing income stream from those permits. Purse seine permits may not be assigned and are not transferable outside of the historical Purse Seine category participants, and like any limited access privilege may be modified, suspended or revoked. In this instance, NMFS has concluded that, in view of the long-term absence of active fishing, the elimination of the Purse Seine category will best contribute to achieving optimum yield and ensuring the greatest overall benefit to the nation.

Comment 25

NMFS received comments suggesting changes to the proposed distribution of reallocated Purse Seine category quota, including that no quota should be reallocated to the Angling category, additional quota going to the General category should be allocated to particular subquota periods, and more quota should be reallocated to the Harpoon category. One commenter was concerned about the potential ecological impacts of reallocation of Purse Seine category quota to the Angling category, due to the impression that it would represent a shift in the size range of fish caught, from large bluefin to smaller bluefin.

Response

Quota categories are tightly associated with authorized gears and permit types. This structure based on gear and permit type remains a valid way to align quota distribution among diverse fisheries. Modifications to the relative size of the allocations (*i.e.,* the percentages for each quota category) in order to further optimize the use of the bluefin resource should address specific concerns or trends in the fishery. There is no new scientific information or fishery trends that warranted fundamental reconsideration of the entire allocation structure beyond the alternatives examined in this Amendment. This Amendment 13 final rule includes modifications to the relative size of the category allocations (*i.e.,* the percentages for each quota category) in order to streamline the allocation system, and further optimize the use of the bluefin resource through elimination of the Purse Seine category with redistribution to other categories. The fundamental sizes of the different quota categories in relation to each other was neither analyzed, nor changed. The scope and rationale for the allocation changes implemented by this final rule are consistent with NMFS Procedural Directive 01–119–01 ''Criteria for Initiating Fisheries Allocation Reviews'', and the 2006 Consolidated HMS FMP. Additionally, NMFS implemented Amendment 12 to the 2006 Consolidated HMS FMP (86 FR 46836, August 20, 2021), an amendment that, among other things, addresses the 2016 revised National Standard guidelines and the 2017 Fisheries Allocation Review Policy Directive 01–119. Amendment 12 established triggers for the review of allocations for quota-managed HMS species, and these factors were appropriately considered within the examined alternatives. NMFS decided there was no need in Amendment 13 to consider fundamental changes to the baseline quota percentages (*see* Section 2.10.6), thus reallocating Purse Seine category quota in proportion to those percentages also seems reasonable.

Although the suggestions that the additional quota being reallocated from the Purse Seine category to the General category should be allocated to particular subquota periods was not within the scope of the action, the justifications cited by commenters for favoring one subquota period or another provided useful information for NMFS' consideration of modifications to the General category subquota periods. Comments pertaining to the General category subquota periods or methods of allocating quota among the General category subquota periods are addressed in Comments 26 and 27. Regarding the potential ecological impacts of reallocation of quota from the Purse Seine category to the Angling category, NMFS has determined that the ecological impacts will be neutral. Although NMFS understands the commenter's concern, which is based on the premise that the harvest of bluefin of different size classes may have different ecological impact, the increase in the size of the Angling category quota is relatively small (from 19.7 to 22.6 percent of the bluefin quota).

'G' Alternatives: Modifications to General Category Subquota Periods and/or Allocations

Comment 26

NMFS received comments that opposed, or asked what the justification was for the preferred No Action alternative to maintain the current structure of the General category fishery time periods and associated subquotas. One commenter stated that current management of the General category favors participants early in the season versus the fall participants over the last several years. They further elaborated that the current fishery has evolved into a part-time fishery with many less experienced recent entrants to the fishery, and noted specific concerns such as poor quality fish landed. They suggested various requirements including: that General category vessels be required to show tax proof of their commercial status and abide by the relevant safety regulations; and that HMS Charter/Headboat vessels fishing under the General category quota verify that they take charter trips.

Response

NMFS agrees that the General category fishery has changed over time. Handgear fisheries that target bluefin have consistently been very active, and the number of permit holders remains high. Increases in landings from the handgear fisheries that began prior to 2015 have continued. With such increases, there has been renewed public interest in the optimal and fair and equitable allocation of bluefin quota among seasons and geographic areas. These occurrences are the reason NMFS considered changes to the General category fishery in this amendment. Notwithstanding these changes to the fishery, based on the analyses in Draft Amendment 13/DEIS and the Final Amendment 13/FEIS (*see* Section 4.7.4), NMFS determined that the current structure of the fishery provides equitable fishing opportunities, as explained further in the response to Comment 27, is not modifying the General category regulations in the final rule. The open access permit categories that allow the use of handgear to target bluefin commercially are intended to provide opportunities for a variety of participants. NMFS acknowledges that among those participants there is likely to be a range in levels of experience and dependence upon the income derived from the fishery. There are licensing and safety regulations in place currently for the HMS Charter/Headboat and General category permitted vessels fishing commercially that do not apply to recreational vessels issued an HMS Angling permit.

Comment 27

NMFS received comments expressing concern with one or more of the alternatives analyzed but not preferred. A commenter stated that the alternative that would allocate the General category quota equally among 12 monthly

subquota periods would benefit southern participants, but adversely affect finances and participation of northern participants. Commenters who are participants in the January through March fishery expressed interest in a larger January through March subquota to have more opportunity earlier in the season. A commenter did not support providing additional quota to the January through March subquota period because it would mean taking away quota from the June through and August subquota period, during the time when there is the highest level of participation by fishermen north of Cape Cod. Similarly a commenter was concerned that the alternative that would extend the January through March subquota period through the end of April would represent a shift in catch and opportunity from north to south, and believed that it would result in negative economic consequences later in the year. A commenter was concerned about the alternative that would increase the September and October through November subquotas, with a corresponding decrease in the June through August subquota. They stated that the quota for the June through August subquota period has been exceeded in recent years and the fishery has been closed prior to August 31. They explained that the greatest fishing effort in terms of man-hours is during the June through August period, and that reducing the quota during this time period would represent a significant adverse impact on fishing opportunity. One commenter suggested that NMFS should prioritize August General category fishing by creating a separate August subquota in order to maximize fishing opportunity and number of participants. The commenter stated that during August the greatest amount of bluefin availability coincides with the greatest amount of fishing effort. Other commenters who are participants in the October through November period or December period fisheries expressed concerns regarding the uncertainty of whether General category quota would remain for the times when commercial-sized bluefin are available in their areas. Some commenters preferred to see more opportunities available when market prices are generally higher, such as in the fall months. Several commenters noted that fall bluefin are the most valuable due to higher fat content and that providing more quota to June through August would increase landings of lower quality and lower value fish. Several commenters stated that commercial fishermen on Cape Cod and the islands of Martha's Vineyard and Nantucket depend on quality fish in the late fall. Allocating the additional quota for the fall would ensure that bluefin quota would last into the fall. Several commenters were concerned that, in recent years, some of the subquotas have been reached and the General category has been closed while fishing opportunities (*i.e.,* fish availability) remained and meanwhile other subquotas are not reached. One commenter stated that NMFS should create a separate November subquota period.

Response

NMFS acknowledges that there are varied views on how the General category could be modified. As noted by commenters, there are potential trade-offs associated with each of the alternatives analyzed, including the preferred alternative, depending upon the time of year or location being considered. The bluefin fishery is highly dynamic because bluefin are highly mobile, with a distribution that changes seasonally and annually. Fishing permits are open access, thus permit holders may fish in any geographic location they choose. Price fluctuations do not show a strong pattern during the year, despite perceptions that prices are higher in the fall. However, there are also predictable patterns in bluefin distribution that are reflected in the current structure of the General category subquota time periods. The larger quota associated with some subquota periods reflects the general seasonality, historical availability, and relative sizes of the historical seasonal fisheries for bluefin. NMFS analyzed various quantitative metrics in Draft Amendment 13/DEIS and the Final Amendment 13/FEIS to enable standardized comparisons among the different subquota periods and alternatives (*e.g.,* Tables 4.32 through 4.40). Standardized metrics are used to compare among quota periods because the quota periods are allocated different amounts of bluefin, and are of different duration. After considering information from recent years, NMFS believes that the subquotas continue to be appropriate, given fish availability, fishing effort, and bluefin landings during the different subquota time periods, and thus provide fair and equitable fishing opportunities. It is important to note that the subquotas work in concert with several regulatory mechanisms that provide flexibility in how the amount of quota is divided among the subquota periods. NMFS may transfer unused quota from one subquota period to a subsequent subquota period in the year such that the quota allocated to subquota periods may increase. Unused quota may, if remaining unused as the year progresses, all be transferred into the December subquota period. NMFS may allocate quota from the December subquota period to the January through March subquota period, may allocate additional quota from the Reserve category, or may utilize changes in retention limits to modify the rate of catch to facilitate the attainment of subquotas and the annual quota.

In 2021, NMFS resumed the use of restricted-fishing days to further facilitate the attainment of subquotas, and a schedule of restricted-fishing days was finalized for 2022 (87 FR 33056, June 1, 2022). The data from recent years suggest that the flexibility in the quota system provided by these regulatory mechanisms is working. Landings (as a percentage of quota) have been increasing in recent years. Subquota periods that have lower percentage allocations have not necessarily been limited by them. For example, during 2018 and 2019, landings during the January through March subquota period were 8 percent and 13 percent (respectively) of the total General category bluefin landings, despite that period having an initial allocation of 5.3 percent of the General category quota. Similarly, during 2018 and 2019, landings during the October through November subquota period were 18 percent and 22 percent of the total General category bluefin landings, despite that period having an initial allocation of 13 percent (Figure 3.3). Although the amount of bluefin quota in the Reserve category will be reduced under Amendment 13 as a result of the removal of the Purse Seine category, and the associated flexibility to transfer quota from the Reserve to the General category will be reduced, the General category will be allocated a larger portion of the U.S. bluefin quota. NMFS will continue to monitor the General category carefully and make inseason adjustments per its regulations to facilitate a well-managed fishery that, among other things, provides equitable fishing opportunities.

'H' Alternatives: Modifications to the Angling Category Trophy Fishery

Comment 28

NMFS received comments in support of the proposed measure to modify the current Angling category Trophy North subquota area by dividing the area into two zones (north and south of 42° N lat., off Chatham, MA) and modify the allocation percentages to provide opportunities for anglers fishing off New

England and make the trophy fishery more equitable. One commenter noted that the Angling category boosts local economies through angler expenditures on boat fuel and fishing tackle. Two commenters were concerned that in order to create the new trophy suballocation for the Gulf of Maine trophy area, NMFS would increase the Trophy bluefin allocation through an equivalent reduction of the subquota for large school/small medium bluefin subquota (bluefin that measure from 47 inches to less than 73 inches curved fork length (CFL)). They noted that the large school/small medium size class is an important component of the fishery. There were suggestions that NMFS increase the quota allocation to the Angling category and to the trophy subquotas, particularly for New England and for the New York Bight.

Response

NMFS agrees that dividing the current Trophy North subquota area into two zones and providing allocation to the new area (Gulf of Maine) will make the fishery more equitable by providing a modest amount of trophy quota to anglers north of 42° N lat. NMFS agrees that the recreational HMS fishery is an important contributor to the economy. Through this final rule NMFS will increase the portion of the Angling category quota allocated for trophy bluefin from 2.3 percent to 3.1 percent to provide quota to the new area. The source of that additional quota will be from the large school/small medium size range. Because the amount of school bluefin (27″−<47″) that can be caught each year is limited in the codified regulations, and in compliance with ICCAT's binding western Atlantic bluefin recommendation, to no more than 10 percent of the annual U.S. bluefin quota, any increase to the trophy subquota (73″ or greater) will need to be balanced with an equivalent reduction of the subquota for large school/small medium bluefin subquota (47″−<73″). NMFS disagrees that the reduction in the relative amount of large school/small medium fish allocated will be problematic. There will be only a minor decrease in the amount of allocation for large school/small medium bluefin; the subquota will represent approximately 52 percent of the Angling category quota. In recent years, Angling category landings overall have averaged less than the Angling category quota, and in many years, landings of large school/small medium bluefin have averaged less than the available quota for those size classes. NMFS disagrees that more quota should be allocated to the Angling category. In determining the scope of alternatives analyzed in Amendment 13, NMFS decided not to consider making fundamental changes to the structure of the bluefin quota category allocations, as explained in response to Comment 25. The change to the structure of the Angling category trophy fishery is a relatively minor aspect of the recreational bluefin fishery. The primary intent of the recreational trophy allocation is to reduce discards of trophy bluefin, and not to support a directed fishery.

Comment 29

NMFS received several suggestions regarding the current geographic areas associated with the trophy fishery. There were suggestions to move the current Trophy North/South line from its current location in southern New Jersey (off Great Egg Inlet) southward to Ocean City, Maryland, to create more opportunity for Maryland anglers, and to consider alternating the location of the line every other year. The Maryland Department of Natural Resources elaborated that they did not support any of the 'H' alternatives because they would continue to be inequitable to those fishing out of Ocean City, Maryland. They stated that Maryland is within the Trophy South area, but does not have access to the fish because the quota is caught (in areas to the south of Maryland) before the fish are accessible to Maryland. For this reason they felt the alternatives were not fair to anglers off of Maryland, Delaware, or southern New Jersey and, therefore, suggested moving the southern boundary of the Trophy North area southward to include Ocean City, Maryland. Another commenter suggested creation of another trophy geographic area and associated trophy subquota within the current Trophy South area, because the subquota is often filled off North Carolina and Virginia Beach, Virginia.

Response

NMFS disagrees that Amendment 13 should modify the southern boundary of the Trophy North area or create a new southern trophy area. In the past, the southern boundary of the Trophy North area was further to the south, and fishermen requested that NMFS move the line to the north. Specifically, NMFS implemented the boundary change from off Ocean City, Maryland to off Great Egg Inlet, New Jersey in a 2001 final rule, based on public comments, to reduce confusion regarding fishing areas and catch limits and to reduce the likelihood of vessels being excluded from participating in the trophy bluefin fishery (66 FR 42801, August 15, 2001). Given the highly dynamic nature of the fishery, there may be times during which a particular geographic area has less opportunity for trophy bluefin landings than during other times. Permit holders may fish for bluefin in any geographic location they choose, as long as they are fishing in an area that is open.

I Alternatives—Modifications to Other Handgear Fishery Regulations

Comment 30:

Two commenters supported the alternative that would allow the use of harpoon gear by vessels issued an HMS Charter/Headboat permit, in order to provide flexibility and fishing opportunity. To address safety concerns, commenters suggested allowing only the vessel captain and crew—and not passengers—to use harpoon gear. Alternatively, the use of harpoon gear could be allowed on non-for-hire commercial trips only. Several commenters did not support prohibiting vessels with General category permits from using harpoon gear because landings in that permit category by harpoon gear were relatively low and therefore not a concern. Those commenters further noted that a prohibition on harpoon gear use by vessels in the General category would force vessels to obtain Harpoon category permits instead.

Response:

NMFS disagrees that vessels fishing for bluefin issued an HMS Charter/Headboat permit should be allowed to fish with harpoon gear. In the 2008 rule on this subject, there were public concerns about safety and the liability associated with allowing the use of harpoon gear on ''for-hire-trips'' (trips on which there are paying passengers aboard a vessel issued a Charter/Headboat permit, fishing under recreational rules). NMFS does not believe that safety and liability concerns would be adequately addressed by limiting harpoon use to only the vessel captain and crew because such a restriction would be difficult to enforce, and charter clients are likely to include a variety of levels of boating and fishing experience. NMFS also does not prefer allowing harpoon use by Charter/Headboat permit holders on non-for-hire commercial trips, as there is adequate opportunity for vessels fishing commercially to utilize harpoon gear under the General or Harpoon category permits. NMFS agrees that prohibiting General category permit holders from using harpoon gear is not necessary. Currently, both the General and Harpoon categories are authorized to

use the gear, and bluefin landings by vessels using harpoon gear fishing in the General category comprise a relatively low percentage of the General category landings.

Comment 31:

Several commenters did not support the proposed measure to implement a retention limit for the Harpoon category. These commenters stated that it is important for Harpoon category participants to maintain the ability to land as many fish per day as they can and that a retention limit would hamper their ability to take advantage of the limited opportunities to catch bluefin during the window of time when bluefin are available to harpoon gear on the water's surface. The specific reasons the commenters did not support a retention limit varied and included: reliance by some participants on the fishery to make a living, the importance of being able to capitalize on good weather days to their overall business success, climate change reducing good weather fishing opportunities, and the need for the flexibility to catch many bluefin on a particular trip because on some days they will catch no fish. Some commenters stated that Harpoon category fishermen have shown the willingness and ability to voluntarily control catch based on market demand. One commenter said that the analysis should not rely on data from 2019 due to atypical high landings that year.

Response:

NMFS agrees that some vessel owners rely on revenue from the Harpoon category fishery as part of their annual income, and that the opportunities to target bluefin using harpoon gear are limited by fish availability and weather. However, NMFS disagrees that implementation of a retention limit on the total number of bluefin retained by vessels fishing in the Harpoon category will be problematic. A default trip limit set at 10 fish will likely constrain only a small percentage of trips, with the potential economic benefits of a longer season and/or associated extension of fishing opportunities to a greater number of Harpoon category participants. Furthermore, this measure will allow NMFS the ability to adjust the retention limit via inseason action to avoid closing the fishery. NMFS closed the 2019 Harpoon category fishery effective August 8, 2019, when the adjusted quota of 91 mt was met; Harpoon landings for 2019 totaled approximately 102 mt (84 FR 39208, August 9, 2019). The determination that the retention limit is warranted does not rely solely on the presumption of high total landings (such as during 2019). The retention limit will be a useful management tool due to the dynamic and diverse nature of the fishery. A retention limit of 10 bluefin may prevent a few vessels landing large numbers of bluefin from having a disproportionate impact on the rate of harvest of the limited quota, and reduce potential market issues associated with high landings during a short period of time.

Comment 32:

Several commenters did not support the preferred No Action alternative that will maintain the current Harpoon category start date of June 1, but instead supported the alternative that would move the start date earlier to May 1. They explained that bluefin, a cold water species, are no longer available at the surface to the harpoon fishery once surface waters warm during the summer. They state that in the past, bluefin remained at the surface in September and October, but recently are no longer on the surface by mid-August, and that given warmer surface temperatures associated with climate change, the harpoon category season needs an earlier start date. Commenters indicated that bluefin migrate through southern New England in May and that a May 1 start date would allow opportunities for Harpoon category participants while minimizing potential gear conflicts or market competition with the General category. Some commenters supported the preferred No Action alternative to maintain the current June 1 Harpoon category fishery start date. They were concerned that an earlier opening date would result in earlier closure. They also noted concerns about equitable access to the fishery among different geographic regions (*i.e.,* that an earlier start date would benefit participants in Southern New England to the detriment of northern participants, especially the traditional participants in Maine). One commenter also expressed concern about potential baiting activity behind fishing vessels using bottom trawls or dredges and the effect on early season surface accumulations of bluefin.

Response:

NMFS disagrees that the current start of the Harpoon fishery should be moved from June 1 to May 1. Maintaining the current start date of June 1 for the Harpoon category, which coincides with the start date for the General category fishery, will facilitate enforcement and business planning, and provide greater certainty to participants regarding fishing opportunities and market conditions. Given the dynamic nature, geographic range, and diverse participants of the commercial handgear fishery for bluefin, maintaining the June 1 start date is likely to result in equitable fishing opportunities.

Comment 33:

Two commenters supported extending the ability for permit holders with an Atlantic Tunas permit in the General, Harpoon, or Trap category, or Atlantic HMS permit in the Angling or Charter/Headboat category, to change permit categories from within 45 days of purchase to the end of the fishing year as long as the vessel has not landed a bluefin.

Response:

NMFS agrees that allowing applicants to change permit types as long as they had not landed a bluefin will give vessel owners more opportunity to change their permit type, and provide flexibility to account for mistakes made by permit applicants when choosing the permit type. Because vessels are not allowed to land bluefin in two quota categories within a fishing year, the restriction will still preclude vessels from gaining any sort of an advantage over vessels fishing under a single permit type within a fishing year.

General Comments on the IBQ Program and Pelagic Longline Fishery

Comment 34:

NMFS received general comments regarding the current status of the pelagic longline fishery, as it relates to Amendment 13. The common themes of such comments were that the fishery is struggling and that it is very important to: maintain the viability of the fishery; fully utilize the U.S. swordfish quota; maintain domestic food production to decrease dependence on imports for national security; and have the United States continue to serve as a strong example internationally of a well-managed fishery. Commenters stated specifically that NMFS needs to preserve the viability of the pelagic longline fishery by preserving its flexibility and allocating an adequate amount of IBQ allocation in order to account for sets with high bluefin catch and maintain opportunity to fish for swordfish and other target species. Commenters noted diverse challenges facing the industry including competition from imports, closed areas, declining participation, challenges for new entrants, the high cost of fishing gear, the cost of leasing IBQ allocation, a deterioration of the bluefin market, and difficulty in finding experienced,

quality crew. One commenter stated that the proposed measures do not minimize the disadvantage to U.S. fishermen in relation to foreign competitors and do not minimize adverse social and economic impacts to the pelagic longline industry.

Response:

NMFS agrees that the pelagic longline fishery faces numerous and serious challenges. The elements of Amendment 13 pertaining to the pelagic longline fishery focus on modifications to the IBQ Program to address some of the challenges. Amendment 13 will implement changes to the IBQ Program that provide additional flexibility for the majority of pelagic longline vessels, including dynamic determination of IBQ shares, a more flexible means of regional designation of IBQ shares, and a low-share threshold in the Gulf of Mexico; an increase in the Longline category quota to 15.9 percent of the U.S. bluefin quota; and relaxation of the requirement for mailing EM hard drives. Amendment 13 will also authorize the future development of a bluefin quota set-aside, if needed, for the pelagic longline fishery. The selection of the specific measures being implemented from among the alternatives analyzed in the FEIS minimize the adverse social and economic impacts to the pelagic longline industry. NMFS is open to future consideration of regulatory changes that would address other issues in the fishery, such as obtaining data from spatial management areas, and considering modifications to such areas to optimize the balance of protection of bycatch species and access to target species.

Comment 35:

NMFS received a comment from an environmental group that the reduction in bluefin bycatch under the IBQ Program has been a compelling success story, and that, since its implementation, the pelagic longline fishery has not exceeded its bluefin quota. One commenter stated that Amendment 13 would increase sustainability and transparency, and one commenter expressed appreciation for NMFS' efforts to improve the pelagic longline fishery regulations.

Response:

NMFS agrees that the IBQ Program has successfully reduced the incidental catch of bluefin substantially compared to previous levels, and agrees that Amendment 13 will further improve the IBQ Program.

General Comments on Amendment 13

Comment 36:

NMFS received comments that the comment period was open during a busy fishing season and requesting that the comment period be extended a second time to March 2022, and the date of implementation postponed, so that the commenters would have time to read the Amendment 13 documents. They also stated that such extension of the comment period would provide NMFS time to look into the issue of fishermen baiting and harpooning bluefin behind fishing vessels using bottom trawls or dredges. NMFS received comments that the Agency did not address suggestions from some pelagic longline representatives regarding the Amendment 13 scoping document. One commenter expressed concern that the impacts of these management measures would force the species into extinction, and that the quota for bluefin should be zero. The EPA commented that they support efforts to reduce bluefin dead discards and that preventing wasteful bycatch will become increasingly important as various impacts of climate change on the ocean intensify impacts on marine resources.

Response:

The original comment period on the proposed rule was from May 21, 2021 through July 20, 2021, and then extended through September 20, 2021 (86 FR 38262, July 20, 2021). The four-month duration of the comment period provided reasonable opportunity for the public to comment on the proposed management measures. Amendment 13 did not analyze alternatives to address concerns about new fishing strategies in the harpoon fishery, but could consider this topic for future discussions at the HMS Advisory Panel. NMFS did not analyze all of the suggestions for management measures that it received during the scoping phase of the development of Amendment 13, but did consider input from scoping and analyzed a reasonable range of alternatives. Measures implemented by this final rule do not alter, and are consistent with, the ICCAT-adopted western Atlantic bluefin quota and U.S. portion of the quota and the best scientific information available. Currently, the stock is not experiencing overfishing. NMFS agrees that bycatch reduction will continue to be important in the context of future climate change impacts on marine resources.

Management Options Considered but Not Further Analyzed

Comment 37:

NMFS received comments on management options that were considered but not analyzed. There were multiple comments in support of annual accountability for quota debt under the IBQ Program. Commenters stated that the flexibility of annual accountability is needed to facilitate leasing of IBQ allocation throughout the year, which is particularly important if the Longline category does not receive any bluefin quota from the Purse Seine category quota reallocation. Commenters also stated that the current quarterly accountability is not needed because there are adequate deterrents with the IBQ Program to prevent targeting bluefin.

Response:

NMFS disagrees that annual accountability should have been an alternative that was analyzed or preferred. Vessels have successfully accounted for bluefin catch under the quarterly accountability rules. Although annual accountability would provide substantial flexibility for vessel owners, this method of accountability may result in higher prices for IBQ allocation leases, a compressed market for IBQ allocation at the end of the year, and reduced incentive to avoid bluefin. The timing of quarterly accountability is likely to maintain incentives for vessels to utilize fishing strategies that minimize the likelihood of interactions with bluefin, and reduce the ability for vessels to accrue large amounts of quota debt. For example, a vessel that is not able to avoid bluefin catch and accrues quota debt would be constrained on a quarterly basis. A vessel with quota debt at the beginning of the quarter would not be able to lawfully fish with pelagic longline gear until it leased sufficient IBQ allocation to 'pay' for the quota debt. This requirement provides strong incentives to avoid catch of bluefin and could prevent the vessel from pelagic longline fishing if the vessel owner is not able to find affordable IBQ allocation to lease from another permit holder. In contrast, under annual accountability, a vessel would be able to accrue quota debt throughout the year, and therefore incentives to use a fishing strategy that avoids bluefin are weaker. Quarterly accountability provides a more appropriate balance between accountability and flexibility than annual accountability would. While leasing from the Purse Seine category will no longer be available, as explained in response to comment 22, Amendment

13 addresses leasing concerns by reallocating a portion of the Purse Seine category quota to the Longline category.

Changes From the Proposed Rule (86 FR 27686; May 21, 2021)

This section explains the changes in the regulatory text from the proposed rule to the final rule. Changes were made in response to public comment, refined analyses, or clarification of text for the final rule. Therefore, where relevant, the description of measures implemented by this final rule include any changes from the measures in the proposed rule and Draft Amendment 13/DEIS. Where NMFS modified the proposed measures or adopted a different alternative that was not proposed, such alternatives fell within the scope of, or are a logical outgrowth of, the alternatives in the proposed rule and DEIS. The changes from the proposed rule include changes to the method of determining quota shares in the IBQ Program; IBQ regional designation rules; Purse Seine category reallocations; Harpoon category retention limits; and changes to the electronic monitoring program impacts. The changes from the proposed rule text in the final rule are described below.

1. Section 635.9, paragraphs (c) and (e). Modification to the standardized reference grid and VMP.

NMFS received a number of comments on Draft Amendment 13 and the proposed rule regarding the measuring grid, including accommodating individual vessel configurations and maintaining safety. *See* comment 17 under Responses to Comments. After reviewing these comments, NMFS determined that it is important to provide time for a measuring grid to be adapted for each vessel and for each vessel to install and begin using that grid. The final rule thus provides that, over the next year, NMFS or a NMFS-approved contractor will work with vessel owners/operators to specify a measuring grid that, to the extent practicable, accommodates the unique layout and operations of each fishing vessel. A description of the measuring grid will be included in each vessel's VMP, and a vessel owner will have six months after the VMP is approved to install the grid specified in the VMP. *See* response to comment 17 for further explanation. Additionally, because appropriated funds are not available, the final rule requires vessel owners to cover the cost of grid installation, which is a change from the proposed rule.

2. Section 635.15, paragraphs (b), (c), and (e), § 635.28, paragraph (a), and § 635.34, paragraph (b). Modification to the IBQ share eligibility, distribution, and allocation methods.

The proposed rule determined IBQ shares based upon landings of designated species (swordfish, and yellowfin, bigeye tuna, albacore, and skipjack tunas) as the measure of fishing effort and four percentile tiers (Sub-Alternative A2c). Public comments noted concerns regarding the species included as designated species (*see* comment 2); potential factors that may affect a vessel's fishing strategy, which species are fished, and what is landed (*see* comment 3); disproportionate impacts the tiers may have on IBQ shares (*see* comment 4); and different views on the best methods for determining IBQ shares (*see* comment 3). After considering public comments, NMFS decided to change the final rule to determine IBQ shares annually based on sets as the measure of fishing effort and eliminate tiers, instead providing each eligible vessel with a ''customized'' share. NMFS will only count one set (a single deployment and retrieval of pelagic longline gear) per day towards the determination of IBQ shares. *See* Pelagic Longline Fishery: *Annual IBQ Share Determination* above for further details. This provides a standardized, uniform method for determining IBQ shares for a geographically diverse fleet with a range of vessel sizes and fishing strategies. In addition, it addresses a concern raised about short sets being deployed for the purpose of influencing IBQ share determinations, and is simpler for NMFS to implement. *See* responses to comments 2–4 for further explanation.

Pursuant to existing authority at § 635.27(a), NMFS may increase or decrease the baseline Longline quota through inseason or annual adjustments. When doing so, NMFS would apply each IBQ shareholder's share percentage to the amount of quota increase (subject to the applicable GOM cap) or decrease, and will notify shareholders of any resulting changes in their IBQ allocations.

After considering a concern raised about potential, future declines in effort in the Gulf of Mexico resulting in a very low percentage of GOM-designated shares in some years and severely limiting operation of the fishery, NMFS conducted further analyses and decided to add a low GOM designated share threshold (5 percent or less) to the final rule. *See* comment 8 and response under Response to Comments for further explanation. If the threshold is triggered, either GOM or ATL shares and resultant allocations may be used to account for BFT caught in the Gulf of Mexico and to satisfy the minimum IBQ requirement. Other existing regional accounting rules would continue to apply, and there would be a cap on BFT incidental catch in the Gulf of Mexico (weight of bluefin associated with 35-percent or lower cap on GOM designated shares). *See* Pelagic Longline Fishery: *Regional Designations for IBQ Shares and Resultant Allocations* above for further details.

Lastly, based on public comment about new entrants (*see* comment 6), NMFS adds to the framework provisions of the 2006 Consolidated HMS FMP and associated regulations authority for a *de minimis* amount of bluefin quota from the Longline category quota prior to calculating the annual IBQ allocations. This lays the groundwork for potential, future rulemaking, if needed. No set aside is being established at this time.

3. Section 635.19, paragraph (b). Correction and clarifications to Atlantic tunas primary gears.

The proposed rule incorrectly listed bandit gear and green-stick gear as primary gears for the Angling category for BAYS. The final rule deletes those gear types. In addition, consistent with an existing prohibition that refers to fishing for, catching, retaining, or possessing bluefin tuna, the final rule adds ''catching'' or ''catches'' in several places where the other terms appear in paragraph (b).

4. Section 635.23, paragraph (d). Modification regarding Atlantic Tunas Harpoon category permit holders retention limits for bluefin.

The proposed rule maintains the current Harpoon category retention limit (range) of large medium bluefin, but sets a combined daily retention limit on the total number of large medium and giant bluefin at 10 fish. These aspects are unchanged in the final rule. The final rule adds inseason authority to adjust the combined daily retention limit between 5 to 10 fish, in order to avoid closing the fishery. *See* Harpoon category section and comment 31 and response, above, for further details and explanation.

5. Section 635.27, paragraph (a) and subparagraph (a)(3). Modification to the commercial and recreational quotas for bluefin.

The proposed rule would have reallocated Purse Seine category quota proportionally to the directed bluefin quota categories (General, Angling, Harpoon, and Reserve categories) (preferred Alternative F4). The final rule adds Longline and Trap, and reallocates the Purse Seine category quota to all categories by revising each category's percentage proportionally. NMFS made this change in light of public comments expressing concern about impacts on

the IBQ leasing market as a result of discontinuation of the Purse Seine category, further analyses on the source of pelagic longline IBQ leases, and the agency's conclusion that the Longline category should be included in the reallocation to increase the likelihood of a successful leasing market. *See* Purse Seine section and comment 22 and response above for further details.

The final rule also amends § 635.27(a)(3) to add: ''For purposes of § 635.28(a)(1), regional IBQ allocations under § 635.15(c)(3) and the BFT catch cap for fishing in the Gulf of Mexico (§ 635.15(c)(3)(iii)) are considered quotas.'' Section 635.28(a)(1) provides for closure authority. Adding the BFT catch cap here ensures that, if the low GOM designated shares threshold is triggered, NMFS can take action if the catch cap is reached or projected to be reached. Section 635.28(a)(1) already authorizes closure action for regional IBQ allocations; deleting reference there to regional IBQ allocations and adding the reference to § 635.27(a)(3) merely simplifies the regulatory text.

6. Section 635.28, paragraph (a). Modification to fishery closures.

Consistent with the edit to § 635.27(a)(3) discussed above, the final rule deletes reference to regional IBQ allocations here.

7. Section 635.34, paragraph (b). Adjustment of management measures.

As explained above, NMFS has added to the framework provisions of the 2006 Consolidated HMS FMP authority for a *de minimis* set aside of bluefin quota from the Longline category. The final rule makes a parallel edit to § 635.34.

8. Section 635.71 and other sections throughout the rule. Technical adjustments.

In addition to the primary changes described above, additional technical changes were made throughout the rule to improve upon clarity (*e.g.,* change in punctuation, reordering phrases or sentences, adding additional information or cross-references), correct capitalizations, or correct cross-references for paragraphs that are changing. In section 635.71, the final rule adds a prohibition corresponding to an existing requirement at § 635.23(f)(2), which requires vessels with pelagic longline gear on board to retain all dead large medium or giant bluefin. The final rule clarifies that both apply to retaining ''and land[ing]'' bluefin, and instead of specifying a size for the fish, uses ''large medium or giant'' BFT, which are defined terms under § 635.2. Other changes in § 635.71 correct cross-references based on the changes in this final rule. A number of other technical changes can be found throughout the rule and do not affect the intent of the final rule. Rather, these changes are editorial in nature or clarifications to existing regulatory text.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law.

As described above, NMFS prepared an FEIS for Amendment 13. The Notice of Availability for the FEIS was published in the **Federal Register** on May 13, 2022 (87 FR 29310). In approving Amendment 13, NMFS issued a Record of Decision (ROD) identifying the selected alternatives. A copy of the ROD and the FEIS, which includes detailed analyses of a reasonable range of alternatives to meet rulemaking objectives, is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS requested reinitiation of consultation under the Endangered Species Act (ESA) in July 2022, on the effects of the Atlantic HMS pelagic longline fishery due to new information on mortality of giant manta ray that exceeded the mortality anticipated in the May 2020 Biological Opinion on that fishery. As explained in the Background section, in accordance with section 7(d) of the ESA, NMFS has determined that, during consultation, pelagic longline fishery activity consistent with the 2020 Biological Opinion will not result in an irretrievable or irreversible commitment of resources which would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures and that continued compliance with the Reasonable and Prudent Measures and Terms and Conditions in that biological opinion will avoid jeopardy to ESA-listed species, consistent with section 7(a)(2) of the ESA.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA, which must address each of the requirements in 5 U.S.C. 604(a)(1)–(5), is below. The entire FRFA is included in the FEIS and is available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the RFA requires Agencies to state the objective of, and legal basis for, the action. The objectives of, and legal basis for, this final rule are set forth in the Background section above.

Sections 604(a)(2) and (3) of the RFA require that a FRFA include a summary of significant issues raised by public comment or by the Chief Counsel for Advocacy of the Small Business Administration in response to the IRFA and proposed rule, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS did not receive any comments on the proposed rule from the Chief Counsel for Advocacy of the Small Business Administration. Additionally, NMFS did not receive any public comments specifically on the IRFA, however the Agency did receive some comments regarding the anticipated or perceived economic impact of the rule. The comments and responses included below are those that pertain specifically to such economic impacts. A summary of all of the comments received and the Agency's responses are provided above.

Comment 2 noted that dolphin fish provide up to 30 percent of the revenue for a pelagic longline vessel, thus it should be included as a designated species under the proposed, dynamic allocations of IBQ shares. While NMFS agrees that dolphin fish is an economically important component of the pelagic longline fishery, based on other public comments and additional analyses, NMFS decided to use pelagic longline sets, not designated species, for the allocations.

Comment 4 noted that the use of tiers in the proposed, dynamic allocation alternatives has the effect of disadvantaging some vessels, as it would assign IBQ shares based on four distinct percentages. Some vessels could receive less IBQ shares and may have to spend more money to lease additional shares from other vessels, or lose potential income from additional shares that could have leased to other vessels. NMFS agrees that there were negative implications for individual vessels associated with the use of tiers. After consideration of public comments, NMFS determined that the beneficial aspects of the use of tiers did not outweigh these negative aspects, and, therefore NMFS will base dynamic allocation of IBQ shares on customized share percentages for each vessel, not tiers.

Comment 8 noted that the combined effect of the proposed IBQ measures that focus on the Gulf of Mexico—that is the Gulf of Mexico designation of IBQ and

the associated rules—would not function when there is very low fishing effort in the Gulf of Mexico. The specific concern stated was that vessels may have insufficient IBQ allocations to satisfy the minimum IBQ requirements as well as account for any bluefin catch, and that vessels would not lease IBQ allocation to other vessels. A severely constrained or non-functioning IBQ program in the Gulf of Mexico would directly impact the ability for vessels to fish and earn income. NMFS agrees that under conditions of very low fishing effort in the Gulf of Mexico, the IBQ Program may not function as designed. Therefore, NMFS has modified the final rule to include a low share threshold that enables temporary relaxation of certain GOM-specific accounting rules, while maintaining an overall cap on catch in the Gulf.

Comment 6 noted that a bluefin quota 'set-aside' should be created to provide a source of IBQ shares and allocations for vessels that are new entrants to the fishery. In response, NMFS has added to the 2006 Consolidated HMS FMP framework provisions and related regulations the authority to establish such a set aside, if needed, through a future rulemaking.

Comment 22 noted that that the Longline category should be included in the reallocation of Purse Seine quota, because pelagic longline vessels rely on Purse Seine category quota for leasing under the IBQ Program and would be impacted by decreased availability of IBQ allocation to lease with elimination of the Purse Seine category. A commenter stated that increased IBQ allocations to active pelagic longline vessels under the proposed IBQ share alternative will not make up for the loss of quota currently available from the Purse Seine category. NMFS agrees with this statement, having confirmed it through additional analyses for the Final Amendment 13/FEIS. Based on this and other considerations, the final rule includes the Longline and Trap categories in the reallocation of Purse Seine category quota.

Comment 27 noted public concerns about some of the General category subquota alternatives that were not preferred, varied views on how to modify the subquotas. For example, one commenter noted that modification of the current subquota periods into 12 equal subquota periods (Alternative G2a), would adversely affect the participation and finances of vessels, depending upon the location of the vessels. Another commenter did not support extending the January through March subquota period until the end of April (Alternative G2b) because such a change would result in negative economic consequences later in the year. NMFS acknowledges that there are potential trade-offs associated with each of the alternatives analyzed, but notes that the bluefin fishery is highly dynamic, fishing permits are open access, and price fluctuations do not show a strong pattern during the year. After considering public comment and information from recent years, NMFS believes that existing General category subquota periods continue to be appropriate, given fish availability, fishing effort, and bluefin landings during the different subquota time periods, and thus provide fair and equitable fishing opportunities. Thus, the final rule makes no changes to those subquota periods.

Comment 31 noted that the implementation of the proposed retention limit of 10 bluefin for the Harpoon category, which applies to large medium and giant fish (combined), would result in lost fishing opportunity and unharvested bluefin quota, and that therefore NMFS should not implement the measure. NMFS disagrees that the harpoon retention limit would result in lost fishing opportunity. Based on past data, the retention limit would affect relatively few vessels. In 2019 only 2 percent of Harpoon category trips landed 10 or more bluefin. NMFS has added to the final rule the ability to adjust the limit inseason to between 5 and 10 fish, in order to provide a means with which to influence rates of catch, lengthen the fishing season, and optimize fishing opportunities and resultant revenues.

Section 604(a)(4) of the RFA requires Agencies to provide an estimate of the number of small entities to which the rule would apply. For RFA compliance purposes, NMFS established a small business size standard of $11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS code 11411). SBA has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which includes charter/party boat entities. SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than $8.0 million. NMFS considers all HMS permit holders to be small entities because average annual receipts are less than $11 million for commercial fishing or $8 million for charter/party boat entities. Regarding those entities that would be directly affected by the measures implemented by this final rule, the average annual revenue per active pelagic longline vessel in 2017 is estimated to be $307,422 based on 88 active vessels, which is well below the NMFS small business size standard for commercial fishing businesses of $11 million. In 2019, there were 280 Atlantic Tunas Longline category permits, and 67 vessels were actively fishing based on logbook records. In examining the trends of overall fleet-wide revenues in The Three-Year Review, NMFS found that the average annual revenue per vessel has been relatively stable. Thus, while Final Amendment 13 does not update the revenue estimate for 2019, based on information that NMFS has on the fishery, revenue per vessel in 2019 would have been well below $11 million.

Other non-pelagic longline HMS commercial fishing vessels typically earn less revenue than pelagic longline vessels, and each HMS Charter/Headboat typically earns much less than $8 million annually. Thus, all of these vessels would also be considered small entities. The other (non-Atlantic Tunas Longline) commercial measures implemented by this final rule apply to 2,721 General category permit holders, 3,769 Charter/Headboat permit holders, 20 Harpoon category permit holders, and 34 seafood dealers that purchase bluefin (based on 2019 data).

NMFS has determined that the final rule measures will not likely directly affect any small organizations or small government jurisdictions defined under the RFA, nor will there be disproportionate economic impacts between large and small entities.

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. This final rule contains revised or new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). *See* FRFA in Final Amendment 13 at section 7.4 for further details. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated below (see Paperwork Reduction Act).

Under section 604(a)(6) of the RFA, Agencies must describe the steps to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the measures adopted in the

final rule and why the agency rejected each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities. These elements are summarized below. The full text of the Final Regulatory Flexibility analysis is contained in the Final Amendment 13/FEIS, Chapter 7.

Modifications to IBQ Share Eligibility, Distribution and Allocation Methods

Alternative A1, the No Action Alternative, would make no changes to the current method of determining IBQ share eligibility, and the distribution of IBQ allocations, including regional designations. Although this alternative would not result in any changes in the economic impacts to small entities associated with the IBQ Program under Amendment 7, the costs and inefficiencies associated with the current method of share determination would continue. Specifically, there would continue to be the inefficiency associated with annual IBQ allocations that are neither used to account for bluefin catch, nor leased to other shareholders. Alternative A1 would not meet objective 4 of this Amendment. For these reasons, this alternative was rejected.

Alternative A2 is composed of four sub-alternatives with annual, dynamic determination methods for allocating IBQ shares based on different criteria for defining the pool of recently active vessels. In making annual determinations, NMFS would use a recent 36-month period of relevant, best available data. Public comments supported use of a measure of fishing effort, rather than equal shares, because the pelagic longline fleet is very diverse in terms of fishing effort. The current IBQ Program has 136 shareholders. Under the sub-alternatives, there would be 91 defined shareholders based on the total number of vessels that submitted VMS bluefin reports from 2017 through 2019. The sub-alternatives would reduce dissatisfaction among active fishery participants that results from the current IBQ Program, under which a relatively large number of permit holders who are not active receive annual IBQ allocations. While the FRFA estimates numbers of vessels that would have larger or smaller IBQ share percentages, any changes in IBQ shares are short term, as IBQ shares will be determined annually using the most recent three years of relevant, available data. Economic costs associated with reduced allocations would only be realized if shareholders need to lease IBQ allocation to account for bluefin catch in excess of their allocations. Shareholders may have a slightly reduced ability for business planning due to the potential annual variability in share percentages. However, they would be aware that a substantive change in their amount of fishing effort may result in slight changes in the share percentage in the following year. Any adverse impacts on a shareholder could be partially mitigated through leasing IBQ allocation, recognizing that there are costs associated with leasing. The FRFA anticipates that the leasing market is likely to continue to function well, with a price similar to or lower than recent prices, because under the sub-alternatives, most vessel allocations would increase.

Sub-Alternative A2a would define IBQ shareholders annually based on the relative number of hooks fished as the measure of fishing effort. The FEIS estimates that sixty-five vessels would have larger share percentages and twenty-six would have smaller share percentages compared to the No Action Alternative. Under dynamic determination of shares based on hooks, active vessels generally would be distributed more IBQ allocation per vessel than under the No Action Alternative (with the exception of shareholders in the first quartile). However, public comment strongly supported the use of sets instead of hooks or designated species landings, and it is more difficult to quantify the number of hooks than the number of sets. Therefore, this alternative was rejected.

Sub-Alternative A2b (preferred in Final Amendment 13 and implemented in final rule) defines IBQ shareholders based on the relative number of pelagic longline sets as the measure of fishing effort. For valid participants in the Deepwater Horizon Oceanic Fish Restoration Project, a proxy amount of sets will be added to a vessel's history during the period of its participation in the Project, in order to ensure there are no negative impacts associated with their voluntary participation in that project. The proxy will be based upon the average number of sets made by IBQ shareholders' vessels that did not participate in the Project during the period that participants fished under the Project. For most active IBQ shareholders, who are small business entities, the overall economic impacts of Sub-Alternative A2b would be minor and beneficial. The FRFA estimates that sixty-one vessels would have larger share percentages and thirty vessels would have smaller share percentages compared to the No Action Alternative. Overall there would be a net increase in IBQ allocation value. Sixty-one vessels would be in a better economic position with respect to the amount of IBQ allocation distributed to them in association with their IBQ share (expressed in terms of potential lease costs avoided, or leasing benefits accrued). The average pounds of IBQ allocation gained would be 2,696 with a range of between 43 and 7,490 pounds. Using a weighted average cost per pound of leased IBQ allocation from 2017 through 2019 of $1.70, the average lease value of IBQ allocation gained would be approximately $4,582 per shareholder with a range of $74 to $12,732. For the thirty vessels with smaller IBQ allocations, the average lease value of IBQ allocation lost would be approximately $3,492 per shareholder with a range of $87 to $7,302. Under dynamic allocation based on sets, vessels are generally distributed more IBQ allocation than under the No Action Alternative (with the exception of shareholders in the first quartile). There were public comments supporting this alternative. NMFS prefers this alternative as it provides a standardized, uniform method for determining IBQ shares for a geographically diverse fleet with a range of vessel sizes and fishing strategies. In addition, NMFS can determine the number of sets annually, in a timely manner, using a single data source.

Sub-Alternative A2c (preferred in Draft Amendment 13) would define IBQ shareholders based upon the total amount by weight of each individual permitted vessel's designated species landings relative to the total amount of designated species landings by pelagic longline fleet, as the measure of fishing effort. Participants in the Deepwater Horizon Oceanic Fish Restoration Project would have their fishing effort represented by the use of a proxy amount of landings used in the calculation of their IBQ shares, in order to ensure that there are no negative impacts associated with their voluntary participation in that project. For most active IBQ shareholders, who are small business entities, the economic impact of this alternative would be positive, and the overall economic impacts would be minor beneficial. The FRFA estimates that 56 vessels would have would have larger share percentages and thirty-five vessels would have smaller share percentages when compared to the No Action Alternative. Overall, there would be a net increase in IBQ allocation value. Public comments noted concern with not including certain species as designated species and noted that there is diversity in the pelagic longline fleet with regard to

fishing strategy and species fished and landed. The exclusion of dolphin and wahoo from the list of designated species affected the IBQ share percentages of eight vessels in the analyses. Compared to the IBQ share percentages that they would have received if dolphin and wahoo were included, four vessels increased in share percentage and four vessels decreased.

Under dynamic allocation based on designated species landings, vessels generally would be distributed more IBQ allocation than under the No Action Alternative (with the exception of shareholders in the first quartile). However, given variations in fishing effort within the fleet, concern about creating incentives to capture lower value fish and potentially increasing waste of fish, complexities of administering this approach, and other public comments, this alternative was rejected.

Alternative A3 would have distributed IBQ allocation using the same formula used in Amendment 7, but instead of using data during the period from 2006 through 2012, the alternative would define eligible vessels as those that reported making at least one set using pelagic longline gear (based on logbook data, as in Amendment 7) from 2016 through 2018, and the relevant catch data used to designate IBQ shareholders to one of three tiers would also be based on 2016 through 2018. The number of tiers (three) would remain the same (high, medium, and low), but the IBQ share percentages would be higher for all tiers. The net result under this alternative would be some permit holders would have a larger IBQ share percentage and other permit holders would have a smaller IBQ share percentage when compared to the No Action Alternative. The number of IBQ shareholders would be reduced from 136 to 99, and reduce dissatisfaction among fishery participants that results from the current regulations under which a relatively large number of permit holders who are not active, receive an annual IBQ allocation because they are IBQ shareholders (with a permitted vessel). This alternative was rejected as the preferred alternative because it would only partially achieve the objective that IBQ shares distributed to inactive shareholders be redistributed to active vessels, because the share determination is static (*i.e.,* a one-time determination). Because the alternative is not dynamic, over time the distribution of IBQ shares and subsequent IBQ allocation among vessels may not be aligned with the active vessels.

Modifications to Rules Closely Linked to IBQ Allocations

Alternative B1, the No Action Alternative regarding Gulf of Mexico (GOM) and Atlantic (ATL) designated share determination, would result in the continuation of the current IBQ shareholders, associated share percentages, and regional designations (35 percent of the total Longline category quota designated as GOM, and 65 percent designated as ATL). Vessels that currently do not have GOM designated IBQ allocation but would like to fish in the Gulf of Mexico would need to lease GOM IBQ allocation. The costs associated with vessels leasing GOM designated IBQ allocation would continue. Vessels that do not have any shares of GOM designated IBQ would not gain any additional flexibility, and the alternative would not provide the authority for NMFS to reduce the cap on GOM designated IBQ. For these reasons, this alternative was not preferred.

Alternative B2 would eliminate regional designations in conjunction with maintaining a maximum amount of bluefin catch from the Gulf of Mexico (35 percent of the Longline category quota). The alternative would facilitate fishing opportunities in the Gulf of Mexico for vessels currently with only ATL designated IBQ, and may result in increased revenue for such vessels. For vessels that already fish exclusively in the Gulf of Mexico, with all or most of their IBQ allocation designated as GOM, this alternative may have adverse economic impacts. Such vessels that currently have GOM designated IBQ allocation may face increased competition for fishing grounds or markets due to any increased fishing effort in the Gulf of Mexico, or face a smaller market for leasing their GOM allocation to other vessels. Elimination of the regional designations would likely result in increased uncertainty in the fishery. The alternative would not provide the authority for NMFS to reduce the cap on GOM designated IBQ. For the above reasons, this alternative was not selected as the preferred alternative.

Alternative B3, implemented by this final rule, will annually modify regional GOM and ATL designations as part of the dynamic allocation of IBQ shares; cap bluefin catch from the Gulf of Mexico (35 percent of Longline category quota or IBQ shares and resultant allocations); allow for reduction of the cap based on established criteria used for inseason and annual adjustments to quota; and maintain existing accounting rules for regional IBQ allocations unless a GOM low shares threshold is triggered. Regional designations annually would be based on the location of vessels' pelagic longline fishing activity using a recent 36-month period of relevant, best available data, and thus, GOM designated shares could be lower than the GOM cap (35 percent default or lower). Regarding the potential for NMFS to decrease the maximum percentage of GOM designated IBQ shares, if the maximum amount of GOM designated IBQ shares were reduced compared to the No Action level (*e.g.,* down to between 27 percent and 33 percent of the total IBQ shares), there would likely be no practical impact because the recent levels of catch of bluefin from the Gulf of Mexico have been very low. This alternative would provide a reasonable amount of flexibility for vessels to fish in the Gulf of Mexico.

The final rule adds a low GOM designated shares threshold. A public comment expressed the concern that the potential for declining effort in the Gulf of Mexico could result in a total percentage share and allocation of GOM IBQ so low that it improperly constrains the fishery. In order to prevent serious constraints in the functioning of the IBQ Program in the Gulf of Mexico under conditions of very low fishing effort, this final rule provides: if the total amount of IBQ shares that are designated as GOM are 5 percent or less of the total IBQ allocations (ATL plus GOM designated shares), NMFS will suspend the requirement to account for bluefin caught in the Gulf with GOM IBQ allocation, and use GOM IBQ allocation to satisfy the minimum IBQ requirement under the quarterly accountability rules. If the threshold is triggered, overall, the economic impacts are expected to be minor and beneficial, due to the increased flexibility for vessels currently without GOM designated IBQ shares and subsequent allocation. More specifically, there could be several types of impacts on small entities as a result of implementing the threshold provision: Those associated with vessel owners that have ATL designated IBQ shares (likely with home ports in the Atlantic); impacts on vessel owners with GOM designated IBQ shares (likely with home ports in the Gulf of Mexico), and those impacts that may result from a reduced percentage of total IBQ shares that are designated as GOM (if the amount of GOM designated shares, based on location of fishing effort (landings) exceeds the level of the cap). If triggered, this measure will provide increased flexibility for vessels that currently have ATL designated IBQ

shares because the dynamic annual definition of shares and regional designations would enable a vessel to receive annual shares with a GOM regional designation as a result of fishing with pelagic longline gear in the Gulf of Mexico during the previous year (instead of needing to lease GOM designated IBQ allocation annually). Historical fishery participants in the Gulf of Mexico will continue to receive GOM designated IBQ shares based on their level of activity (in the Gulf of Mexico). If the number of vessels fishing in the Gulf of Mexico increased, there may be minor short-term adverse economic impacts to those entities due to increased competition. However, based on the few vessels with home ports in the Atlantic that have fished in the Gulf of Mexico during the past few years, the potential for any adverse economic impact on vessels with home ports in the Gulf of Mexico is very low.

Preferred Alternative B4 is the No Action Alternative with respect to the Northeast Distant Gear Restricted Area (NED) rules. The economic impacts of the preferred alternative with respect to the NED rules will be neutral because there will no changes to the relevant rules. Data associated with vessels fishing in the NED will be included as part of the formula defining IBQ shares, and vessels fishing in the NED do not have to use IBQ allocation to account for bluefin catch until after the 25-mt NED quota is utilized. Vessels that fish in the NED would continue to be able to fish there with no impact on the associated IBQ shares.

Alternative B5 would not include NED fishing activity as part of the data used in calculating IBQ Allocations. This alternative would have minor adverse economic impacts on vessels that fish in the NED because their fishing effort in the NED would not be reflected in their IBQ share percentage. Depending upon the specific amount of fishing effort, a vessel may receive a lower IBQ share percentage if tiers are used to assign IBQ shares. Nine vessels fished in the NED during 2016 through 2018. The NED fishery is unique and highly variable, and therefore only a few vessels fish there intermittently. If a vessel fished in the NED during a particular year, their share percentage may be reduced during subsequent years as a result, whether or not any bluefin were caught during that year, and whether or not the vessel choses to fish in the NED during subsequent years. If NED fishers receive a lower IBQ share percentage relative to their total fishing effort than other vessels, this may put them at a competitive disadvantage. Disadvantaging vessels that fish in the NED may alter the costs and incentives for vessels to fish in the NED, and have an adverse long-term impact on the fishery as a whole due to the underutilization of swordfish. Therefore, this alternative was not selected as the preferred alternative.

Sale of IBQ Shares

Preferred Alternative C1 would continue the current regulations under which no sale of IBQ shares is allowed. This alternative is expected to have minor beneficial economic impacts. There is little need for Atlantic Tunas Longline category permit holders to accumulate additional IBQ shares, because for most permit holders, annual allocations combined with a minimal amount of leasing is likely to be sufficient for permit holders to account for bluefin catch. Continued prohibition on sale of IBQ shares would reduce uncertainty in the IBQ allocation leasing market in both the short term and long term, which would be beneficial to the IBQ Program overall.

Alternative C2 would allow sale of IBQ shares and have some beneficial and some adverse impacts, with the net socioeconomic impacts being minor adverse. Sale of IBQ shares provides Atlantic Tunas Longline category permit holders an alternative means of participating in the IBQ leasing market that enables management of their IBQ allocation and business planning on a longer time scale than a single year. Permit holders may be able to save money through a single IBQ share transaction instead of via annual IBQ allocation lease transactions, a beneficial impact. On the other hand, allowing sale of IBQ shares would introduce uncertainty in the IBQ allocation leasing market, which is otherwise robust as described in the Three-Year Review, and could have an adverse impact on the IBQ Program overall. There is no demonstrated need for Atlantic Tunas Longline category permit holders to accumulate additional IBQ shares over multiple years, because for most permit holders, annual allocations combined with a minimal amount of leasing is likely to be sufficient for permit holders to account for bluefin catch. Furthermore, allowing sale and accumulation of IBQ shares beyond a single year would not be consistent with the dynamic allocation alternatives, as it would remove the ability for NMFS to allocate shares annually among active vessels based on recent fishing effort. Therefore, this alternative was not selected as the preferred alternative.

Cap on IBQ Shareholder Percentage or IBQ Allocation Use

Sub-Alternative D1a, the No Action Alternative, would not place a cap on the amount of IBQ shares owned. This alternative is expected to have neutral economic impacts on small entities. The IBQ Program has been functioning under these regulations since 2015, and there have been no reported or observed issues relating to excessive accumulation of IBQ shares. In 2015 through 2019, the highest level of IBQ share ownership by one entity was between five and six percent of total IBQ shares, and this percentage remained the same throughout that time period. However, it is possible that future conditions in the fishery will change. Regardless of the likelihood of accumulation of IBQ shares, this alternative would not prevent future accumulations of shares by entities and was therefore not selected as the preferred alternative.

Sub-Alternative D1b, which would cap the accumulated sum of IBQ shares owned by a single entity at seven percent, is expected to have minor adverse economic impacts on small entities. Under the allocation method described in the preferred 'A' alternatives, the maximum amount of IBQ shares that a single entity would own on an annual basis would be between six and seven percent of total shares. However, there is the possibility that entities could have business plans to acquire additional shares or purchase additional permits to increase their IBQ shares in the short-term that would be above a seven-percent cap, in which case there could be short-term minor adverse economic impacts. If an entity owned many vessels and had a relatively large amount of fishing effort (under the dynamic allocation alternatives), it is possible that a seven percent share cap would result in a disproportionately low percentage share of bluefin that could affect their ability to fish for their target species, and prevent increases in lawful fishing activity. By limiting the number of Atlantic Tunas Longline category permits an entity could own (outside of the limit discussed above at § 635.4(l)(2)(iii)), or limiting the amount of annual IBQ shares an entity could receive (or buy, under Alternative C2), the seven-percent cap could in turn limit the amount of fishing activity and target species landings of vessel or business, potentially preventing that business from increasing activity. For these reasons, Sub-Alternative D1b could have long-term adverse economic impacts. For the reasons stated, this

alternative was not selected as the preferred alternative.

Preferred Sub-Alternative D1c, implemented by this final rule, will cap the amount of IBQ shares owned at 25 percent, and is expected to have neutral economic impacts. In 2015 through 2019, the highest level of IBQ share ownership by one entity was between five and six percent of total IBQ shares, and this percentage remained the same throughout that time period. Under the allocation method described in the preferred 'A' alternatives, the maximum amount of IBQ shares that a single entity would own on an annual basis would be between six and seven percent of total shares. If this trend continues where the maximum percent ownership remains stable over time, implementing a cap at 25 percent would not impact the fleet. This cap level would allow flexibility in entities' business planning to acquire more shares, by acquiring additional Atlantic Tunas Longline category permits. Implementing a 25-percent cap to prevent acquisition of excessive IBQ shares would prevent a single entity from controlling an excessive portion of the market, would address potential concerns among vessel owners, and accumulation of shares by a single entity and reduce any associated uncertainty, which would be a minor, beneficial socioeconomic impact.

Sub-Alternative D1d would cap the amount of IBQ shares owned at 50 percent, and is expected to have neutral economic impacts in the short term. Although this cap level would allow flexibility in entities' business planning to acquire more shares, by acquiring additional Atlantic Tunas Longline category permits, in the long term, Sub-Alternative D1a could have direct minor adverse economic impacts, if the high cap level of 50 percent is insufficient to prevent acquisition of excessive IBQ shares, allowing a single entity to control an excessive portion of the market. Therefore, this alternative was not selected as the preferred alternative.

Sub-Alternative D2a (No Action), which would not cap the amount of IBQ allocation *leased or used,* is expected to have neutral economic impacts on small entities. The IBQ Program has been functioning under these regulations since 2015, and there have been no reported or observed issues relating to excessive accumulation of IBQ allocation. The highest amount of IBQ allocation that a single entity held in a given year, including leased allocation, was 6.5 percent, 12.3 percent, and 8.8 percent of the total annual allocation (*i.e.,* the Longline category bluefin quota) in 2015, 2017, and 2019, respectively. During the development of Amendment 13 in spring 2022, NMFS became aware of concerns regarding recent, high bluefin landings in a portion of the pelagic longline fishery. NMFS considers this to be an unusual event and not reflective of how the IBQ Program has functioned overall. The IBQ Program was designed to provide ample flexibility for vessel owners to lease IBQ allocation in the amounts that they need to account for bluefin catch, maintain an IBQ allocation balance that satisfies the minimum IBQ allocation requirements, and maintain an IBQ allocation balance that addresses the potential risk/need to account for future catch of bluefin. Furthermore, another measure implemented by this final rule, which sets a cap on IBQ share ownership at 25 percent (Sub-Alternative D1c) will prevent an excessive accumulation of IBQ shares over time. Leasing of IBQ allocation occurs on an annual basis and expires at the end of each calendar year, therefore there is no long-term concern about excessive accumulation of allocation via leasing. In addition, the preferred alternatives under the IBQ allocation alternatives (A alternatives) are designed to update and more closely align the distribution of IBQ shares and resulting allocation with the current fishing activity and need for IBQ allocation of the pelagic longline fleet, which could reduce the likelihood that entities would seek to lease additional allocation.

Sub-Alternative D2b would establish a cap on the amount of IBQ allocation an entity may lease or use at 25 percent. Although the level of this cap would be larger than the highest amount of IBQ allocation that a single entity held in a given year, it is possible that it would constrain the ability of a vessel to account for bluefin catch. A limit on how much IBQ allocation an entity can lease could cause some permit holders to become needlessly risk averse and decrease their fishing activity and, consequently, target species landings. Concerns about targeting bluefin may be better addressed through another regulatory mechanism. For these reasons, this alternative was not selected as the preferred alternative.

Adjustments to Other Aspects of the IBQ Program

Sub-Alternative E1a (No Action), which would make no changes to the dealer reporting requirements implemented by Amendment 7, would have direct, minor adverse economic impacts because it requires vessel operators and dealers to collaborate in submitting information that is also supplied independently by the vessel operators by way of VMS. The requirement to verify information by submitting it in two different reporting systems can be frustrating for fishermen. During the time-period collecting two data streams, NMFS was able to verify information that was collected and determine that VMS was the best approach for submitting a single stream of dead discard data. The requirement for fishermen to submit a personal identification number (PIN) when dealers entered landings data was also frustrating and time consuming for fishermen and dealers alike since fishermen were frequently either not available when dealers entered the data, or did not have access to their PIN. Fishermen chose to provide their PIN to dealers which allowed the data to be entered, but did not provide the data verification that was the objective of the original requirement. Therefore, this alternative was not selected as the preferred alternative.

Preferred Sub-Alternative E1b implemented by this final rule modifies dealer reporting requirements for IBQ Program, and will have minor, beneficial economic impacts for dealers since they will be relieved of a reporting requirement (dead discards) and are no longer required to collaborate with fishermen for landings data entry. The removal of the PIN collaboration will reduce frustration for both fishermen and dealers and thus reduce labor costs with this task. Instead of being required to coordinate with the dealer to provide a PIN in conjunction with a bluefin landing, a pelagic longline fisherman will be informed via an automated email from the Catch Shares Online System when dealers enter a landing transaction into the computer system and a landing is accounted for in their vessel's account.

Sub-Alternative E2a, regarding electronic monitoring (EM) (the No Action Alternative), would continue the current requirement that EM hard drives be submitted after each trip using pelagic longline gear. This alternative would maintain the current requirements for shipping hard drives. Currently vessel owners or operators must mail hard drives to NMFS after each fishing trip. When compared to the preferred alternative, this would maintain a higher cost burden by requiring transactions after each trip. This would also maintain a higher burden in terms of time. Operators would have to spend time pulling, packaging, and shipping hard drives after each trip, instead of after every other trip. Therefore, this alternative was not selected as the preferred alternative.

Preferred Sub-Alternative E2b implemented by this final rule will require that the vessel operator mail the hard drives at the completion of every two trips, instead of after each pelagic longline fishing trip. This alternative will have a minor beneficial economic impact by reducing the costs and time associated with mailing EM hard drives. This measure will reduce the frequency of hard drive shipments and reduce the number of transactions by half. Considering the high transaction average of 34 shipments per year, this would reduce the high average to 17 shipments. Each active vessel would still ship at least 1 hard drive per year, as NMFS would require any data recorded in a given year be submitted to NMFS prior to the next fishing year. Assuming a shipping cost of $20 per transaction, this reduction in shipping frequency would save operators an average of $120 per year. Reducing shipping frequency also saves vessel operators additional time and logistics, by only having to pull, package, and ship hard drives after every other trip. The time savings provided by this alternative are difficult to quantify, as vessel operators' shipping methods will influence the amount of time saved, however this would provide a minor beneficial impact by providing time-savings to the vessel operators. For these reasons, this alternative was selected as the preferred alternative.

Sub-Alternative E3a, regarding the EM Program (the No Action Alternative), would not clarify the current procedures regarding EM camera installation and would not provide NMFS with any additional authority regarding installation of hardware on vessels. Vessel operators would continue to operate as they have since implementation of the EM program, thus economic impacts are neutral. This alternative was rejected because it would not facilitate improvements in the accuracy of the EM data, and would have indirect, minor and adverse ecological impacts.

Through this final rule (Preferred Sub-Alternative E3b), NMFS clarifies that it may require installation of permanent or semi-permanent hardware (boom or telescoping device) in order to mount and install EM video cameras at locations on vessels as necessary to obtain optimal views, and that NMFS, working in conjunction with the vessel owner/operator, may make relatively minor modifications to the vessel structure to mount cameras in locations that provide required views of the vessel and adjacent areas. If installation of hardware is needed, the economic impacts of modifying the camera installation and placement would be minor adverse for the affected, small entities, due to the estimated cost of approximately $1,000 per vessel, unless agency funding were to be available. Vessel crew would be required to extend, lower, or raise the boom mounted camera during fishing activities if needed. Additional logistics required may represent an increased time burden and a slight increase in the complexity of their fishing operation. Overall however, this time burden would only be a couple of minutes to extend, lower, or raise at the start and end of each fishing trip. Crew may also be required to access the camera during the trip in order to clean the lens. The process of cleaning the lens may be more difficult if the camera is mounted on a boom. Although this alternative has associated costs as described above, it would also increase the likelihood of improved data collection, and have indirect, minor, and beneficial ecological impacts. Data that is more robust is likely to provide ecological benefits in the long-term. Therefore, this alternative was selected as the preferred alternative.

Sub-Alternative E4a, the No Action Alternative (no additional fish handling protocols or requirements for measuring grids) for electronic monitoring, would have neutral economic impacts and no labor or equipment costs to vessel operators. This alternative was not selected as the preferred alternative because it would not facilitate improved data collection and would have minor adverse ecological impacts.

Preferred Sub-Alternative E4b implemented by this final rule will require more specific fish handling procedures and the installation/placement of a measuring grid on deck, in view of one of the cameras. This alternative will have minor adverse impacts as it would slightly increase costs in terms of the time required to process fish, or costs associated with a measurement tool such as a printed processing carpet or painted grid on the deck. The crew will need to modify their fish handling procedures to place all fish on the grid. Although there will be minor costs associated with this alternative, there will be an associated increase in the likelihood of improved data collection and long-term minor ecological benefits.

Sub-Alternative E5a (No Action) would make no changes to the current regulations, under which there is no cost recovery for the IBQ Program, and would therefore have a neutral economic impact. This alternative was not selected as the preferred alternative, because the Magnuson-Stevens Act requires a cost recovery program for a limited access privilege program.

Sub-Alternative E5b, implemented by this final rule, is preferred because it is consistent with the Magnuson-Stevens Act requirement to have a cost recovery program. Under this alternative, NMFS would not charge a fee in years where the collection program costs exceed estimated recovered costs. When a fee is charged, permit holders would incur up to a three-percent fee on any sale of bluefin caught by pelagic longline gear under the IBQ Program. This would have minor, adverse economic impacts on Atlantic Tunas Longline category permit holders that land bluefin.

Modifications to the Purse Seine Category Management Measures and Other Category Quota Allocations

Sub-Alternative F1a (No Action) would maintain the current mathematical method of subtracting 68 mt from the U.S. baseline quota to account for Longline category then applying codified allocation percentages for the bluefin categories. The economic impacts would be neutral. This alternative was not selected, because it would maintain the current complex method of calculating quota allocations. In contrast, Sub-Alternative F1b was selected to be implemented by this final rule because it will simplify the process: it revises the category allocation percentages to reflect the annual 68-mt allocation to the Longline category. Sub-Alternative F1b is expected to have neutral economic impacts. However, if the U.S. quota were to increase in the future, there may be minor, positive long-term socioeconomic impacts for Longline category participants because the category would be allocated slightly more quota than under the No Action alternative. In the event of a decrease in U.S. quota, the socioeconomic impacts would be minor negative for the Longline category. For other categories, socioeconomic impacts would be minor negative if there is a U.S. quota increase, and minor positive if there is a quota decrease.

Alternative F2 would eliminate the Purse Seine category and redistribute that category's quota to other quota categories under a variety of options (sub-alternatives). Sub-Alternative 2a (No Action Alternative) would maintain all aspects of the current quota allocation (with the exception of other quota allocation alternatives considered in Sections G, H, and I, regarding the General and Harpoon categories) and Purse Seine category regulations. The Purse Seine category would continue to receive quota based on activity level, and could either fish or trade that quota

via the IBQ system. There would likely continue to be a large annual shift of Purse Seine category quota to the Reserve category (required under the regulations), that could be redistributed via inseason action. The economic impacts of this alternative would be neutral. This alternative was not selected because the uncertainty and unused quota associated with the current regulations would continue.

Sub-Alternative F2b, being implemented by this final rule, will discontinue the Purse Seine category and reallocate quota upon implementation. This sub-alternative, and Sub-Alternatives F2c1 and F2c2, only address the timing of discontinuation of the Purse Seine category. Impacts associated with quota reallocation are discussed under the F3 reallocation alternatives of which Sub-Alternative F3a, discussed below, is the preferred alternative. The impacts from the set of alternatives for discontinuance and reallocation (*e.g.,* F2b and F3a) are considered additive.

Sub-Alternative F2b will have moderate adverse direct economic impacts to Purse seine category participants compared to the status quo. Under this measure implemented by this final rule, quota allocations will no longer be distributed to Purse Seine category participants, so neither fishing for bluefin nor leasing via the IBQ system will be allowed after the effective date of this Amendment 13 final rule. The economic impacts are estimated based on the loss of potential revenue from these two activities. Purse Seine category participants last landed fish from 2013 through 2015, are not currently economically dependent upon bluefin landings, and not expected to engage in fishing for bluefin in the future. Using leasing data from 2013–2019, NMFS estimates a loss of $38,391 per year category-wide or $7,678 per participant from this sub-alternative. This sub-alternative was selected because elimination of the inactive Purse Seine category immediately would provide immediate benefits to the active bluefin categories. Although there would be a loss in potential income from leasing IBQ allocation, NMFS has concluded that, in view of the long-term absence of active fishing (despite trying to create incentives under Amendment 7 for purse seine vessels to remain active in the fishery), the elimination of the Purse Seine category will best contribute to achieving optimum yield and ensuring the greatest overall benefit to the nation. Promoting commercial and recreational fishing under sound conservation and management principles and achieving, on a continuing basis, optimum yield from a fishery are key purposes of the Magnuson-Stevens Act. *See* comment and response 24 for further explanation.

Sub-Alternative F2c would discontinue the Purse Seine category and reallocate quota at a future (sunset) date, *i.e.,* the end of Year 2 after Amendment 13 is implemented. Sub-Alternative F2c1 would allow leasing and fishing until the sunset date, while Sub-Alternative F2c2 would only allow leasing. Economic impacts for both sub-alternatives would be moderate and adverse, but in addition, Sub-Alternative F2c2 would result in potential, lost opportunity to fish for bluefin and associated potential revenue losses. The most reasonably likely estimate of Purse Seine category future fishing activity is 0 mt landings since the category has not fished since 2015. This alternative was not selected because there is no justification to delay the benefits associated with discontinuation of the Purse Seine category.

Alternative F3 would reallocate the Purse Seine category quota proportionally to all other quota categories. The preferred Sub-Alternative F3a would apply Longline category increase to *all* areas, while Sub-Alternative F3b would only allow the Longline category increase to be fished in the Atlantic (not the Gulf of Mexico). Economic impacts for Sub-Alternative F3a, which is implemented by this final rule, will be moderate and beneficial with estimated increases in revenue for the commercial quota categories that will receive the redistributed quota after the Purse Seine category is terminated. The Draft Amendment 13/DEIS did not prefer including the Longline category in the reallocation. After considering public comment and conducting additional analyses, NMFS decided to include the Longline category, given impacts to the IBQ leasing market as a result of elimination of Purse Seine category quota and inactive pelagic longline vessels (due to annual dynamic allocations) as sources for leasing bluefin quota. Active vessels in the IBQ program in the past have relied, in a large part, on Purse Seine category bluefin quota as the source for leasing IBQ. Including the Longline category in the reallocation increases the likelihood of maintaining a successful IBQ leasing market in the future (including new entrants). The Longline category will continue to benefit from a robust IBQ leasing market resulting from additional IBQ. Annual revenue increases for other categories resulting from Sub-Alternative F3a are estimated as follows: $1,689,758 for the General category, $131,548 for the Harpoon category, and $93,204 for the Reserve category, resulting in a combined total of $1,914,510. The incidental Trap category is unlikely to see any annual revenue increase given the total amount in its quota is *de minimis* and any landings are rare. Total revenue was also estimated for the Reserve category, because quota from that category could be used to augment one of the commercial categories via inseason action, at some point during the fishing year.

When Sub-Alternative F3a is combined with Sub-Alternative F2b (immediate disbursement), there will be moderately beneficial economic impacts on fishery participants due to increased bluefin quota and associated revenue. Net impacts (*i.e.,* economic impacts to all categories combined) are also beneficial, since the estimated annual revenue loss to the Purse Seine category for leasing would be $0.15 million annually, which equals a net increase in revenue of approximately $2.15 million annually. Revenue loss associated with purse seine leasing rather than fishing was used to calculate net value because a leasing only scenario is the most likely scenario that would occur, since Purse Seine category participants have not fished since 2015, but have been actively leasing quota through 2019. This sub-alternative was selected because it will provide economic benefits to the active bluefin categories.

Economic impacts for Sub-Alternative F3b (reallocation to all categories but Longline category could not use additional bluefin quota in the Gulf of Mexico) would be moderate and beneficial, and include estimated increases in revenue for the directed quota categories that received the redistributed quota. When combined with Sub-Alternative F2b (immediate disbursement), economic impacts for Sub-Alternative F3b would be moderately beneficial for participants in all quota categories, except for pelagic longline vessels that fish in the Gulf of Mexico. As explained above under Alternative F3, the final rule includes the Longline category in the reallocation because of impacts of eliminating the Purse Seine category on the IBQ leasing market. Longline category vessels fishing in the Gulf of Mexico have relied in part on leasing Purse Seine IBQ quota, so allowing use of reallocated quota there is needed in order to address IBQ leasing market changes. Thus, Sub-Alternative F3b is not selected. When Sub-Alternative F3b is combined with Sub-Alternative F2c (reallocate the Purse Seine category quota after a 2-year sunset period), short

term economic impacts would be neutral. Combining F3b with F2c, which would delay reallocation, was not selected because there is no justification to delay the benefits associated with discontinuation of the Purse Seine category.

Alternative F4 would redistribute Purse Seine category quota to the directed categories only. Economic impacts for Alternative F4 would be moderate and beneficial for directed categories, and moderate and negative for incidental categories. The beneficial impacts include increases in revenue for the commercial quota categories that receive the redistributed quota after the Purse Seine category is terminated. However, impacts on the Longline category would be moderate and negative because bluefin quota from the Purse Seine category would be neither reallocated to the Longline category, nor available for leasing. As explained above under Alternative F3, active vessels in the IBQ program in the past have relied, in a large part, on Purse Seine category bluefin quota as the source for leasing IBQ. When combined with Alternative F2b (immediate disbursement) (Preferred), economic impacts for Alternative F4 would be moderately beneficial for directed category participants receiving quota. Revenue for leasing rather than fishing was used to calculate net value because it is the most likely scenario, since Purse Seine category participants have not fished since 2015, but have been actively leasing quota through 2019. It is difficult to quantify the negative aspects of the impact of this alternative on the IBQ Program. The costs associated with leasing are likely to increase, and if fishing behavior is constrained by a poorly functioning IBQ leasing market, there could be reductions in target species landings. This alternative was not selected given the IBQ leasing market concern.

When combined with Sub-Alternative F2c (1 and 2), which would reallocate the Purse Seine category quota after a 2-year sunset period, Alternative F4's short term economic impacts would be neutral. The long-term impacts would be moderate and beneficial. There would be economic gains for the categories receiving quota when the sunset of the Purse Seine category occurs after two years, and losses for the Purse Seine category at that time. This alternative was not selected given the IBQ leasing market concern and because there is no justification to delay the benefits associated with discontinuation of the Purse Seine category.

Modifications to General Category Subquota Periods and/or Allocations

Alternative G1, the preferred No Action Alternative, will not make any modifications to the General category subquota periods and/or allocations and thus has neutral economic impacts. The status quo subquotas assigned to the time periods generally reflect the historical catch patterns from the 1980s and 1990s as well as formalization of the winter fishery. Recent annual bluefin landings under the General category quota have approached or exceeded the base and adjusted General category quotas (*i.e.,* they were 149 and 101 percent of base and adjusted quotas, respectively, for 2017; 168 and 96 percent of base and adjusted quotas for 2018; and 147 and 104 percent base and adjusted quotas for 2019). Exceedances of base quotas reflect inseason quota transfers from the Reserve and Harpoon categories. Although ex-vessel prices have been variable over the last several years, high landings relative to quota have led to a modest total increase in ex-vessel gross revenues in 2016 through 2019. Revenues for the General category were $9.7 million in 2016 and 2018, at the highest level since 2002. While NMFS agrees that the General category fishery has changed over time, NMFS determined, based on analyses in Draft Amendment 13/DEIS and the Final Amendment 13/FEIS (*see* Section 4.7.4), that the current structure of the fishery continues to provide equitable fishing opportunities, as explained further in the response to Comment 27. This alternative was selected because the current subquota periods and allocations, in combination with NMFS' authority for inseason management of the fishery, facilitate the catch of bluefin quota and provide equitable opportunities for participation and catch of bluefin. The current regulations are achieving the objectives of the fishery management plan as explained in the FEIS Section 4.7.4.

Sub-Alternatives G2a, G2b, G3a, G3b, and G3c analyzed modifications to the subquota periods or size of the subquota percentages. Sub-Alternative G2a would modify the General category time periods to 12 equal months. Sub-Alternative G2b would modify General category time periods to extend the January through March subquota time period through April 30. Sub-Alternative G3a would modify the General category allocation percentage to increase the January through March amount. Sub-Alternative G3b would modify General category allocation percentages and increase the September and the October through November amounts and decrease the June through August amount. Sub-Alternative G3c would modify the General category allocation percentages, and is directly associated with Alternatives F5 and F6 (discontinue Purse Seine category fishery and reallocate quota). Any increases of General category quota resulting from Alternatives F5 and F6 would be applied to the September and the October through November subquota periods. For all of these sub-alternatives, based upon the changes in subquota amounts, changes in revenue were estimated using changes in potential landings and the price associated with those landings.

For these General category fishery sub-alternatives there would be some increases in revenue for some subquota periods and declines in revenue for other subquota periods. Overall, the impacts were expected to be moderate, and beneficial or adverse, depending on quota and fish prices in the various time periods. The changes in revenues in these General category subquota allocation alternatives are strongly subject to availability of fish and fishing conditions during the subquota time periods. Further, the potential gross revenue estimates are based on price assumptions and market dynamics that are uncertain. Lastly, unused quota may be adjusted (added) within a calendar year from one period to the next, any unused quota from the adjusted January through March period would return to the June through August period and onward if not used completely during that period. These sub-alternatives were not selected, because they would not meaningfully increase the equity of the fishery among participants or optimize bluefin landings. In the context of the highly variable bluefin fishery and the current regulatory structure, the analyses do not demonstrate the benefits of any of these alternatives over the preferred alternative.

Modifications to the Angling Category Trophy Fishery

The impacts of Alternative H1, the No Action Alternative, would be neutral, but continue the current structure (defined trophy areas and associated quotas) of the trophy fishery. The RFA is not applicable to anglers as they are not ''small entities'' (*i.e.,* small businesses, organizations or governmental jurisdictions) for RFA purposes. There is no sale of tunas by Angling category participants, thus no economic costs or impacts with this alternative. For charter vessels, which sell fishing trips to recreational fishermen, for those north of the northern mid-Atlantic states, including

New England states, the perceived lower opportunity to land a trophy bluefin would continue. Therefore, this alternative was not selected.

Preferred Alternative H2, implemented by this final rule, will modify the current Angling category northern trophy subquota areas and allocations specified at § 635.27(a)(1), by dividing the northern area into two zones: north and south of 42° N. lat. (off Chatham, MA); these newly-formed areas will be named the Gulf of Maine trophy area and the Southern New England trophy area, respectively, as shown in the FEIS. The net result will be that the Trophy quota will be divided among four geographic areas (in the Atlantic and Gulf of Mexico) and each area would receive the same amount of quota (*i.e.,* the Angling category trophy quota would be divided equally four ways). There will be minor, beneficial social impacts (and economic impacts for charter vessels) to a small number of vessels in the new zone north of 42° N. lat. (the Gulf of Maine trophy area) resulting from the small amount of fish that would be allowed to be landed. The perception of greater fairness among northern area participants also represents beneficial, social impacts. HMS Charter/Headboat permitted vessel owners and operators have commented over the years that the ability to attract customers with the opportunity to retain a trophy bluefin is important, even if few are ultimately landed. NMFS also received comments about the importance of trophy opportunities for tournaments as well. For these reasons, this alternative was selected.

Modifications to Other Handgear Fishery Regulations

Preferred Sub-Alternative I1a (No Action) will maintain the current authorized gears applicable to the Atlantic Tunas permit categories, and make no changes to the relevant gear regulations. For example, participants in the HMS Charter/Headboat category will still be authorized to use rod and reel, handline, bandit gear, and green-stick, as well as speargun for recreational catch of non-bluefin tunas only, and the General category will be authorized to use harpoon, rod and reel, handline, bandit gear, and green-stick. This alternative was selected because there is currently equitable flexibility to use various gear types among the open access bluefin permit categories.

Sub-Alternative I1b would add harpoon gear as an authorized gear for the HMS Charter/Headboat category vessels. The addition of this gear would only apply to vessels with the ability to carry six or fewer passengers for hire. Harpoon gear could be used on commercial trips by Charter/Headboat permitted vessels with the commercial sale endorsement. This alternative would have minor, beneficial economic impacts for those vessels that have success in harpooning bluefin that may be available at the water's surface. This alternative was not selected, because it would have relatively minor benefits, and public comments expressed concerns about the safety of the alternative. Further, although the Charter/Headboat category may not fish with harpoon gear, the permit category has the flexibility to fish under commercial or recreational HMS regulations, which is not allowed under other permit categories.

Sub-Alternative I1c would eliminate harpoon as gear authorized for use by General category permitted vessels. This alternative was not selected because it would result in minor, adverse impacts: it would reduce opportunity for vessels with General category permits that fish with harpoon gear and reduce flexibility and efficiency in catching the General category quota. Further, the use of harpoon gear by General category permitted vessels does not significantly reduce fishing opportunities for rod and reel fishermen.

Sub-Alternative I2a (No Action) would maintain the current Harpoon category retention limit regulations: an unlimited number of giant bluefin per day (measuring 81″ curved fork length or greater), and two large medium bluefin (73″ − <81″) per vessel per day unless the large medium bluefin retention limit is increased by NMFS through an inseason adjustment to a maximum of four per vessel per day. This alternative was not selected because it would not optimize the use of the harpoon category quota by limiting retention of high numbers of bluefin on a single trip.

Sub-Alternative I2b would set an overall Harpoon category daily retention limit of 10 commercial-sized bluefin per day or trip (*i.e.,* the combined limit of large medium (73″ − <81″) and giant (81″ or greater) would be 10 fish), and would maintain the current regulations regarding retention of large medium bluefin (73″ − <81″) (*i.e.,* the range of two (default) to four fish, adjustable through inseason action). This alternative was not selected because, although it would optimize the use of the harpoon category quota by limiting retention of high numbers of bluefin on a single trip, it would not provide parity with most of the other bluefin regulations regarding retention limits. Specifically, there would be no authority for NMFS to reduce the 10 fish retention limit to address changing conditions or circumstances in the fishery.

Sub-Alternative I2c, implemented by this final rule, will set a default overall daily limit of 10 commercial-sized bluefin per day or trip (*i.e.,* the combination of large medium (73″ − <81″) and giant (81″ or greater) would be 10 fish). Secondly, this measure will authorize NMFS to set the combined daily retention limit over a range of 5 to 10 fish (adjustable through inseason action). For example, if NMFS were to set the Harpoon category limit of combined large medium and giant bluefin to nine (via inseason action) (and a limit of two large medium fish were in effect), then no more than seven giant bluefin could be kept in that same day or trip, such that the total does not exceed nine fish. This alternative was selected because it will optimize the use of the Harpoon category quota by limiting retention of high numbers of bluefin on a single trip, and provide a mechanism to lower the retention limit inseason to respond to changing conditions or circumstances in the fishery.

Sub-Alternative I3a (No Action) will maintain the June 1 start date and November 15 closure date for the Harpoon category season. A June 1 start date for the Harpoon category means that the Harpoon and General category seasons start at the same time. The Harpoon and General category seasons starting together will facilitate enforcement and business planning, and provide greater certainty to participants regarding opportunities, participation/effort, and potential impact on market prices. Participants will continue to have the potential to catch the same percentage of the quota and earn the equivalent share of total ex-vessel revenues. To the extent that bluefin may be available to harpoon gear prior to June 1, opportunities to harpoon fish may be lost, both from the catch of the fish and the potential for better ex-vessel prices when there may be fewer fish on the market, particularly from the General category, which will not begin until June 1. To the extent that opportunities could extend deeper into the summer, more Harpoon category participants could benefit. For these reasons, this alternative was selected.

Sub-Alternative I3b would lengthen the season for the Harpoon category by implementing an earlier start date of May 1 for the fishery instead of the current start date of June 1. The November 15 closure date would remain the same. The overall impacts would be both minor adverse and beneficial. The relative magnitudes of the adverse and

beneficial impacts are unknown. Starting the Harpoon category season in advance of the General category season (which would remain at June 1) would result in an adverse impact due to increased uncertainty for enforcement and business planning, and reduced certainty to General category participants regarding opportunities, participation/effort, and potential impact on market prices. A beneficial impact would accrue to Harpoon category vessels. This alternative would increase the likelihood of Harpoon category participants being able to catch the full Harpoon category quota and thus would be minor, and beneficial. An increase in optimum yield may result from a potential increase in the geographic and temporal distribution of landings. Increases in positive economic impacts would depend on the availability of bluefin to the fishery from the beginning of May until the Harpoon category quota (base or adjusted, as applicable) is reached. This alternative was not selected because of the adverse impacts anticipated and the relative magnitudes of the adverse and beneficial impacts are unknown.

Sub-Alternative I4a (No Action) would maintain the current requirement that gives permit holders 45 days to change their Atlantic Tunas or HMS permit category as long as they have not landed a bluefin. This alternative was rejected because continuation of the administrative restriction without a clear corresponding benefit is not warranted.

Sub-Alternative I4b, implemented by this final rule, will extend the ability to change permit categories from 45 days to the full fishing year as long as the vessel has not landed a bluefin. For a subset of the impacted permit holders, this alternative will be very beneficial, if an incorrect permit is obtained that prohibits a commercial fisherman from selling fish or a charter/headboat fisherman from taking paying passengers (*e.g.,* HMS Angling permit). This alternative was selected because it will provide additional flexibility for permit applicants to correct mistakes, while maintaining the condition that no bluefin have been landed (and therefore precluding misuse of such flexibility).

Sub-Alternative I5a (No Action) would make no changes to the current regulations concerning green-stick gear. Vessels authorized to fish with pelagic longline gear would not be permitted to retain bluefin caught with green-stick gear. The economic impacts of the No Action Alternatives would be minor and adverse, as a result of maintaining the current regulations that preclude a pelagic longline vessel from retaining bluefin caught on green-stick gear. This alternative was not selected because it would not allow a pelagic longline vessel to retain bluefin incidentally caught by greenstick gear, and therefore not minimize discarding.

Sub-Alternative I5b, would amend retention and reporting requirements for bluefin caught with green-stick gear by vessels with Atlantic Tunas Longline category permits, to allow the retention of one bluefin per trip (73″ or greater CFL), provided that pelagic longline gear is not on board, and that vessels comply with additional regulations (*i.e.,* VMS set reports, HMS logbook requirements, IBQ program requirements) applying to such trips. This alternative was rejected because although it would allow retention of a bluefin caught by green-stick gear, the restriction that green-stick gear cannot be used if pelagic longline gear is onboard may limit the flexibility for fishermen to adapt fishing strategies to the conditions on a particular trip, and reduce the ability of those vessels to maximize their opportunity to catch yellowfin. Green-stick gear selection by fishermen targeting yellowfin could maximize economic returns and efficiency, or reflect adherence to specific requirements if fishing under the DWH OFRP in the Gulf of Mexico.

Sub-Alternative I5c, implemented by this final rule, amends retention and reporting requirements for bluefin caught with green-stick gear (by vessels with Longline category permits), to allow the retention of one bluefin per trip (of 73″ or greater) and with additional regulations (*i.e.,* VMS set reports, HMS logbook requirements, IBQ program requirements) applying to such trips. This measure allows both green-stick and pelagic longline gear on the vessel at the same time. In comparison to the No Action Alternative, this measure will have minor, beneficial economic impacts because a vessel would be able to retain a legal-sized bluefin that may otherwise be discarded dead due to a *de facto* prohibition on bluefin retention. Retention of such fish would reduce waste, augment revenue, and reduce the frustration associated with regulatory discarding. Allowing the use of green-stick gear while pelagic longline gear is on board is intended to provide vessel operators flexibility to employ fishing strategies with multiple gear types to optimize their business in a highly dynamic fishery. Green-stick gear selection by fishermen targeting yellowfin could maximize economic returns and efficiency, or reflect adherence to specific requirements if fishing under the DWH OFRP in the Gulf of Mexico. For these reasons, this alternative was selected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared, and posted to the Amendment 13 website. Copies of this final rule are available from the Office of Sustainable Fisheries, and the guide is available upon request (see **ADDRESSES**).

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA).

As part of Amendment 13, this final rule contains measures that eliminate or modify existing reporting, record-keeping, or other compliance requirements that require PRA filing, as described below. This final rule will change the existing requirements for collection-of-information under OMB Control Number 0648–0372 by modifying the VMS reporting requirement for vessels issued an Atlantic Tunas Longline permit that are fishing with green-stick gear. Such vessels will be required to submit a VMS set report for each green-stick retrieval that interacts with bluefin and report information on the location and the numbers, length range, and disposition of bluefin within 12 hours (caught using green-stick gear, in addition to the VMS reports for pelagic longline sets). This requirement is expected to increase the number of responses by only 18 per year, because of the low number of vessels expected to use green-stick gear (up to 3 vessels), and the low rate of bluefin incidental catch. This requirement will not change the total number of respondents and would have a *de minimis* impact on total costs. The public reporting burden for bluefin catch and effort is estimated to average 5 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This final rule will also modify other existing requirements for the collection

of information under OMB Control Number 0648–0372. The requirement for vessels fishing with purse seine gear to report bluefin information through VMS is eliminated, because this final rule eliminates the provisions that allow fishing with purse seine gear. The removal of this requirement will reduce the total burden by six hours and reduce the estimated burden cost by two thousand dollars. The final rule changes the existing EM requirements for pelagic longline vessels by requiring vessel owners to pay for specific required EM system modifications: hardware for the installation of rail video cameras and installation of a measuring grid on deck. These payment requirements will not affect the reporting burden hours for vessel operators. Finally, the final rule changes the existing EM requirements for pelagic longline vessels by requiring vessel owners to mail in their EM hard drives after every other trip, unless the hard drive is at full capacity after the first trip, as opposed to the current requirement to do so after ever trip.

This final rule revises the existing requirements for collection-of-information under OMB Control Number 0648–0040 by removing two aspects of the dealer reporting requirements for the IBQ Program. First, this final rule eliminates the current requirement that vessel operators or owners confirm that the landing report information entered into the IBQ system by the dealer is accurate, by entering the PIN associated with the vessel account. Secondly, this final rule removes the requirement that any pelagic longline vessel owner or operator who discarded dead bluefin is required to also enter dead discard information from the trip by coordinating with the dealer and entering that trip's dead discard information into the online IBQ system via the dealer account. The vessel operator will continue to be required to report dead discard information via VMS while at sea. NMFS estimates that the number of small entities subject to these requirements includes participants in the Longline category. As of March 2020, a total of 280 Atlantic Tunas Longline category limited access permits were issued. It is likely that the number of vessels that will actually be affected by these requirements would not be larger than 60 vessels. Since 2017, no more than 58 different pelagic longline vessels have landed bluefin.

This final rule changes the existing requirements for the collection-of-information under OMB Control Number 0648–0677 by adding cost recovery requirements for Atlantic Tunas Longline permit holders that land bluefin. Annually, NMFS will estimate its incremental costs associated with the IBQ Program (including costs associated with the cost recovery program) and the total ex-vessel value of bluefin harvested under the Program, and notify the public whether a cost recovery fee will be charged for the year. If NMFS determines an annual cost recovery fee is warranted, NMFS will send bills to permit holders that sold bluefin to dealers. Permit holders would be billed based on the ex-vessel value of the bluefin sold by that vessel, and would pay the cost recovery fee through the Catch Shares On-line Program website and the associated pay.gov link. NMFS estimates that the number of small entities subject to new cost recovery requirements will include all Atlantic Tuna Longline permit holders than landed bluefin, which is not likely to exceed 60 vessels, based on 2017 through 2019 IBQ Program data. The public reporting burden for cost recovery is estimated to average 15 minutes per individual response, including the time for logging onto the relevant online website, reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden is estimated to be 15 hours.

NMFS invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: *www.reginfo.gov/public/do/PRAMain.* Find these particular information collections by using the search function and entering either the title of the collection or the OMB Control Number 0648–0372, 0648–0040, 0648–0677.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects

50 CFR Part 600

General provisions for domestic fisheries, Magnuson-Stevens Act provisions, National standards, Regional fishery management councils.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: September 23, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

§ 600.725 [Amended]

■ 2. In § 600.725, amend the table in paragraph (v), under the heading ''IX. Secretary of Commerce,'' by removing and reserving the entry 1.H.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 4. In § 635.2:

■ a. Add in alphabetical order a definition for ''BFT'';

■ b. Revise the definition of ''CFL'';

■ c. Add in alphabetical order definitions for ''Electronic Monitoring (EM) system'' and ''IBQ (individual bluefin quota)'';

■ d. Revise the definition of ''Northeast Distant gear restricted area''; and

■ e. Add in alphabetical order a definition for ''Vessel Monitoring Plan (VMP)''.

The additions and revisions read as follows:

§ 635.2 Definitions.

* * * * *

BFT means Atlantic bluefin tuna as defined in § 600.10 of this chapter.

* * * * *

CFL (curved fork length) means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel (*i.e.,* in dorsal direction above caudal keel).

* * * * *

Electronic monitoring (EM) system means a system of video cameras and

recording and other related equipment installed on a vessel.

* * * * *

IBQ (individual bluefin quota) refers to limited access privileges under the IBQ Program (§ 635.15), implemented for the management of Atlantic BFT incidentally caught by Atlantic Tunas Longline category LAP holders.

* * * * *

Northeast Distant gear restricted area (NED) means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long.

* * * * *

Vessel monitoring plan (VMP) means an on-board, EM system reference document required by § 635.9(e)(1).

* * * * *

■ 5. In § 635.4, revise paragraphs (d)(1) and (2), remove paragraph (d)(5), and revise paragraph (j)(3).

The revisions read as follows:

§ 635.4 Permits and fees.

* * * * *

(d) * * *

(1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, or Trap category of the Atlantic Tunas permit, a valid HMS Charter/Headboat permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

* * * * *

(j) * * *

(3) A vessel owner issued an Atlantic Tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit at any time during the fishing year, provided the vessel has not landed BFT during that fishing year as verified by NMFS via landings data.

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■ 6. In § 635.5, revise paragraphs (a)(3) and (6) and (b)(2)(i)(A) to read as follows:

§ 635.5 Recordkeeping and reporting.

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(a) * * *

(3) *BFT landed by a commercial vessel and not sold.* If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, as instructed by NMFS, immediately upon landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or the BFT must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All BFT landed but not sold will be accounted against the quota category according to the permit category of the vessel from which it was landed.

* * * * *

(6) *Atlantic Tunas Longline category permitted vessels.* The owner or operator of a vessel issued, or that should have been issued, an Atlantic Tunas Longline category permit is subject to the VMS reporting requirements under § 635.69(e)(4) and the applicable IBQ Program and/or leasing requirements under § 635.15.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) *Landing reports.* Each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each BFT received from a U.S. fishing vessel. Such reports must be submitted as instructed by NMFS not later than 24 hours after receipt of the BFT. Landing reports must include the name and permit number of the vessel that landed the BFT and other information regarding the catch as instructed by NMFS. When purchasing BFT from eligible IBQ Program participants, permitted Atlantic Tunas dealers must enter landing reports into the Catch Shares Online System established under § 635.15, not later than 24 hours after receipt of the BFT. The dealer must inspect the vessel's permit to verify that it is a commercial category, that the required vessel name and permit number as listed on the permit are correctly recorded in the landing report, and that the vessel permit has not expired.

* * * * *

■ 7. In § 635.9, revise paragraphs (a), (b)(2) introductory text, (c)(1)(ii), and (c)(6), add paragraph (c)(7), and revise paragraph (e) to read as follows:

§ 635.9 Electronic monitoring.

(a) *Applicability.* An owner and/or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category under § 635.4, and that has pelagic longline gear on board, are required to have installed and maintain at all times during fishing trips, a fully operational EM system on the vessel, as specified in this section. Vessel owners and/or operators can contact NMFS or a NMFS-approved contractor for more details on procuring an EM system.

(b) * * *

(2) Vessel owners and/or operators, as instructed by NMFS, may be required to coordinate with NMFS or a NMFS approved contractor to schedule a date or range of dates, and/or may be required to steam to a designated port for EM work on specific NMFS-determined dates. Such EM work may include, but is not limited to EM system installation, repair, or modifications; modifications to vessel equipment to facilitate installation or operation of EM systems, such as installation of a fitting for the pressure-side of the line of the drum hydraulic system; installation, repair or modification to a power supply or power switches/connections for the EM system; installation of additional lighting; or installation of mounting structure(s) for the camera(s) to provide views of areas and fish consistent with paragraphs (c)(1)(i) through (ii) of this section.

* * * * *

(c) * * *

(1) * * *

(ii) Video camera(s) must be in sufficient numbers (a minimum of two and up to four), with sufficient resolution (no less than 720p (1280 × 720)) for NMFS, the USCG, and their authorized officers and designees, or any individual authorized by NMFS to determine the number and species of fish harvested. To obtain the views required in paragraph (c)(1)(i) of this section, at least one camera must be mounted to record close-up images of fish being retained on the deck at the haulback station, and at least one camera must be mounted to provide views of the area from the rail to the water surface, where the gear and fish are hauled out of the water. NMFS or the NMFS-approved contractor will determine the number and placement of cameras needed to achieve the required views, based on the operation and physical layout of the vessel.

* * * * *

(6) *EM software.* The EM system must have software that enables the system to be tested for functionality and that records the outcome of the tests.

(7) *Standardized reference grid.* The vessel must have a standardized grid on deck in view of the haulback station camera(s) in such a way that the video recording includes an image of each fish on the grid in order to provide a size reference. The standardized grid may be on a removable mat or carpet that is placed on the deck before the fish are brought on board, or may be painted directly on the deck. The standardized reference grid must have accurate dimensions and grid line intervals as instructed and specified in the vessel's VMP by NMFS or the NMFS-approved contractor. The vessel owner and/or operator is responsible for ensuring compliance with the provided instructions and specifications and for ensuring accurate, straight, clear and complete grid lines with no missing, incomplete, blurry or smudged lines.

* * * * *

(e) *Operation.* Unless otherwise authorized by NMFS in writing, a vessel described in paragraph (a) of this section must collect video and sensor data in accordance with the requirements in this section, in order to fish with pelagic longline gear.

(1) *Vessel monitoring plan.* The vessel owner and/or operator must have available onboard a written VMP for its system. At a minimum, the VMP must include: information on the locations of EM system components (including any customized camera mounting structure); contact information for technical support; instructions on how to conduct a pre-trip system test; instructions on how to verify proper system functions; location(s) on deck where fish retrieval should occur to remain in view of the cameras; specifications and other relevant information regarding the dimensions and grid line intervals for the standardized reference grid; procedures for how to manage EM system hard drives; catch handling procedures; periodic checks of the monitor during the retrieval of gear to verify proper functioning; and reporting procedures. The VMP will be updated, revised, and approved periodically by NMFS or the NMFS-approved contractor, and will include both signature and date indicating when the VMP was approved by NMFS or the NMFS-approved contractor. The VMP should minimize to the extent practicable any impact of the EM systems on the current operating procedures of the vessel, and should help ensure the safety of the crew. The vessel owner and/or operator must implement, and ensure that the vessel complies with, all of the requirements, specifications and protocols outlined in the VMP no later than 6 months after the date of approval of the VMP.

(2) *Handling of fish and duties of care.* The vessel owner and/or operator must ensure that all fish that are caught, even those that are released, are handled in a manner that enables the video system to record such fish, and must ensure that all handling and retention of BFT occurs in accordance with relevant regulations and the operational procedures outlined in the VMP. The vessel owner or operator must ensure that each retained fish is placed on the standardized reference grid in view of cameras in accordance with the operational procedures outlined in the VMP.

(3) *Additional duties of care.* The vessel owner and/or operator is responsible for ensuring the proper continuous functioning of all aspects of the EM system, including that the EM system must remain powered on for the duration of each fishing trip from the time of departure to time of return; cameras must be functioning and cleaned routinely; the hydraulic and gear sensors must be operational; the GPS signal must be functioning; and EM system components must not be tampered with.

(4) *Completion of trip(s).* Except when at capacity after one trip or otherwise stated by NMFS in writing, EM hard drives may be used to record up to two trips. Within 48 hours of completing a second fishing trip, or within 48 hours of completing one trip in the case where the hard drive does not have sufficient capacity for a second trip, the vessel owner and/or operator must mail the removable EM system hard drive(s) containing all data to NMFS or NMFS-approved contractor, according to instructions provided by NMFS. The vessel owner and/or operator is responsible for using shipping materials suitable to protect the hard drives (*e.g.,* bubble wrap), tracking the package, and including a self-addressed mailing label for the next port of call so replacement hard drives can be mailed back to the sender. Prior to departing on any trip, the vessel owner and/or operator must ensure an EM system hard drive(s) is installed that has the capacity needed to enable data collection and video recording for the entire trip. The vessel owner and/or operator is responsible for contacting NMFS or NMFS-approved contractor if they have requested but not received a replacement hard drive(s) and for informing NMFS or NMFS-approved contractor of any lapse in the hard drive management procedures described in the VMP.

* * * * *

■ 8. Revise § 635.15 to read as follows:

§ 635.15 Individual bluefin tuna quotas (IBQs).

(a) *General.* This section describes the IBQ Program. As described below, under the IBQ Program, NMFS will assign eligible Atlantic Tunas Longline category LAP holders annual IBQ shares and resulting allocations. IBQ allocations are required for vessels with Atlantic Tunas Longline category permits to fish with pelagic longline or green-stick gear. IBQ allocations may be leased by IBQ shareholders and Atlantic Tunas Longline category LAP holders using the Catch Shares Online System.

(b) *Eligibility*—(1) *IBQ shareholder.* An Atlantic Tunas Longline category LAP holder that fished using pelagic longline gear on at least one set (*i.e.,* deployment and retrieval) during a recent 36 month period is eligible to receive an annual IBQ share in accordance with paragraph (c) of this section and is considered an IBQ shareholder. In determining IBQ shareholders, NMFS will use data as described in paragraph (c) of this section. For an IBQ shareholder's vessel to be considered an ''eligible vessel,'' the vessel must have been issued a valid Atlantic Tunas Longline category LAP when set(s) occurred during the relevant 36 month period. In circumstances where a LAP is transferred from one vessel to another during the relevant 36 month period, the eligible vessel(s) is that which deployed the pelagic longline sets.

(2) *New entrants.* New entrants to the fishery need to obtain an Atlantic Tunas Longline category LAP, as well as other required LAPs, as described under § 635.4(l), and would need to lease IBQ allocations per paragraph (e) of this section if the Atlantic Tunas Longline category LAP acquired was not eligible for an annual IBQ share.

(c) *Annual IBQ share determination.* During the last quarter of each year, NMFS will review the relevant 36 months of best available data to determine eligible IBQ shareholders and the number of pelagic longline sets legally made by each permitted, eligible vessel, and assign IBQ shares based on the criteria below. The 36 month time period is a rolling period that changes annually, and is selected by NMFS based on the availability of recent data and time required by NMFS to conduct determinations under paragraphs (b) and (c) of this section. NMFS intends to include data from the majority of the year prior to the year for which shares are applied and the IBQ allocation distributed. The best available data as determined by NMFS may be a single data source such as VMS data, for which there is a relatively short time period from the time it is submitted by the vessel operator, and the time it can be used by NMFS; or the best available data may include other available data such as logbook, EM, or permit data, in order to accurately determine a vessel's eligibility status and shares. An IBQ shareholder does not need a valid LAP when NMFS makes annual IBQ share determinations, but NMFS will only distribute IBQ allocations to permitted vessels.

(1) *IBQ share calculations.* Annually, NMFS will calculate IBQ shares for each IBQ shareholder based upon the total number of each eligible vessel's pelagic longline sets during the relevant 36 month period, and the relative amount (as a percentage) those pelagic longline sets represent compared to the total number of pelagic longline sets made by all IBQ shareholders' eligible vessels. NMFS will only count one set per calendar day toward a vessel's total number of pelagic longline sets, and will only count a set if a vessel was issued a valid Atlantic Tunas Longline category LAP when the set occurred. The annual IBQ share percentage is used to calculate the annual IBQ allocation (see paragraph (d) of this section).

(2) *Proxy calculation for Deepwater Horizon Oceanic Fish Restoration Project participants.* For valid participants in this Project, the annual IBQ shares will be calculated as described in paragraph (c)(1) of this section, but in addition, a proxy amount of sets will be added to a vessel's history during the period of its participation in the Project. The proxy will be based upon the average number of sets made by IBQ shareholders' vessels that did not participate in the Project during the period that participants fished under the Project.

(3) *Regional designations of IBQ shares.* Annually, IBQ shares and resultant allocations will be designated as either ''GOM'' (Gulf of Mexico) or ''ATL'' (Atlantic), based upon the location (*i.e.,* in the Gulf of Mexico or Atlantic region) of sets included in the calculation under paragraph (c)(1) of this section. Subject to the GOM share cap described below, each region's total shares and resultant allocations for the year will be based on the percentage of sets designated for the region compared to total sets. Per § 635.28(a)(1), NMFS will file a closure action when a region's IBQ allocations have been reached or are projected to be reached. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2. If an IBQ shareholder's vessel had fishing history in both the Gulf of Mexico and Atlantic region, it could receive both GOM and ATL shares.

(i) *GOM share cap.* The maximum amount of designated GOM IBQ shares among all IBQ shareholders is capped at 35 percent of the baseline Longline category quota. Based on the criteria and process under § 635.27(a)(7), NMFS may make an inseason or annual adjustment to reduce the default 35-percent cap for all or the remainder of a calendar year.

(ii) *Adjustment of GOM shares to match the GOM share cap.* If NMFS determines that the total amount of GOM-designated IBQ shares would be greater than the GOM share cap (default or adjusted), NMFS will reduce the total amount of GOM shares in order to equal the GOM share cap. The reduction in total GOM shares will be achieved through equal proportional reductions among all GOM shareholders. The ATL shares will be increased in an analogous manner, so that the total share percentages for the two regions add up to 100 percent. NMFS will notify affected shareholders of any reductions in their GOM shares or increases in ATL shares resulting from this adjustment. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section.

(iii) *Low GOM-designated share threshold.* If NMFS determines that the total amount of GOM-designated IBQ shares is 5 percent or less of the total IBQ shares, NMFS will file an action with the Office of the Federal Register for publication that suspends for that year the requirement to account for BFT caught in the Gulf of Mexico with GOM-designated shares and resultant allocations (paragraph (f)(1) of this section) and the minimum GOM IBQ allocation requirement (paragraph (f)(2) of this section). NMFS will also notify IBQ shareholders of such action per paragraph (e) of this section. In this situation, IBQ shareholders' vessels could fish in the Gulf of Mexico during that year using ATL-designated IBQ allocations. Any vessels fishing in the Gulf of Mexico would still need to account for BFT catch and have the minimum IBQ allocation of 0.25 mt ww (551 lb ww) before departing on the first fishing trip in a calendar year quarter. Those vessels that fish in the Gulf of Mexico may be issued GOM IBQ shares in the following year per the regional designation of shares process described in paragraph (c)(3) of this section. BFT catch (landings and dead discards) from the Gulf of Mexico by pelagic longline vessels will be capped at the weight of BFT equivalent to the GOM share cap (see paragraph (c)(3)(i) of this section) in the applicable year. If this level of catch is reached, or projected to be reached, NMFS will prohibit fishing with pelagic longline gear in the Gulf of Mexico for the rest of the year pursuant to § 635.28(a)(1).

(d) *Annual IBQ allocations.* An annual IBQ allocation is the amount of BFT (whole weight) in metric tons corresponding to an IBQ shareholder's share percentage, distributed to their vessel to account for incidental landings and dead discards of BFT during a specified calendar year. NMFS will only distribute IBQ allocations when there is a valid Atlantic Tunas Longline category LAP associated with a vessel. Unless otherwise required under paragraph (f)(4) of this section, an IBQ allocation is derived by multiplying the IBQ share percentage (calculated under paragraph (c)(1) of this section) by the baseline Longline category quota for that year. If the baseline quota is adjusted during the fishing year, the annual IBQ allocation may also be adjusted as specified in paragraph (e)(2) of this section.

(e) *Notification of IBQ shares and allocations, appeals, and adjustments.* During the last quarter of each year, NMFS will notify Atlantic Tunas Longline permit holders via electronic methods (such as an email) and/or letter to inform them of their IBQ shares, their IBQ allocations, and the regional designations of those shares and

allocations for the subsequent fishing year; whether adjustments were made to GOM-designated shares due to the GOM shares cap; and whether the low GOM-designated share threshold has been triggered. This notification represents the initial administrative determination (IAD) for the permit holder's IBQ share and allocation. NMFS will also notify permit holders of any existing quota debt, and provide instructions for appealing the IAD. As of December 31, if an IBQ shareholder does not have a valid Atlantic Tunas Longline category LAP associated with a vessel due to a permit renewal or transfer, NMFS will issue IBQ allocation for the relevant fishing year if/when the permit renewal or transfer is completed and a valid LAP is associated with a vessel. IBQ shares, allocations, and regional designations may change as a result of the following circumstances, in which case NMFS will notify eligible IBQ recipients.

(1) *Appeals.* Appeals will be governed by the regulations and policies of the National Appeals Office at 15 CFR part 906. Per those regulations, Atlantic Tunas Longline Permit holders may appeal the IAD by submitting a written request for an appeal to the National Appeals Office within 45 days after the date the IAD is issued. NMFS will provide further instructions on how to submit a request for an appeal when it issues the IAD.

(i) *Items subject to appeal and adjustment.* A permit holder may appeal their: eligibility for IBQ shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit; IBQ share percentage; IBQ allocations; and regional designations of shares and allocations. A permit holder may also appeal NMFS' determination of the number of pelagic longline sets legally made by its permitted vessel. However, an adjustment of GOM shares under paragraph (c)(3)(ii) of this section or inseason quota adjustment under paragraph (e)(3) of this section is not subject to appeal. Appeals based on hardship factors will not be considered. Consistent with most limited effort and catch share programs, hardship is not a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize BFT quota from the Reserve category for any adjustment needed due to an appeal.

(ii) *Supporting documentation for appeals.* NMFS permit records would be the sole basis for determining permit transfers, permit renewals, and the validity of permits. NMFS will only use the relevant 36 months of data described under paragraph (c) of this section to determine the numbers of pelagic longline sets made. NMFS will count only pelagic longline sets legally made when the permit holder had a valid permit. No other proof of sets or permit history will be considered. Photocopies of written documents are acceptable; NMFS may request originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation into potential violations of Federal law.

(2) *Inseason quota transfers.* NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with § 635.27(a)(7) and (8). NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ shareholders or to all permitted Atlantic Tunas Longline category LAP vessels that are determined by NMFS to have any recent fishing activity in the pelagic longline fishery. In making this decision, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ allocation, the amount of BFT quota in the Reserve category (at § 635.27(a)(6)(i)), the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. NMFS will determine if a vessel has any recent fishing activity based upon the best available information for the subject and previous year, such as logbook, vessel monitoring system, or electronic monitoring data. Any distribution of quota transferred inseason will be equal among eligible IBQ shareholders or active vessels, and include regional designations of IBQ allocations (see paragraph (c)(3) of this section).

(3) *Inseason quota adjustments.* NMFS may increase or decrease the baseline Longline quota on an inseason basis as authorized under § 635.27(a). When doing so, NMFS would apply each IBQ shareholder's share percentage to the amount of quota increase or decrease, and will notify IBQ shareholders of any resulting changes in their IBQ allocations. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section. Regional designations described in paragraph (c)(3) of this section will be applied to inseason quota distributed to IBQ shareholders, and subject to the applicable cap and other provisions under paragraph (c)(3) of this section.

(f) *Using IBQ shares and allocations.* Unless specified otherwise, IBQ shares and resultant allocations will be available for use at the start of each fishing year and expire at the end of each fishing year. IBQ shares and allocations issued under this section are valid for the relevant fishing year unless revoked, suspended, or modified or unless the Atlantic Tunas Longline category quota is closed per § 635.28(a).

(1) *Usage of GOM and ATL shares and allocations.* GOM shares and resultant allocations can be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in either the Gulf of Mexico or the Atlantic regions. ATL shares and resultant allocations can only be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in the Atlantic region, unless the provisions of paragraph (c)(3)(iii) of this section are in effect. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2.

(2) *Minimum IBQ allocation.* For purposes of this section, calendar year quarters start on January 1, April 1, July 1, and October 1.

(i) *First fishing trip in a calendar year quarter.* Before departing on the first fishing trip in a calendar year quarter, a vessel with a valid Atlantic Tunas Longline category LAP that fishes with or has pelagic longline or green-stick gear onboard must have the minimum IBQ allocation for either the Gulf of Mexico or Atlantic, depending on fishing location. The minimum GOM allocation for a vessel fishing in the Gulf of Mexico, or departing for a fishing trip in the Gulf of Mexico, is 0.25 mt ww (551 lb ww). The minimum ATL or GOM allocation for a vessel fishing in the Atlantic or departing for a fishing trip in the Atlantic is 0.125 mt ww (276 lb ww). A vessel owner or operator may not declare into or depart on the first fishing trip in a calendar year quarter with pelagic longline gear onboard unless the vessel has the relevant required minimum IBQ allocation for the region in which the fishing activity will occur.

(ii) *Subsequent fishing trips in a calendar year quarter.* Subsequent to the first fishing trip in a calendar year quarter, a vessel owner or operator may declare into or depart on other fishing trips with pelagic longline gear onboard with less than the relevant minimum IBQ allocation for the region in which the fishing activity will occur, but only within that same calendar year quarter.

(3) *Accounting for BFT that were landed or discarded dead.* The following requirements apply to Atlantic Tunas Longline permit holders fishing with pelagic longline or green-stick gear regarding accounting for all BFT landings and dead discards from a vessel's IBQ allocation.

(i) *Catch deduction from IBQ allocations.* Except as provided under paragraph (f)(6)(i) of this section, for vessels fishing in the NED, all BFT landings must be deducted from the vessel's IBQ allocation at the end of each trip by providing information to, and coordinating with the dealer. Dead discards will be deducted from the vessel's IBQ allocation by the Catch Shares Online System, when the vessel operator reports dead discards through VMS as required under § 635.69(e)(4)(i).

(ii) *IBQ allocation balances.* If the amount of BFT landed and discarded dead on a particular trip exceeds the amount of the vessel's IBQ allocation or results in an IBQ balance less than the minimum amount described in paragraph (f)(2) of this section, the vessel may continue to fish, complete the trip, and depart on subsequent trips within the same calendar year quarter. The vessel must resolve any quota debt (see paragraph (f)(4) of this section) before declaring into or departing on a fishing trip with pelagic longline gear onboard in a subsequent calendar year quarter by acquiring adequate IBQ allocation to resolve the debt and acquire the needed minimum allocation through leasing, as described in paragraph (g) of this section.

(iii) *End-of-year IBQ transactions by dealers.* Federal Atlantic Tunas Dealer permit holders must comply with reporting requirements at § 635.5(b)(2)(i)(A). No IBQ transactions will be processed between 6 p.m. eastern time on December 31 and 2 p.m. Eastern Time on January 1 of each year to provide NMFS time to reconcile IBQ accounts and update IBQ shares and allocations for the upcoming fishing year.

(4) *Exceeding an available allocation.* If the amount of BFT landed or discarded dead for a particular trip (as defined in § 600.10 of this chapter) exceeds the amount of IBQ allocation available to the vessel, the permitted vessel is considered to have a ''quota debt'' equal to the difference between the catch and the allocation.

(i) *Quarter-level quota debt.* A vessel with quota debt incurred in a given calendar year quarter cannot depart on a trip with pelagic longline gear onboard in a subsequent calendar year quarter until the vessel leases allocation or receives additional allocation (see paragraphs (e) and (g) of this section), and applies allocation for the appropriate region to settle the quota debt such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur (see paragraph (f)(2) of this section). For example, a vessel with quota debt incurred during January through March may not depart on a trip with pelagic longline gear onboard during April through June (or subsequent quarters) until the quota debt has been resolved such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur.

(ii) *Annual-level quota debt.* If, by the end of the fishing year, a permit holder does not have adequate IBQ allocation to settle its vessel's quota debt through leasing or additional allocation (see paragraphs (e) and (g) of this section), the vessel's allocation will be reduced in the amount equal to the quota debt in the subsequent year or years until the quota debt is fully accounted for. A vessel may not depart on any pelagic longline trips if it has outstanding quota debt from a previous fishing year.

(iii) *Association with permit.* Quota debt is associated with the vessel's Atlantic Tunas Longline permit, and remains associated with the permit if/when the permit is transferred or sold. At the end of the year, if an owner with multiple permitted vessels has a quota debt associated with one or more vessels owned, the IBQ system will apply any remaining unused IBQ allocation associated with that owner's other vessels to resolve the quota debt.

(5) *Unused IBQ allocation.* Any IBQ allocation that is unused at the end of the fishing year may not be carried forward by a permit-holder to the following year, but would remain associated with the Longline category as a whole, and subject to the quota regulations under § 635.27, including annual quota adjustments.

(6) *The IBQ Program and the NED.* The following restrictions apply to vessels fishing with pelagic longline gear in the NED:

(i) *When NED BFT quota is available.* Permitted vessels fishing with pelagic longline or green-stick gear may fish in the NED, and any BFT catch will count toward the ICCAT-allocated separate NED quota, and will not be subject to the BFT accounting requirements of paragraph (f)(3) of this section, until the NED quota has been filled. Permitted vessels fishing in the NED must still fish in accordance with all other IBQ Program requirements, including the relevant minimum IBQ allocation requirements specified under paragraph (f)(2) of this section to depart on a trip using pelagic longline or green-stick gear.

(ii) *When NED BFT quota is filled.* Permitted vessels fishing with pelagic longline or green-stick gear may fish in the NED after the ICCAT-allocated, separate NED quota has been filled and must abide by all IBQ Program requirements. Notably, when the NED BFT quota is filled, the BFT accounting requirement of paragraph (f)(3) of this section is applicable. BFT catch must be accounted for using the vessel's ATL or GOM IBQ allocation, as described under paragraph (f)(1) of this section.

(g) *IBQ allocation leasing*—(1) *Eligibility.* The permit holders of vessels issued valid Atlantic Tunas Longline category LAPs are eligible to lease IBQ allocation to and/or from each other. A person who holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not lease IBQ allocation.

(2) *Application to lease*—(i) *Application information requirements.* All IBQ allocation leases must occur electronically through the Catch Shares Online System, and include all information required by NMFS.

(ii) *Approval of lease application.* Unless NMFS denies an application to lease IBQ allocation according to paragraph (g)(2)(iii) of this section, the Catch Shares Online System will provide an approval code to the IBQ lessee confirming the transaction.

(iii) *Denial of lease application.* NMFS may deny an application to lease IBQ allocation for any reason, including, but not limited to: The application is incomplete; the IBQ lessor or IBQ lessee is not eligible to lease per paragraph (g)(1) of this section; the IBQ lessor or IBQ lessee permits is sanctioned pursuant to an enforcement proceeding; or the IBQ lessor has an insufficient IBQ allocation available to lease (*i.e.,* the requested amount of lease may not exceed the amount of IBQ allocation associated with the lessor). As the Catch Shares Online System is automated, if any of the criteria above are applicable, the lease transaction will not be allowed to proceed. The decision by NMFS is the final agency decision; there is no

opportunity for an administrative appeal.

(3) *Conditions and restrictions of leased IBQ allocation*—(i) *Subleasing.* In a fishing year, an IBQ allocation may be leased numerous times following the process specified in paragraph (g)(2) of this section.

(ii) *History of leased IBQ allocation use.* The fishing history associated with the catch of BFT will be associated with the vessel that caught the BFT, regardless of how the vessel acquired the IBQ allocation (*e.g.,* through annual allocation or lease), for the purpose of any potential, future relevant regulations based upon BFT catch.

(iii) *Duration of IBQ allocation lease.* IBQ allocations expire at the end of each calendar year. Thus, an IBQ lessee may only use the leased IBQ allocation during the fishing year in which the IBQ allocation is applicable.

(iv) *Temporary prohibition on leasing IBQ allocation.* No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one year and 2 p.m. eastern time on January 1 of the next year. This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

(h) *Sale of IBQ shares.* Sale of IBQ shares is not permitted.

(i) *Changes in vessel and permit ownership.* In accordance with the regulations specified under § 635.4(l), a vessel owner that has an annual IBQ share may transfer their Atlantic Tunas Longline category LAP to another vessel that he or she owns or transfer the permit to another person. The IBQ share as described under this section would transfer with the permit to the new vessel, and remain associated with that permit for the remainder of that fishing year. Within a fishing year, when an Atlantic Tunas Longline category LAP transfer occurs (from one vessel to another), the associated IBQ shares are transferred with the permit, however IBQ allocation is not, unless the IBQ allocation is also transferred through a separate transaction within the Catch Shares Online System. A person that holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not receive or lease IBQ allocation.

(j) *Evaluation.* NMFS will conduct evaluations of the IBQ Program in accordance with Magnuson-Stevens Act requirements for Limited Access Privilege Programs (Section 303(c)(1)(G)).

(k) *Property rights.* IBQ shares and resultant allocations issued pursuant to this part may be revoked, limited, modified or suspended at any time subject to the requirements of the Magnuson-Stevens Act, ATCA, or other applicable law. Such IBQ shares and resultant allocations do not confer any right to compensation and do not create any right, title, or interest in any BFT until it is landed or discarded dead.

(l) *Enforcement and monitoring.* NMFS will enforce and monitor the IBQ Program through the use of the reporting and record keeping requirements described under § 635.5, the monitoring requirements under §§ 635.9 and 635.69, enforcement of the prohibitions in § 635.71, and its authority to close the pelagic longline fishery specified under § 635.28.

(m) *Cost recovery program.* This program of fees is intended to cover costs of management, data collection and analysis, and enforcement activities directly related to and in support of the IBQ Program. This program applies to vessels issued an Atlantic Tunas Longline category LAP that harvested BFT under the IBQ Program. NMFS will undertake the process described in paragraphs (m)(1) through (5) of this section, on an annual basis.

(1) *Estimation of incremental cost.* NMFS will calculate the estimated incremental cost of the IBQ Program (*e.g.,* oversight, customer service, database/computer maintenance and other costs, electronic monitoring program, data monitoring, preparation of fleet communications, providing status reports to the HMS Advisory Panel, preparation of **Federal Register** documents, and enforcement related activities), including an estimate of the administrative and operational cost of implementing the cost recovery program.

(2) *Estimation of ex-vessel value of catch share species.* NMFS will calculate the ex-vessel value of BFT harvested under the IBQ Program using dealer data on the estimated average ex-vessel value price per pound (paid by the dealer to the vessel) and the total dressed weight of BFT sold to dealers.

(3) *Determination of fees.* NMFS will compare its incremental cost under paragraph (m)(1) of this section to the estimate of BFT ex-vessel value under paragraph (m)(2) of this section to determine the total amount of fees that may be recovered. Fees shall not exceed 3 percent of the BFT ex-vessel value estimated under paragraph (m)(2) of this section. NMFS will determine the fee associated with each vessel that harvested BFT, based on the total dressed weight of BFT sold to dealers by a vessel, and the total amount of fees that may be recovered (fishery-wide). NMFS will not assess fees, if the amount of fees that may be recovered is similar to or less than the estimated cost of implementing the cost recovery program.

(4) *Notification of fees.* NMFS will file with the Office of the Federal Register for publication a notification of its determination on fees, and notify Atlantic Tunas Longline permit holders, specifying the fee amount owed, and instructions for payment through the Catch Shares Online System or other Federal payment system. Federally permitted vessels (Atlantic Tunas Longline permit holders) that sold BFT that do not pay the fee or are delinquent in payment would be subject to relevant enforcement penalties, including permit revocation.

(5) *Annual report.* NMFS will prepare a brief annual report, made available to the public, which summarizes relevant information including the estimation of recoverable costs, estimation of ex-vessel value of BFT, and determination of the cost recovery fee.

(n) *IBQ shares cap.* An individual, partnership, corporation or other entity (collectively, ''entity'' for purposes of this paragraph) that holds an Atlantic Tunas Longline category LAP may not hold or acquire more than 25 percent of the total IBQ shares or resultant IBQ allocations annually. The cap applies to the sum of IBQ shares or associated IBQ allocations an entity holds, regardless of whether the entity is associated with a single or multiple Atlantic Tunas Longline category permits.

■ 9. In § 635.19, revise paragraph (b) to read as follows:

§ 635.19 Authorized gears.

* * * * *

(b) *Atlantic tunas.* Primary gears are the gears specifically authorized in this section for fishing for, catching, retaining, or possessing Atlantic BFT and BAYS.

(1) *Atlantic BFT.* A person that fishes for, catches, retains, or possesses an Atlantic BFT may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the specific permit category issued (Atlantic tunas or HMS permit categories) and listed here:

(i) *Angling category.* Rod and reel (including downriggers) and handline.

(ii) *Charter/headboat category.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear.

(iii) *General category.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.

(iv) *Harpoon category.* Harpoon.

(v) *Trap category.* Pound net and fish weir.

(vi) *Longline category.* Longline and green-stick gear.

(2) *BAYS.* Subject to paragraph (b)(1) of this section that applies to possession or retention of BFT or fishing for or catching BFT, a person may otherwise use the primary gears authorized for the Atlantic Tunas or HMS permit categories and listed here to fish for, catch, retain, or possess BAYS:

(i) *Angling category.* Speargun, rod and reel (including downriggers), and handline.

(ii) *Charter/Headboat category.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General category.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.

(iv) *Harpoon category.* Harpoon.

(v) *Longline category.* Longline and green-stick gear.

(3) *HMS Commercial Caribbean Small Boat Permit.* A person issued an HMS Commercial Caribbean Small Boat permit may use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear to fish for, retain, or possess BAYS tunas in the U.S. Caribbean, as defined at § 622.2.

* * * * *

■ 10. In § 635.21:

■ a. Revise paragraphs (c)(2)(iv) introductory text, (c)(5)(iii)(B), and (c)(5)(iii)(C) introductory text; and

■ b. Remove paragraph (e) and redesignate paragraphs (f) through (k) as paragraphs (e) through (j).

The revisions read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(2) * * *

(iv) In the NED at any time, unless persons onboard the vessel comply with the following:

* * * * *

(5) * * *

(iii) * * *

(B) *Bait.* Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part, are limited, at all times, to possessing on board and/or using only whole finfish and/or squid bait except that if green-stick gear is also on board, artificial bait may be possessed, but may be used only with green-stick gear.

(C) *Hook size and type.* Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part are limited, at all times, to possessing on board and/or using only 16/0 or larger non-offset circle hooks or 18/0 or larger circle hooks with an offset not to exceed 10°. These hooks must meet the criteria listed in paragraphs (c)(5)(iii)(C)(*1*) through (*3*) of this section. A limited exception for the possession and use of J-hooks when green-stick gear is on board is described in paragraph (c)(5)(iii)(C)(*4*) of this section.

* * * * *

■ 11. In § 635.22, revise paragraph (c)(1) to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) * * *

(1) The recreational retention limit for sharks applies to any person who fishes in any manner on a vessel that has been issued or is required to have been issued a permit with a shark endorsement, except as noted in paragraph (c)(7) of this section. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under § 635.4 is required to use non-offset, corrodible circle hooks as specified in § 635.21(e) and (j) in order to retain sharks per the retention limits specified in this section.

* * * * *

■ 12. In § 635.23:

■ a. Revise paragraphs (a)(4), (b)(3), and (d);

■ b. Remove paragraph (e);

■ c. Redesignate paragraphs (f) and (g) as paragraphs (e) and (f);

■ d. Revise newly redesignated paragraphs (e) introductory text and (e)(2); and

■ e. Add paragraph (e)(3).

The revisions and additions read as follows:

§ 635.23 Retention limits for bluefin tuna.

* * * * *

(a) * * *

(4) To provide for maximum utilization of the quota for BFT, and as allowed under paragraph (a)(2) of this section, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(7). NMFS will adjust the daily retention limit by filing an adjustment with the Office of the Federal Register for publication. Previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26(a).

(b) * * *

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27(a)(7). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the Federal Register for publication.

* * * * *

(d) *Harpoon category.* (1) Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land no more than 10 large medium and giant BFT, combined, per vessel per day. The incidental catch of large medium BFT is limited as specified in paragraph (d)(2) of this section. NMFS may increase or decrease the overall daily retention limit of large medium and giant BFT, combined, per vessel per day over a range of 5 to a maximum of 10 fish per vessel per day. Such increase or decrease will be based upon the criteria under § 635.27(a)(7). NMFS will adjust the daily retention limit by filing an adjustment with the Office of the Federal Register for publication.

(2) Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an incidental catch of no more than two large medium BFT per vessel per day, unless adjusted. NMFS may increase or decrease the incidental daily catch limit through an inseason adjustment over a range of two to a maximum of four, large medium BFT per vessel per day, based upon the criteria under § 635.27(a)(7).

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has an Atlantic Tunas Harpoon category permit.

* * * * *

(e) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category are subject to the BFT

retention restrictions in paragraphs (e)(1) through (e)(3) of this section.

* * * * *

(2) A vessel with pelagic longline gear onboard must retain and land all dead large medium or giant BFT.

(3) A vessel permitted in the Atlantic Tunas Longline LAP category may retain, possess, land, and sell one large medium or giant BFT incidentally caught with green-stick gear per trip, if the vessel is in compliance with all the IBQ requirements of § 635.15, including the VMS set report requirement (§ 635.69(e)(4)), and IBQ allocation and usage requirements (§ 635.15(b)).

* * * * *

■ 13. In § 635.24, revise paragraphs (a)(4)(i) and (iii) to read as follows:

§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.

* * * * *

(a) * * *

(4) * * *

(i) Except as provided in § 635.22(c)(7), a person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, land, or sell pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may be retained by persons aboard vessels using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions of §§ 635.21(c)(1), (d)(5), and (f)(6) and 635.22(c)(7).

* * * * *

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may only be retained under the commercial retention limits by persons using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions at § 635.21(c)(1), (d)(5), and (f)(6). If the vessel has also been issued a permit with a shark endorsement and retains a shortfin mako shark, recreational retention limits apply to all sharks retained and none may be sold, per § 635.22(c)(7).

* * * * *

■ 14. In § 635.27:

■ a. Revise paragraphs (a) introductory text, (a)(1)(i) and (ii), and (a)(2) and (3);

■ b. Remove paragraph (a)(4) and redesignate paragraphs (a)(5) through (a)(10) as paragraphs (a)(4) through (a)(9); and

■ c. Revise newly redesignated paragraphs (a)(4) and (5), (a)(6)(i) and (ii), (a)(8), and (a)(9)(i), (ii), and (v).

The revisions read as follows:

§ 635.27 Quotas.

(a) *BFT.* Consistent with ICCAT recommendations, and with paragraph (a)(9)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Longline, Trap, and Reserve categories, as described in this section. BFT quotas are specified in whole weight. The baseline annual U.S. BFT quota is 1,316.14 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. This baseline BFT quota is divided among the categories according to the following percentages: General—54 percent (710.7 mt); Angling—22.6 percent (297.4 mt), which includes the school BFT held in reserve as described under paragraph (a)(6)(ii) of this section; Longline—15.9 percent (209.3 mt) (*i.e.,* total not including the 25-mt allocation from paragraph (a)(3) of this section); Harpoon—4.5 percent (59.2 mt); Trap—0.1 percent (1.3 mt); and Reserve—2.9 percent (38.2 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(8) and (9) of this section.

(1) * * *

(i) Catches from vessels for which Atlantic Tunas General category permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 710.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through March 31—5.3 percent;

(B) June 1 through August 31—50 percent;

(C) September 1 through September 30—26.5 percent;

(D) October 1 through November 30—13 percent; and

(E) December 1 through December 31—5.2 percent.

(ii) NMFS may adjust each period's apportionment based on overharvest or underharvest in the prior period, and may transfer subquota from one time period to another time period, earlier in the year, through inseason action or annual specifications. For example, subquota could be transferred from the December 1 through December 31 time period to the January 1 through March 31 time period; or from the October 1 through November 30 time period to the September 1 through September 30 time period. This inseason adjustment may occur prior to the start of that year. In other words, although subject to the inseason criteria under paragraph (a)(7) of this section, the adjustment could occur prior to the start of the fishing year. For example, an inseason action transferring the 2016 December 1 through December 31 time period subquota to the 2016 January 1 through March 31 time period subquota could be filed in 2015.

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures as described under § 635.34, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 297.4 mt. No more than 3.1 percent of the annual Angling category quota may be large medium or giant BFT. In addition, no more than 10 percent of the baseline annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(6)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(6)(ii) of this section), 52.8 percent of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school BFT Angling category quota may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) After adjustment (Angling category quota minus school and large medium/giant subquotas), resulting in a large school/small medium subquota of 154.1 mt, an amount equal to 52.8 percent may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed north of 39°18′ N. lat.

(iii) One fourth of the large medium and giant BFT Angling category quota may be caught retained, possessed, or landed, in each of the four following geographic areas: North of 42° N. lat.; south of 42° N. lat. and north of 39°18′ N. lat.; south of 39°18′ N. lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico region. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter.

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant BFT that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 209.3 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the NED, and subject to the restrictions under § 635.15(b)(6). For purposes of the closure authority under § 635.28(a)(1), regional IBQ allocations under § 635.15(c)(3) and the BFT catch cap for fishing in the Gulf of Mexico (§ 635.15(c)(3)(iii)) are considered quotas.

(4) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Atlantic Tunas Harpoon category permits is 59.2 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(5) *Trap category quota.* The total amount of large medium and giant BFT, that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Trap category permits is 1.3 mt.

(6) * * *

(i) The total amount of BFT that is held in reserve is 38.2 mt, which may be augmented by allowable underharvest from the previous year. Consistent with paragraphs (a)(7) through (a)(9) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota. NMFS may also use any portion of the Reserve category quota for adjustments to, or appeals of, IBQ allocations (see § 635.15(e)(1)(i)) and research using quota or subquotas (see § 635.32).

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(6)(i) of this section. Consistent with paragraph (a)(7) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

(8) *Inseason adjustments.* To be effective for all, or part of a fishing year, NMFS may transfer quotas specified under this section, among fishing categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(7) of this section.

(9) * * *

(i) Adjustments to category quotas specified under paragraphs (a)(1) through (a)(6) of this section may be made in accordance with the restrictions of this paragraph and ICCAT recommendations. Based on landing, catch statistics, other available information, and in consideration of the criteria in paragraph (a)(7) of this section, if NMFS determines that a BFT quota for any category or, as appropriate, subcategory has been exceeded (overharvest), NMFS may subtract all or a portion of the overharvest from that quota category or subcategory for the following fishing year. If NMFS determines that a BFT quota for any category or, as appropriate, subcategory has not been reached (underharvest), NMFS may add all or a portion of the underharvest to, that quota category or subcategory, and/or the Reserve category for the following fishing year. The underharvest that is carried forward may not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted fishing category quotas and the Reserve category quota must be consistent with ICCAT recommendations. Although quota may be carried over for the Longline category as a whole, IBQ shares and IBQ allocations may not be carried over from one year to the next, as specified under § 635.15(f).

(ii) NMFS may allocate any quota remaining in the Reserve category at the end of a fishing year to any fishing category, provided such allocation is consistent with the determination criteria specified in paragraph (a)(7) of this section.

* * * * *

(v) NMFS will file any annual adjustment with the Office of the Federal Register for publication and specify the basis for any quota reduction or increases made pursuant to this paragraph (a)(9).

* * * * *

■ 15. In § 635.28, revise paragraphs (a)(1) and (2) to read as follows:

§ 635.28 Fishery closures.

(a) * * *

(1) When a BFT quota specified in § 635.27(a) has been reached, or projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are available, *e.g.,* BFT have migrated into the area or weather is conducive for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(7).

* * * * *

§ 635.29 [Amended]

■ 16. In § 635.29, remove paragraph (c).

■ 17. In § 635.31, revise paragraph (a)(1) to read as follows:

§ 635.31 Restrictions on sale and purchase.

(a) * * *

(1) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit with a commercial sale endorsement; a valid Atlantic Tunas General, Harpoon, Longline, or Trap category permit; or a valid HMS Commercial Caribbean Small Boat permit issued under this part, and the appropriate category has not been

closed, as specified at § 635.28(a). However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic BFT only to a dealer that has a valid permit for purchasing Atlantic BFT issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

* * * * *

■ 18. In § 635.34, revise paragraph (b) to read as follows:

§ 635.34 Adjustment of management measures.

* * * * *

(b) In accordance with the framework procedures in the 2006 Consolidated HMS FMP, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: Maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions, or regional and/or sub-regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; the IBQ shares or resultant allocations for BFT; administration of the IBQ program (including but not limited to requirements pertaining to leasing of IBQ allocations, regional or minimum IBQ share requirements, IBQ share caps (individual or by category), permanent sale of shares, NED IBQ rules, *etc.*); *de minimis* BFT quota set-aside for new entrants and associated requirements, process and conditions; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; observer coverage requirements; EM requirements; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

* * * * *

■ 19. In § 635.69, revise paragraphs (a) introductory text and (a)(1) and (4), add paragraph (a)(5), and revise paragraphs (e)(4) introductory text and (e)(4)(ii) to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, enhance reporting, and support the IBQ Program (§ 635.15), an owner or operator of a commercial vessel that has been issued or is required to be issued an Atlantic Tunas Longline category LAP or a vessel that is permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline or gillnet gear is required to install a NMFS-approved enhanced mobile transmitting unit (E–MTU) vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the circumstances listed in paragraphs (a)(1) through (a)(5) of this section. For purposes of this section, a NMFS-approved E–MTU VMS is one that has been approved by NMFS as satisfying its type approval listing for E–MTU VMS units. Those requirements are published in the **Federal Register** and may be updated periodically.

(1) Whenever the vessel has pelagic longline gear on board;

* * * * *

(4) A vessel is considered to have pelagic or bottom longline gear on board, for the purposes of this section, when the gear components as specified at § 635.2 are on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10 of this chapter, is on board a vessel that has been issued a shark LAP.

(5) Whenever a vessel issued an Atlantic Tunas Longline permit has green-stick gear on board.

* * * * *

(e) * * *

(4) BFT and fishing effort reporting requirements for vessels fishing with pelagic longline gear or vessels issued an Atlantic Tunas Longline category LAP fishing with green-stick gear.

* * * * *

(ii) *Green-stick gear.* The owner or operator of a vessel with an Atlantic Tunas Longline permit that is fishing with green-stick gear must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each green-stick set that interacts with BFT, as instructed by NMFS, the date and area of the set, the length of BFT retained (actual), and the numbers and lengths of all BFT discarded dead or alive (approximate), must be reported within 12 hours of the completion of the retrieval of each set.

* * * * *

■ 20. In § 635.71:

■ a. Revise paragraphs (a)(14) and (37) and (b)(3), (8) through (10), and (17);

■ b. Remove and reserve paragraphs (b)(18) and (20) through (22).

■ c. Revise paragraphs (b)(30), (31), and (33) through (36), (39) through (41), (46) through (59), (c)(7), (d)(13), (22), (23), (25), and (28), and (e)(11) and (17).

The revisions and additions read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(14) Fail to install, activate, repair, or replace a NMFS-approved E–MTU vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or gillnet gear on board the vessel, or with green-stick gear on board a vessel issued an Atlantic Tunas Longline category permit as specified in § 635.69.

* * * * *

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.21(f)(1).

(b) * * *

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit as authorized under § 635.23(b) and (c).

* * * * *

(8) Fail to pay cost recovery fees as instructed by NMFS, as specified at § 635.15(m)(4).

(9) Hold or acquire more than 25 percent of the total IBQ shares or associated allocations annually as specified under § 635.15(n).

(10) Fail to retain and land all dead large medium or giant BFT when pelagic longline gear is on board a vessel, as specified in § 635.23(e)(2).

* * * * *

(17) Fish for, catch, retain, or possess BAYS tunas with gear not authorized for the category permit issued to the vessel, as specified in § 635.19(b).

* * * * *

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(h).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(h).

* * * * *

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(h).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(h).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat category permit, as specified at § 635.21(h).

(36) Possess J-hooks onboard a vessel that has pelagic longline gear on board, and that has been issued or required to be issued a LAP under this part, except when green-stick gear is on board, as specified at § 635.21(c)(2)(iv) and (c)(5)(iii)(C).

* * * * *

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear, as specified in § 635.21(c)(2)(iv), (c)(5)(iii)(C), or (i).

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any part of the hook, when fishing with or possessing green-stick gear on board a vessel that has been issued or required to be issued a LAP under this part, as specified at § 635.21(c)(2)(iv) or (c)(5)(iii)(C).

(41) Fail to report BFT catch by pelagic longline, through VMS as specified at § 635.69(e)(4).

* * * * *

(46) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board that does not have an approved and fully operational, working EM system as specified in § 635.9; tamper with, or fail to install, operate or maintain one or more components of the EM system; obstruct the view of the camera(s); or fail to handle BFT in a manner that allows the camera to record the fish as specified in § 635.9; or fail to comply with the standardized reference grid, hard drive, vessel monitoring plan and other requirements under § 635.9.

(47) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without a minimum amount of IBQ allocation available for that vessel, as specified in § 635.15(f)(2), as applicable.

(48) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without accounting for BFT as specified in § 635.15(f)(3).

(49) Lease BFT quota allocation to or from the owner of a vessel not issued a valid Atlantic Tunas Longline permit as specified under § 635.15(g)(1).

(50) Fish in the Gulf of Mexico with pelagic longline gear on board if the vessel has only designated Atlantic IBQ allocation, as specified under § 635.15(c)(3).

(51) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board in the Gulf of Mexico, without a minimum amount of designated GOM IBQ allocation available for that vessel, as specified in § 635.15(f)(2).

(52) If leasing IBQ allocation, fail to provide all required information on the application, as specified under § 635.15(g)(2).

(53) Lease IBQ allocation in an amount that exceeds the amount of IBQ allocation associated with the lessor, as specified under § 635.15(g)(2).

(54) Sell quota share, as specified under § 635.15(h).

(55) Fail to provide BFT landings and dead discard information as specified at § 635.15(f)(3)(iii).

(56) Fish with or have pelagic longline gear on board if any quota debt associated with the permit from a preceding calendar year quarter has not been settled as specified in § 635.15(f)(4)(i).

(57) Lease IBQ allocation during the period from 6 p.m. December 31 to 2 p.m. January 1 (Eastern Time) as specified at § 635.15(g)(3)(iv).

(58) Lease IBQ allocation if the conditions of § 635.15(g)(2) are not met.

(59) Fish with or have pelagic longline gear on board if any annual level quota debt associated with the vessel from a preceding year has not been settled, as specified at § 635.15(f)(4)(ii).

(c) * * *

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e).

* * * * *

(d) * * *

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(f).

* * * * *

(22) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when fishing at a registered recreational HMS fishing tournament that has awards or prizes for sharks, as specified in § 635.21(e) and (j).

(23) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when issued an Atlantic HMS Angling permit or HMS Charter/Headboat category permit with a shark endorsement, as specified in § 635.21(e) and (j).

* * * * *

(25) Fail to follow the fleet communication and relocation protocol for dusky sharks as specified at § 635.21(c)(6), (d)(2), and (f)(5).

* * * * *

(28) Retain, land, or possess a shortfin mako shark that was caught with pelagic longline, bottom longline, or gillnet gear and was alive at haulback as specified at § 635.21(c)(1), (d)(5), and (f)(6).

* * * * *

(e) * * *

(11) Possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(g).

* * * * *

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(g).

* * * * *

[FR Doc. 2022–21167 Filed 9–30–22; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 87 Monday,
No. 190 October 3, 2022

Part IV

Department of Agriculture

Agricultural Marketing Service

9 CFR Part 201

Inclusive Competition and Market Integrity Under the Packers and Stockyards Act; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–FTPP–21–0045]

RIN 0581–AE05

Inclusive Competition and Market Integrity Under the Packers and Stockyards Act

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is soliciting comments on proposed revisions to the regulations under the Packers and Stockyards Act, 1921. The proposal would prohibit certain prejudices against market-vulnerable individuals that tend to exclude or disadvantage covered producers in those markets. The proposal would identify retaliatory practices that interfere with lawful communications, assertion of rights, and associational participation, among other protected activities, as unjust discrimination prohibited by the law. The proposal would also identify unlawfully deceptive practices that violate the Packers and Stockyards Act with respect to contract formation, contract performance, contract termination, and contract refusal. The purpose of the rule is to promote inclusive competition and market integrity in the livestock, meats, poultry, and live poultry markets.

DATES: Comments must be received by December 2, 2022.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. AMS strongly prefers comments be submitted electronically. However, written comments may be submitted (*i.e.,* postmarked) via mail to S. Brett Offutt, Chief Legal Officer, Packers and Stockyards Division, USDA, AMS, FTPP; Room 2097–S, Mail Stop 3601, 1400 Independence Ave. SW, Washington, DC 20250–3601. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above. Parties who wish to comment anonymously may do so by entering ''N/A'' in the fields that would identify the commenter.

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:

Outline of the Notice of Proposed Rulemaking

I. Introduction and Regulatory Background

The rise of vertically integrated contract agriculture and highly concentrated local markets in livestock and poultry over the last four decades have increasingly left many producers and growers (hereinafter producers, unless otherwise noted) vulnerable to a range of practices that unjustly exclude them from and undermine their economic opportunities in the marketplace. The regulatory toolkit embodied in the Packers & Stockyards Act, as amended (P&S Act or Act) (7 U.S.C. 181 *et seq.*), has not been deployed to keep pace with these issues. AMS is proposing this regulation to enhance those basic protections that modern livestock and poultry producers need to promote inclusive competition and market integrity. We invite comment on a range of questions in this proposal.

Specifically, AMS is proposing to:

- Prohibit, as undue prejudices, disadvantages, and adverse actions against ''market vulnerable individuals'' who are at heightened risk in relevant markets;
- Prohibit, as unjust discrimination, retaliatory and adverse actions that interfere with lawful communications, assertion of rights, associational participation, and other protected activities;
- Prohibit, as deceptive practices, regulated entities employing pretexts, false or misleading statements, or omissions of material facts, in contract formation, contract performance, contract termination, and contract refusal; and
- Require recordkeeping to support USDA monitoring, evaluation, and enforcement of compliance with aspects of this rule.

AMS is proposing these modernized regulations under the Act's provisions prohibiting undue prejudice, unjust discrimination, and deception to provide for clearer, more effective standards to govern the modern marketplace and to better protect, through compliance and enforcement, individually harmed producers and growers. Enacted in 1921 ''to comprehensively regulate packers, stockyards, marketing agents and dealers,'' [1] the P&S Act, among other things, prohibits actions that hinder integrity and competition in the livestock and poultry markets. Section 202(a) of the Act states that it is unlawful for any packer, swine contractor, or live poultry dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device.[2] Section 202(b) of the Act states that it is unlawful for any packer, swine contractor, or live poultry dealer to make or give any undue or unreasonable preference or advantage to any particular person or locality, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect. The Secretary of Agriculture (Secretary) has

[1] *Hays Livestock Comm'n Co.* v. *Maly Livestock Comm'n Co.,* 498 F.2d 925, 927 (10th Cir. 1974).

[2] 7 U.S.C. 192(a).

delegated the responsibility for administering the P&S Act to AMS. Within AMS, the Packers, and Stockyards Division (PSD) of the Fair-Trade Practices Program has responsibility for the day-to-day administration of the P&S Act. The current regulations implementing the P&S Act are found in title 9, part 201 of the Code of Federal Regulations (CFR). Section 407 of the P&S Act (7 U.S.C. 228) provides that the Secretary ''may make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act.'' This proposed rule, if finalized, would amend 9 CFR part 201.

A. Background to This Rulemaking

Congress enacted the P&S Act after many years of concern about farmers and ranchers being cheated and mistreated. At the time, Congress worried that the five very large meatpackers' control over the nation's food supply tended toward monopolization, which could put economic opportunity for producers and their communities at risk, destroying individual economic opportunity for producers and smaller food businesses and harming rural communities, among other harms.[3] Moreover, Congress believed that existing antitrust and market regulatory laws, including the Sherman Act and Federal Trade Commission Act, did not sufficiently protect farmers and ranchers.[4] Accordingly, in the P&S Act, Congress gave the Secretary of Agriculture broad authority to regulate the meatpacking industry. The House of Representatives' report on the P&S Act stated that it was the ''most comprehensive measure and extends farther than any previous law in the regulation of private business, in time of peace, except possibly the interstate commerce act.'' [5] The Conference Report on the P&S Act stated that: ''Congress intends to exercise, in the bill, the fullest control of the packers and stockyards which the Constitution permits . . .'' [6]

In the early 1900s, meat packing in the United States was highly concentrated, with approximately 50 to 70 percent of the beef packing industry controlled by the industry's ''Big Five:'' Armour, Cudahy, Morris, Swift, and Wilson.[7] A 1918 Federal Trade Commission (FTC) meat industry investigation found that in 1916 the Big Five controlled the slaughter and processing of 82 percent of cattle, 79 percent of calves, 87 percent of sheep, and 63 percent of swine in the U.S.[8] Those five dominant operators also controlled an interlocking network of the feed mills, stockyards, and transportation infrastructure that supported the industry. As extensively documented in a report by the FTC, which set the stage for Congressional passage of the P&S Act, those five packers deployed from their positions in that market structure a range of practices to further entrench their dominance.[9]

At that same time, the Department of Justice (DOJ) brought enforcement cases under the Sherman Act against the packing industry, which resulted in a series of consent decrees (judicially overseen agreements) that restructured the market.[10] The consent decrees, together with the adoption of the P&S Act, reformed market practices by eliminating packer ownership of cattle and their means of transporting it, and reinforced market structures that—for a period of time in the 20th century—secured open, fair marketplaces for all, such as terminal auction yards regulated as stockyards by the Packers and Stockyards Administration of USDA.[11] By 1963, the four-firm concentration ratio (the standard economic tool used to evaluate the degree of concentration in markets) had fallen to 26 percent in beef and 33 percent in hogs.

Amidst slowing demand in the beef and hog sectors, the dramatic growth of demand in the poultry industry, technological advances and increased returns to scale in meat processing, and a decline in Federal antitrust and fair markets enforcement, concentration returned to the meat packing industry.[12] Between 1980 and 2020, the four-firm concentration ratio grew from 36 percent to 81 percent in beef packing (steers and heifers) and rose by 34 percent to 64 percent in hogs.[13] Between 1977 and 2020, the four-firm concentration ratio in the poultry broiler industry increased from 22 percent to 53 percent.[14]

The above data reflects the state of concentration nationally, but concentration in local markets that exceeds national averages has been observed in the poultry, hog and pig, and cattle industries. 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.[15] Regional concentration is often higher than national concentration for hogs.[16] And in cattle, based on AMS's experience conducting investigations and monitoring markets, there are commonly only one or two buyers in some local geographic markets, and few sellers have the option of selling fed cattle to more than three or four packers.

The move towards heightened concentration was accompanied by a dramatic shift from the spot market towards various types of vertical contracts. In the early 20th century, farm-finished cattle and hogs were primarily shipped by rail and slaughtered in urban centers close to large consumer bases, and fresh meat was rail-shipped only by the largest packers. Prices for cattle and hog purchases were largely negotiated in spot, cash markets in person. In 1921, poultry consumption accounted for a small share of total U.S. meat consumption, and retail distribution outlets (*i.e.,* local food markets) were not centralized.

[3] *See* 61 Cong. Rec. 1860 (1921) (House Floor Debate).

[4] *See,* Shively, J. and Roberts, J., ''Competition Under the Packers and Stockyards Act: What Now?'' 15 Drake Journal of Agricultural Law 419, 422–423 (2010); and Current Legislation, 22 Columbia Law Review 68, 69 (1922).

[5] House Report No. 67–77, at 2 (1921).

[6] House Report No. 67–324, at 3 (1921).

[7] Mathews, K. H. Jr., W. F. Hahn, K. E. Nelson, L. A. Duewer, and R. A. Gustafson. April 1999. U.S. Beef Industry: Cattle Cycles, Price Spreads, and Packer Concentration. U.S. Department of Agriculture, Market and Trade Economics Division, Economic Research Service. Technical Bulletin No. 1874.

[8] Federal Trade Commission. 1918. Annual Report for 1918, p. 23., available at *ftc_ar_1918.pdf* (last accessed 8/9/2022).

[9] *Id.*

[10] *United States* v. *Swift & Co.,* Equity No. 37623, (Sup. Ct. of D.C. 1920).

[11] Harl, Agricultural Law, sec. 71.03 (1993).

[12] MacDonald, J.M., M. E. Ollinger, K. E. Nelson, and C. R. Handy. Consolidation in U.S. Meatpacking. Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture. Agricultural Economic Report No. 785. Available at *https://www.ers.usda.gov/publications/pub-details/?pubid=41120,* accessed 9/19/22.

[13] U.S. Department of Agriculture, Agricultural Marketing Service., Packers and Stockyards Division, Annual Report. Various years.

[14] U.S. Department of Agriculture, Agricultural Marketing Service, Packers and Stockyards Division, Annual Report, 2020. 2021 draft pending as of 07/11/22. United States Department of Agriculture Grain Inspection, Packers and Stockyards Administration. ''Assessment of the Livestock and Poultry Industries Fiscal Year 2007.'' May 2008.

[15] 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.

[16] Wise, T. A., S. E. Trist. ''Buyer Power in U.S. Hog Markets: A Critical Review of the Literature,'' *Tufts University, Global Development and Environment Institute (GDAE)* Working Paper No. 10–04, August 2010, available at: *https://sites.tufts.edu/gdae/files/2020/03/10-04HogBuyerPower.pdf.TAbl* (last accessed 8/9/2022).

In successive decades, as concentration in the industry increased and as the size of plants increased, large packers needed to ensure constant and secure supplies of animals to keep these larger plants running at peak capacity.[17] Buying animals through contracts with producers was believed to facilitate their ability to do so. Vertical contracts took the form of production, marketing, and forward contracts.

Livestock and poultry production contracts are agreements between a producer and a contractor, where the livestock (generally hogs) or poultry are grown by a grower on behalf of the contractor under specific guidelines (production practices or target weight, for example) identified in the contract. The producer is generally paid a contract fee by the contractor for growing the livestock or poultry. Once the livestock or poultry reach a specific weight, they are often marketed to a packer or live poultry dealer under a marketing contract, though they could also be marketed on the spot market. Under a marketing contract, the ownership of the livestock or poultry (mostly livestock) remains with the producer until they are ready to be marketed to a packer or live poultry dealer. A marketing contract is an agreement between a producer and a packer or live poultry dealer that identifies a price (or a pricing formula), quantities/qualities, and a delivery schedule for the livestock or poultry to the packer or live poultry dealer. A forward contract is a specific type of marketing contract (generally for livestock) under which a specific group of livestock is negotiated for sale by a producer or contractor to a packer several months in advance of delivery of the livestock. The producer or contractor and packer agree to the delivery month and pricing method for the specific group of livestock to be delivered. The producer generally picks the day of delivery in the delivery month.

The growth of these vertical contract relationships, in the context of highly concentrated markets, has led to concerns that firms have greater control over producers and thus have more ability to abuse their market power, impede producer choices, exclude some market participants, and coerce producers unwittingly into inefficient farm decisions.[18] Many have expressed concern that the decline in the use of spot markets to market livestock has also led to harder-to-quantify losses of independent ways of life, adversely impacting rural economies and communities.[19]

Among the four major meat markets, chicken companies adopted production contracting earliest and most completely. Between 1950 and 1955, along with increased vertical integration through ownership of the flocks, the use of production contracts rose from 5 to 85 percent of the broiler industry's production to become nearly universal by 1975. The same switch was slower in turkey production, exceeding 80 percent in 1977.[20] The share of hogs sold through long-term marketing contracts increased from 10 to 72 percent between 1993 and 2001. Packer-owned hogs increased from 6.4 percent of U.S. hog production in 1994 to 24 percent in 2000.[21] Comparatively, in the cattle industry 32 percent of production was under contract in 2013—referring again to contractual agreements for growing cattle to a certain weight or under a certain production method.[22] [23] Marketing contracts have seen far greater adoption. Cattle being marketed through forward contracts and Alternative Marketing Arrangements (AMAs), where cattle are already dedicated to certain packers or end-buyers, have risen from about 35 percent in 2005 to 73 percent today.[24] As a result, since 2005, negotiated cash trades have declined from 65 percent to about 27 percent today.[25]

Some of these developments were driven in part by technological and marketing changes.[26] In cattle, for example, the development of boxed beef to ship standardized cuts allowed packers to move their slaughter facilities closer to producers. With cattle no longer shipped from terminal auction markets to the large cities, packers played a more dominant role in the procurement of cattle directly from producers within a surrounding area, and marketing practices shifted, for a time, towards bilateral cash negotiation and, then eventually, longer-term marketing contracts with pricing formulas.[27]

[17] MacDonald. J. M. and W. D. McBride. The Transformation of U.S. Livestock Agriculture: Scale, Efficiency, and Risks. January 2009. Economic Information Bulletin No. (EIB–43). Available at *https://www.ers.usda.gov/webdocs/publications/44292/10992_eib43.pdf?v=0,* accessed 9–20–2022.

[18] Hendrickson, M.K., and H.S. James, Jr. 2005. ''The Ethics of Constrained Choice: How the Industrialization of Agriculture Impacts Farming and Farmer Behavior.'' *Journal of Agricultural and Environmental Ethics,* 18: 269–291. In: Hendrickson, M., James, H., Heffernan, W.D. 2013. ''Vertical Integration and Concentration in U.S. Agriculture.'' In: Thompson, P., Kaplan, D. (eds) Encyclopedia of Food and Agricultural Ethics. Springer, Dordrecht, 7. See also Christopher Leonard, ''The Meat Racket'' (2015); 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/s/uwlaw/item/29746.*

[19] James, H.S. Jr., M.K. Hendrickson, and P.H. Howard. 2013. ''Networks, Power and Dependency in the Agrifood Industry.'' In H.S. James, Jr. (ed.), ''The Ethics and Economics of Agrifood Competition'' (pp. 99–126). Dordrecht, The Netherlands: Springer Publishers. In: Hendrickson, M., James, H., Heffernan, W.D. 2013. ''Vertical Integration and Concentration in US Agriculture.'' In: Thompson, P., Kaplan, D. (eds) Encyclopedia of Food and Agricultural Ethics. Springer, Dordrecht, 8.

[20] Martinez, S. W. (2002). ''Vertical Coordination of Marketing Systems: Lessons From the Poultry, Egg, and Pork Industries.'' (No. 1473–2016–120694) Economic Research Service, USDA, Washington, DC.

[21] Martinez, S. W. (2002). ''Vertical Coordination of Marketing Systems: Lessons From the Poultry, Egg, and Pork Industries'' (No. 1473–2016–120694) Economic Research Service, USDA, Washington, DC.

[22] Crespi, John, and Tina L. Saitone. (2018) ''Are Cattle Markets the Last Frontier? Vertical Coordination in Animal-Based Procurement Markets.'' *Annual Review of Resource Economics* 10(1): 207–227.

[23] Macdonald, James M. (2015) ''Trends in Agricultural Contracts.'' Choices 30(3):1–6.

[24] Packers and Stockyards Division, ''Annual Report'' (2020).

[25] U.S. Department of Agriculture, Agricultural Marketing Service, Market News, as of May 2022.

[26] Lonergan, S. M., and D. N. Marple. ''Historical perspectives of the meat and animal industry and their relationship to animal growth, body composition, and meat technology,'' ''The Science of Animal Growth and Meat Technology.'' Lonergan, S. M., D. N. Marple, Eds., Second Edition, Elsevier, (2019) 1–17, available at *The Science of Animal Growth and Meat Technology | ScienceDirect.*

[27] Lawrence, J.D., Schroeder, T.C. and Hayenga, M.L. (2001), ''Evolving Producer-Packer-Customer Linkages in the Beef and Pork Industries.'' *Applied Economic Perspectives and Policy,* 23: 370–385. Available at *https://doi.org/10.1111/1467-9353.00067.*

The increased use of long-term production and marketing contracts in livestock and poultry markets, can foster greater vertical coordination, and potentially allows certain production and marketing efficiencies related to scale and certain enhanced aspects of packer, or even retailer, control over product differentiation. The use of vertical contracts may be appealing to livestock or poultry producers for a range of reasons, including more secure access to markets. In poultry markets, for example, contracts shift some aspects of market risks from producers to live poultry dealers, such as grain prices or certain weather-related risks.[28] In the case of livestock, contracts can also reduce a producer's output price risk.[29]

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.[30] In particular, without robust open spot markets, cattle producers have complained of less ability to enter the markets and less competition between buyers for better prices.[31] As one notable commentator has termed them, these markets appear to be by ''invitation only.''[32]

Limited options for producers heighten the risks of prejudicial exclusion and retaliation. Over the years, these concerns have been reported to USDA, but the Department has not been able to effectively address complaints, in part owing to insufficient clarity around P&S Act rules and standards and related questions around the ability for individuals to bring cases based on specific instances of harm.

The rise of concentrated and vertically integrated markets also gives rise to certain abuses that may take the form of deception. For example, cattle producers have complained to USDA that they are provided with false pretexts as to why a packer would not accept cattle from a producer or would pay less for it. Similarly, poultry and swine growers have complained they have not been told the truth regarding why they were terminated from contracts or otherwise treated differently under them. These forms of deception may also be connected with efforts to discriminate, retaliate, or otherwise unjustly exclude certain producers or growers from the marketplace.[33]

Concerns with the rise of vertically integrated contracting across concentrated markets were highlighted in a series of workshops conducted by the U.S. Department of Justice (DOJ) and USDA in 2010.[34] And indeed, following the workshops, a number of producers reported to USDA that they suffered retaliation, and that racial and other exclusionary prejudices were problems. In 2010 and 2016, USDA proposed regulations seeking to address many of these concerns, given their pervasiveness in the marketplace and the longstanding challenges that USDA faced in addressing them. However, the relevant provisions of the proposed regulations were not finalized.[35]

Unfortunately, the concentrated nature of livestock and poultry markets exposes all producers to potential market abuses, but some may not be well positioned to protect themselves. Racial and ethnic minorities are arguably more exposed to market abuses, as evidenced by their participation in the agricultural sector having declined sharply over the last many decades. The most recent data from the 2017 Census of Agriculture (Figures 1 and 2) indicate that non-white racial and ethnic groups constitute a very small share of contracted livestock and poultry producers—a trend likely due in part to historical discrimination against these groups.

Undoubtedly, discrimination such as what has been experienced by these groups in the past continues in some form today, which is why additional protections are needed. Further, the same USDA Census of Agriculture data show that producers who identify as Black and Native Hawaiian are more likely to have lower gross revenue than their white counterparts, which makes these producers relatively more vulnerable to the market abuses observed in the sector today. These longstanding challenges have prompted Congress and USDA to promote more equitable market access. Section II.B.ii, below provides a more extensive discussion of AMS's concerns regarding the exclusion from, or disadvantages in, certain markets.

Retaliation remains a prevalent concern in today's concentrated and highly integrated markets. For example, as recently as April 2022, threats and fear of retaliation interfered with plans for invited witnesses to testify at each of the House and Senate Agriculture Committees' hearings on livestock competition practices. In his opening remarks, House Agriculture Committee Chair David Scott noted:

We were supposed to have a 4th witness, a rancher, on our panel, but due to intimidation and threats to this person's livelihood, to this person's reputation, they chose not to participate out of fear. Witness intimidation is unacceptable. . .

Only a day before, Senator Deborah Fischer had stated:

I wish we had a Nebraska producer here, but as is noted in their letter, none of our producer members we encouraged to testify were willing to put themselves out front for fear of possible retribution from other market participants, an unfortunate reality of today's cattle industry.[36]

[28] Knoeber, Charles R., and Walter N. Thurman. (1995) ''Don't Count Your Chickens. . . : Risk and Risk Shifting in the Broiler Industry.'' *American Journal of Agricultural Economics* 77(3): 486–496.

[29] Key, N. and MacDonald, J.M. (2006) ''Agricultural Contracting: Trading Autonomy for Risk Reduction'' Amber Waves, U.S. Department of Agriculture Economic Research Service. *https://www.ers.usda.gov/amber-waves/2006/february/agricultural-contracting-trading-autonomy-for-risk-reduction/*

[30] 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/;* 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/s/uwlaw/item/29746.*

[31] See, *e.g.,* Bill Bullard, ''Chronically Besieged: The U.S. Live Cattle Industry,'' Presentation to Thurman Arnold Project at Yale and Law, Ethics, & Animals Program at Yale Law School, ''Big Ag & Antitrust Conference,'' Jan. 2021, available at *https://www.r-calfusa.com/wp-content/uploads/2021/01/210116-Chronically-Beseiged-The-U.S.-Live-Cattle-Industry-Final.pdf;* see also Nathan Miller et al., ''Buyer Power in the Beef Packing Industry: An Update on Research in Progress,'' April 2022, available at *http://www.nathanhmiller.org/cattlemarkets.pdf.*

[32] C. Robert Taylor, ''The Many Faces of Corporate Power in the Food System.'' Presented at DOJ/FTC Workshop on Merger Enforcement, February 2004, available at *https://www.justice.gov/atr/many-faces-power-food-system.*

[33] See, *e.g.,* ''Transition Recommendations: On Issues Related to Agricultural Concentration and Competition,'' Campaign for Contract Agriculture Reform . . . Western Organization of Resource Councils, *et al.*, Nov. 9, 2020.

[34] 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/sites/default/files/atr/legacy/2012/05/16/283291.pdf.*

[35] Poultry Grower Ranking Systems; Withdrawal of Proposed Rule, 86 FR 60779 (November 4, 2021).

[36] House Chair David Scott D–GA, Opening remarks, U.S. House, Committee on Agriculture,

Continued

Producer organizations have also recently reported to USDA concerns relating to possible coercion in the rulemaking comment process.[37] Section II, and in particular II.E.ii, below, provide a more fulsome discussion of concerns regarding retaliation for engaging in protected activities.

Deception in various forms and guises also remains a concern in the marketplace, including during the COVID–19 pandemic, where producers had dramatically reduced access to markets.[38] We discuss these concerns extensively in Section III, below.

The historic Executive order issued by the Biden-Harris administration, Executive Order (E.O.) 14036—Promoting Competition in the American Economy (86 FR 36987; July 9, 2021), directs the Secretary of Agriculture to address unfair treatment of farmers and improve conditions of competition in their markets by considering rulemaking to address, among other things, certain practices related to market abuses and enhanced competition in the livestock, poultry, and related markets, including unjustly discriminatory, unduly prejudicial, and deceptive practices, in particular retaliation. E.O. 14036 also underscored that an individual should not have to show market-wide harm to secure relief under the Act. AMS has considered that direction in undertaking this rulemaking.

The P&S Act is a remedial statute enacted to address problems faced by farmers, producers, and other participants in certain livestock, poultry, and related agricultural markets; to protect the public from predatory practices; and to help ensure a stable food supply. Thus, as academics and courts have noted, the Act has ''tort-like provisions that are concerned with unfair practices and discrimination'' that fulfill a ''market facilitating function,'' which Congress designed to prevent ''market abuse.'' [39] AMS interprets and implements the Act to affect its core statutory purposes.[40] AMS is concerned that the current regulations do not adequately address many unduly prejudicial, unjustly discriminatory, and deceptive practices, which are exacerbated by increased horizontal concentration and vertical contracting. This proposed rule aims to address those concerns.

B. Previous Rulemakings

At the direction of Congress, through the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246), USDA's then Grain Inspection, Packers, and Stockyards Administration (GIPSA), which administered the Packers and Stockyards Act, published a proposed rule (75 FR 35338; June 22, 2010) (2010 Proposed Rule).[41] The 2010 Proposed Rule, among other things, banned retaliation as an ''unfair, unjustly discriminatory, and deceptive practice,'' and clarified when certain conduct in the livestock and poultry industries represents the making or giving of an undue or unreasonable preference or advantage or subjects a person or locality to an undue or unreasonable prejudice or disadvantage. Congress then prohibited finalization of portions of the 2010 Proposed Rule through appropriations acts for fiscal years 2012 through 2015.

In 2015, after increased public awareness of issues that the 2010 Proposed Rule attempted to address,[42] Congress ceased including the prohibition in appropriations bills, and GIPSA undertook another rulemaking to address these issues. In 2016, the agency published another proposed rule (81 FR 92703; December 20, 2016) (2016 Proposed Rule) attempting to establish what constituted unfair practices and undue preferences, along with a related interim final rule (81 FR 92566) (2016 IFR). Following the change of administration, the agency decided to take no further action on the rule. In a notification of no further action published in the **Federal Register** (82 FR 48603; October 18, 2017) (2017 No Further Action Notification), GIPSA acknowledged that some producers, growers, and farm trade groups generally supported the proposed rule, and many commenters had raised concerns about growing power imbalances, discrimination, and retaliation. GIPSA, however, decided not to finalize the 2016 Proposed Rule, in part on the grounds that it raised the stakes for regulated entities in ways that could suppress innovation, and contained ambiguous terms that were likely to increase and prolong litigation between producers and regulated entities and between regulated entities and AMS. The 2016 Proposed Rule listed six non-exclusive criteria for the Secretary to consider when determining whether conduct constituted an unfair practice or preference. In contrast, the current proposed rule focuses on discrimination, deception, and retaliation.

In 2020, AMS issued a proposed rule (85 FR 1771; January. 13, 2020) (2020 Proposed Rule), which was finalized later that year (85 FR 79779; December. 11, 2020) (2020 Final Rule), which that set out several (nonexclusive) criteria the Secretary would consider concerning undue or unreasonable preferences or advantages: whether the preference or advantage cannot be justified on the basis of a cost savings related to dealing with different producers, sellers, or growers; cannot be justified on the basis of meeting a

''An Examination of Price Discrepancies, Transparency, and Alleged Unfair Practices in Cattle Markets,'' April 27, 2022, (14 min: 24 sec), available at *https://anchor.fm/houseagdems/episodes/An-Examination-of-Price-Discrepancies-Transparency-and-Alleged-Unfair-Practices-in-Cattle-Markets-e1hpvo8/a-a7r40dk.* U.S. Senate Committee on Agriculture, Nutrition, and Forestry, ''Legislative hearing to review S. 4030, the Cattle Price Discovery and Transparency Act of 2022, and S. 3870, the Meat and Poultry Special Investigator Act of 2022,'' April 26, 2022 (1 hour 39 min), available at *https://www.agriculture.senate.gov/hearings/legislative-hearing-to-review-s-4030-the-cattle-price-discovery-and-transparency-act-of-2022-and-s3870-the-meat-and-poultry-special-investigator-act-of-2022.*

[37] *See, e.g.,* U.S. Department of Agriculture, ''USDA Extends Public Comment Period to August 23 and Posts Public Webinar for the Proposed Rule to Promote Transparency in Poultry Grower Contracting and Tournaments,'' Aug. 5, 2022, available at *https://www.usda.gov/media/press-releases/2022/08/05/usda-extends-public-comment-period-august-23-and-posts-public* (last accessed Aug. 2022).

[38] On limits to market access in the pandemic, see U.S. Department of Agriculture, Agricultural Marketing Service, ''Agricultural Competition: A Plan in Support of Fair and Competitive Markets,'' May 2022, available at *https://www.ams.usda.gov/reports/agricultural-competition-plan-support-fair-and-competitive-markets* (last accessed Aug. 2022).

[39] Herbert Hovenkamp, ''Does the Packers and Stockyards Act Require Antitrust Harm?'' (2011). Faculty Scholarship at Penn Carey Law. 1862. *https://scholarship.law.upenn.edu/faculty_scholarship/1862* (''subsections (a) and (b) appear to be tort-like provisions that are concerned with unfair practices and discrimination, but not with restraint of trade or monopoly as such''); Peter Carstensen, *The Packers and Stockyards Act: A History of Failure to Date,* CPI Antitrust Journal 2–7 (April 2010) (''Congress sought to ensure that the practices of buyers and sellers in livestock (and later poultry) markets were fair, reasonable, and transparent. This goal can best be described as market facilitating regulation.''); Michael C. Stumo & Douglas J. O'Brien, *Antitrust Unfairness vs. Equitable Unfairness in Farmer/Meat Packer Relationships,* 8 Drake J. Agric. L. 91 (2003); Michael Kades, ''Protecting livestock producers and chicken growers,'' Washington Center for Equitable Growth (May 2022), *https://equitablegrowth.org/wp-content/uploads/2022/05/050522-packers-stockyards-report.pdf* (''Section 202's prohibitions on unjust discrimination and undue preference are not limited to conduct that destroys or limits competition or creates a monopoly. These provisions address conduct that impedes a well-functioning market and deprives livestock and poultry producers of the true value of their animals. Taken together, these provisions seek to prevent market abuses.'').

[40] *See Bowman* v. *U.S. Dep't of Agric.,* 363 F.2d 81 at 85 (5th Cir. 1966).

[41] In 2017, GIPSA merged with the Agricultural Marketing Service (AMS). AMS now administers the regulations under the Act and undertook this rulemaking to meet the statutory requirement.

[42] ''Chickens: Last Week Tonight with John Oliver,'' HBO, May 17, 2015, available at *https://www.youtube.com/watch?v=X9wHzt6gBgI;* see also Nathaniel Haas, ''John Oliver v. *chicken,*'' *Politico,* June 1, 2015, available at *https://www.politico.com/story/2015/06/john-oliver-vs-chicken-118510.*

competitor's prices; cannot be justified on the basis of meeting other terms offered by a competitor; and cannot be justified as a reasonable business decision. In response to the 2020 Proposed Rule, AMS received numerous comments raising concerns regarding discriminatory and retaliatory practices; however, AMS stated that the 2020 Final Rule was intended for the narrower purpose of establishing criteria to consider.[43] Specifically, the 2020 Proposed Rule's preamble noted that discrimination on the basis of race, gender, and other such protected bases was unlawful and would be addressed as potential violations of the Act's prohibition against undue prejudices. In August 2021, AMS reiterated this policy in a series of Frequently Asked Questions (FAQs).[44] AMS's FAQs also underscored that the rule's criteria were ''not exhaustive and not determinative.''

In the context of each of these rulemakings spanning the last decade, GIPSA, and later AMS, received comments regarding the power imbalances in the livestock and poultry industries and highlighting the need for regulations that adequately protect farmers against recurrent retaliation, deception, and discrimination. Given the consistency of these assertions, as well as the concerns further brought to light during the COVID–19 pandemic regarding today's increasingly concentrated livestock and poultry markets,[45] AMS believes this proposed rule is needed to effectuate its responsibility to protect producers against unlawful practices that exclude, disadvantage, discriminate against, retaliate against, or deceive them, and that the rulemaking would promote markets with integrity that are competitive and inclusive to all.

[43] Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act, 85 FR 79779 (January 11, 2021), 9 CFR part 201. Comments available at *https://www.regulations.gov/document/AMS-FTPP-18-0101-0001/comment.*

[44] 85 FR 79779; U.S. Department of Agriculture, Agricultural Marketing Service, ''Frequently Asked Questions on the Enforcement of Undue and Unreasonable Preferences under the Packers and Stockyards Act,'' August 2021, available at *https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/faq* (last accessed June 2022).

[45] U.S. Department of Agriculture, ''Agri-Food Supply Chain Assessment: Program and Policy Options for Strengthening Resilience,'' 12–17, February 2021, available at *https://www.ams.usda.gov/supply-chain* (last accessed Aug. 2022); see also Agricultural Marketing Service, U.S. Department of Agriculture, ''Agricultural Competition: A Plan in Support of Fair and Competitive Markets,'' May 2022, available at *https://www.ams.usda.gov/reports/agricultural-competition-plan-support-fair-and-competitive-markets* (last accessed Aug. 2022).

II. Undue Prejudices or Disadvantages and Unjust Discriminatory Practices

A. Agency Interpretation of Undue or Unreasonable Prejudice or Disadvantage and Unjust Discriminatory Practices

This proposed rule addresses concerns related to undue prejudices or disadvantages and unjust discrimination. First, proposed § 201.304(a) would establish clearer duties on packers, swine contractors, and live poultry dealers to ensure full and non-discriminatory market access for market vulnerable individuals. This section would also prohibit undue prejudices and disadvantages against cooperatives.

Second, proposed § 201.304(b) would address retaliation by setting out protected activities that a covered producer may engage in but that a regulated entity may not use as grounds for unjust discrimination or undue prejudice or disadvantage. The proposed regulations would prohibit regulated entities from retaliating against a covered producer for participating in a protected activity by terminating a contract, refusing to renew a contract, offering more unfavorable contract terms than those generally or ordinarily offered, refusing to deal, interfering with third-party contracts, and other actions with a an adverse impact to covered producers. These acts of retaliation would be unjustly discriminatory and unduly prejudicial and disadvantageous.

Section 202(b) of the P&S Act (7 U.S.C. 192(b)) prohibits regulated entities from ''subjecting any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect[.]'' Though not defined by the Act, in 1921, legal definitions of prejudice included anything that ''places the person affected in a more unfavorable or disadvantageous position than he would otherwise have occupied.''[46] *Merriam-Webster.com* defines prejudice to include ''injury or damage resulting from some judgment or action of another in disregard of one's rights'' and ''an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics.''[47] USDA's Judicial Officer has defined prejudice in an administrative adjudication as ''subjecting any person to any injury or damage and not subjecting all similarly situated persons to the same injury or damage [.]''[48]

Likewise, sec. 202(a) of the P&S Act (7 U.S.C. 192(a)) prohibits ''unjust discrimination.'' but does not expressly define the term. *Merriam-Webster.com* defines ''unjust'' as: ''characterized by injustice: unfair.''[49] The common meaning of the word ''discrimination'' means ''differential treatment; especially a failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.''[50] While the meaning of the word ''discriminatory'' varies depending on the context, the common definition includes ''applying or favoring discrimination in treatment.''[51] Therefore, under sec. 202(a) of the Act, a regulated entity treating similar entities differently with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry based on certain conditions is an unjustly discriminatory practice.[52]

The terms ''unjust discrimination'' and ''undue or unreasonable prejudice or disadvantage'' in the P&S Act do not follow the precise language of any law that preceded it. This is not without reason. The P&S Act ''would never have been adopted by the Congress if the marketing of livestock and the distribution of meat products did not present problems [that] were insufficiently met by the [then existing] antitrust laws[.]''[53] There were two laws, however, that preceded the passage of the P&S Act that influenced the inclusions of ''unjust discrimination'' and ''undue or unreasonable prejudice or disadvantage'' in the P&S Act: the Clayton Act, and the Interstate Commerce Act. While both the Clayton Act and the Interstate Commerce Act informed the P&S Act's prohibition on unfair and discriminatory practices, the P&S Act has a broader application.

The Clayton Act, passed in 1914, used the language of discrimination specifically with respect to discriminatory pricing, prohibiting anyone from ''either directly or

[46] *Roberto* v. *Catino,* 140 Md. 38, 116 A. 873, 875 (1922).

[47] Merriam-Webster online dictionary, *https://www.merriam-webster.com/dictionary/prejudice* (accessed June 15, 2022).

[48] *In Re: IBP, Inc.,* 57 Agric. Dec. 1353 (U.S. Department of Agriculture July 31, 1998).

[49] Merriam-Webster online dictionary, *https://www.merriam-webster.com/dictionary/unjust* (accessed June 15, 2022).

[50] Black's Law Dictionary, p. 586 (11th ed. 2019).

[51] Merriam-Webster online dictionary, *https://www.merriam-webster.com/dictionary/discriminatory* (accessed June 15, 2022).

[52] *See, also In Re: IBP, Inc.,* 57 Agric. Dec. 1353 (1998), rev'd on other grounds by *Excel Corp.* v. *United States Dep't of Agri.,* 397 F.3d 1285 (10th Cir. 2005).

[53] *Crosse & Blackwell Co.* v. *F.T.C.,* 262 F.2d 600, 604 (4th Cir. 1959).

indirectly [discriminating] in price between different purchasers of commodities . . . where the effect of such discrimination may be to substantially lessen competition or create a monopoly in any line of commerce.'' [54] The Clayton Act was careful to expressly prohibit discriminatory pricing in particular. In contrast, the P&S Act does not include this textual limitation. In addition, the Clayton Act requires that the discrimination ''may be to substantially effect competition or create a monopoly.'' The P&S Act, again, is broader:

[T]he prohibitions of [the Act] go further than the prohibitions in the Clayton Act. For instance, one of the sections of the Clayton Act prohibits discrimination in prices as between localities, and then contains a sort of nullification clause, to the effect that it shall not prevent anybody from choosing his own customers or making discriminations in prices where there is a difference in quality or a difference in transportation charges, and so forth, while this bill makes any undue or unreasonable discrimination as between localities or between persons unlawful.[55]

Likewise, the Interstate Commerce Act was an important template for the P&S Act. The P&S Act's statutory history is replete with references and comparisons, in general terms, to the Interstate Commerce Act. Passed in 1887, the Interstate Commerce Act forbade common carriers—primarily meaning railroads—from undue preferences, prejudices, and discrimination in their rates and charges between connecting lines.[56] As the Supreme Court explained the Interstate Commerce Act in 1934: ''The purpose . . . was to bring into existence a body which, from its special character, would be best fitted to determine, among other things, whether upon the facts in a given case there is an unjust discrimination against interstate commerce.'' [57]

With respect to the courts' interpretation of unjustly discriminatory practices under the P&S Act, there are few Federal cases that explore the difference between unjust discrimination and the other provisions of the Act. Because of the P&S Act's similarity to the Clayton Act, the Seventh Circuit holds that unjust discrimination has included below-cost sales which injure sellers or primary line competition, even if the buyers or secondary-line competition are not affected. *See Wilson & Co.* v. *Benson,* 286 F.2d 891, 895 (7th Cir. 1961). Likewise, that circuit holds that price discrimination in favor of a larger grocery store chain, and higher prices to its competitors, are another type of unjust discrimination that the Act has prevented. *Swift & Co.* v. *United States,* 317 F.2d 53, 55–56 (7th Cir. 1963). Moreover, the Supreme Court has held that when discrimination is used as an attempt to limit competition, it is a monopoly practice. *See Denver Union Stock Yard Co.* v. *Producers Livestock Mktg.,* 356 U.S. 282, 289 (1958) (interpreting sec. 312 of the Act and finding that regulations aimed at preventing market agencies registered at one stockyard from doing business for producers at any other market within a normal marketing area to be a monopoly practice).

AMS proposes this regulation to protect the integrity of the market as a competitive, price-clearing, economically open commercial endeavor by eliminating or restraining prejudicial discrimination. This includes prejudicial discriminatory behaviors such as those that adversely impact open access by competitors and market participants (through certain exclusionary prejudices, such as denying or disadvantaging an individual's access to market on grounds which could include race, gender, religion, or other bases; or retaliatory discrimination for engaging in certain basic protected activities closely tied to the basic requirements of being in the business of livestock, poultry, and related markets covered under the Act), and otherwise exert forms of control or dependency that limit the economic freedom of those participating in the market.[58] The harms these proposed regulations aim to prevent are the kinds of discrimination (and, as discussed below, deceptive) practices that dominant firms can use to limit competition and interfere with the operation of the market, including across the entire supply chain with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry.

B. Prohibited Undue Prejudices or Disadvantages and Unjust Discrimination—Proposed § 201.304(a)(1)

Section 201.301 of the proposed regulations would protect the integrity of the market, promoting fairness and competition by prohibiting undue prejudices and disadvantages and unjust discrimination that inhibit inclusive market access and treatment. Specifically, proposed § 201.304(a)(1) would prohibit prejudice, disadvantage, or the denial or reduction of market access by regulated entities against covered producers based on their status, as defined in the regulation, of being ''market vulnerable'' producers. This term is defined as membership in a group that has been subjected to, or is at heightened risk of, adversely differential treatment in the marketplace. AMS seeks comments on whether specific groups should be named in the definition of a market vulnerable individual as examples of market vulnerable individuals and, if so, requests supporting evidence on the historical treatment of such groups. AMS also seeks comment on whether, alternatively, prohibitions on undue prejudice or disadvantage or unjust discrimination would best be addressed by identifying defined protected classes, and if so, which protected classes. The intent of the proposed regulation is to help break down barriers that may serve to exclude or disadvantage certain covered producers, while leaving room for differential treatment based on legitimate business purposes.

This proposal defines a *covered producer* as a livestock producer (as defined in the regulation at proposed § 201.302) or swine production contract grower or poultry grower as defined in sec. 2(a) of the Act. While swine contract producers and poultry growers are defined in the Act, AMS believes the Act is properly read to protect livestock producers from unjustly prejudicial and discriminatory practices. To effectuate this purpose, this proposed rule defines *livestock producer* as any person engaged in the raising and caring for livestock by the producer or another person, whether the livestock is owned by the producer or by another person, but not an employee of the owner of the livestock. This definition is designed to

[54] The Clayton Act, sec. 2, Public Law No. 63–212, 38 Stat. 730 (1914).

[55] 61 Cong. Rec. 1888 (1921) (statement of Rep. Anderson).

[56] Act of February 4, 1887 (Interstate Commerce Act), sec. 3, Public Law 49–41, February 4, 1887; Enrolled Acts and Resolutions of Congress, 1789; General Records of the United States Government, 1778—1992; Record Group 11; National Archives.

[57] *State of Fla.* v. *United States,* 292 U.S. 1, 12, 54 S. Ct. 603, 608, 78 L. Ed. 1077 (1934) (citing *United States* v. *Louisville & Nashville R.R. Co.,* 235 U.S. 314, 320 (1914)).''[F]rom the beginning the very purpose for which the Commission was created was to . . . decide whether from facts, disputed or undisputed [whether a] preference or discrimination existed.'' *Louisville and Nashville R.R. Co.,* 235 U.S. at 320.

[58] 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/.*

capture the vast majority of market participants who are dependent on regulated entities to engage in the livestock business. AMS seeks comment on whether to limit the definition to persons engaging in the raising and caring for livestock *in the chain of slaughter,* or whether such limitation is unnecessary or improperly limits the coverage of the Act.

The principal purpose of this proposed approach is to address prejudices in the marketplace against producers that are more vulnerable to such treatment and to stop unjust discrimination. AMS views vulnerability to adverse marketplace treatment to include, but not be limited to, exclusion or disadvantage on the basis of race, ethnicity, or sex or gender prejudices (including discrimination against an individual for being lesbian, gay, transgender, or queer), religion, disability, or age.[59] AMS seeks comment on these bases, and whether there are other bases for vulnerability to adverse marketplace treatment.

This proposed rule aims to ensure more inclusive market competition and address allegations related to undue prejudices through enforceable regulatory prohibitions. The proposed prohibitions would protect producers at both individual and market-wide levels from undue prejudices and disadvantages and unjust discrimination—both of which AMS has determined violate the P&S Act. The Secretary is empowered under the P&S Act to address harms in their incipiency.[60] Moreover, given its experience interacting with producers and regulated entities, AMS believes that individual instances of prejudice and discrimination can have a cumulative adverse effect on relevant markets, including the national market.

AMS believes the proposed regulatory scheme results in a flexible approach to resolving marketplace vulnerabilities. AMS's proposed regulatory approach of prohibiting unjust discrimination and undue prejudices and disadvantages against market vulnerable producers recognizes that discrimination against producers may evolve. AMS expects the proposed definition will be sufficiently responsive to the particular facts of given cases and particular markets over time. AMS is considering issuing guidance on the proposed regulatory approach.

AMS is seeking comment on the definition of ''market vulnerable producers.'' AMS's goal is to appropriately govern regulated entities' conduct for the purpose of ensuring inclusive competition in the marketplace, grounded in the Act's authorities. This includes seeking comment on whether it should delineate specific categories of vulnerable producers on the basis of membership in groups that have historically been subject to adverse treatment owing to racial, ethnic, gender, or religious prejudices. If so, AMS solicits supporting evidence regarding the historical adverse treatment of such groups.

AMS also seeks comment on the use of a ''market vulnerable producer'' approach—rather than a list of protected classes that may not be discriminated against—to the regulatory prohibition against discrimination. In the alternative to using the market vulnerable producer approach, the agency is considering whether this regulation should ban discrimination against specific classes, such as on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, marital status, or family status. Such an approach would differ from the market vulnerable individual approach and would instead more closely follow the civil rights laws that prohibit prejudicial discrimination against certain protected classes.

The prohibition on prejudice against cooperatives also seeks to prevent barriers to market access for cooperatives. Congress has long recognized the need to provide enhanced protections for cooperatives, as embodied for example in the Agricultural Fair Practices Act of 1967 (Pub. L. 90–288), which protects producers' rights to form a cooperative.[61]

i. Authority Provided by the Act

There is no indication that Congress intended to exempt any practice of regulated entities affecting producers covered under the Act.[62] The P&S Act, through secs. 202(a) and (b), broadly prohibits certain practices or devices, including undue or unreasonable prejudices and disadvantages and unjust discrimination. Sections 202(a) and (b) of the Act identify a number of prohibited actions with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry. To effectuate these statutory prohibitions, AMS proposes to prohibit specific undue and unreasonable prejudices, disadvantages, and discrimination against any covered producer. AMS also seeks comment on whether to extend these protections to all persons buying or selling meat and meat food products in markets under the jurisdiction of the Act.

In enacting the P&S Act, Congress cast a wide net to capture all acts of unjust discrimination and unreasonable prejudice against any particular person. The Act's prohibition of anti-competitive, discriminatory, and unreasonably prejudicial actions against a particular person was not a new statutory concept, as the Interstate Commerce Act also banned unreasonable prejudices and discriminatory practices well before the enactment of the P&S Act. While a finding of being within the Interstate Commerce Act's (ICA) scope is not a necessary precondition for a violation of the P&S Act, the comparison is nevertheless useful, especially with respect to the structure and design of provisions governing undue prejudices. A comparison is provided in Table 1, below.

In *Mitchell* v. *U.S.,* the Supreme Court decided that the Interstate Commerce Act prohibited discrimination based on race. 313 U.S. 80 (1941). The Supreme Court held that ''it is apparent from the legislative history of the Interstate

[59] Supreme Court case law has established that discriminating against an individual for being lesbian, gay, transgender or queer is discrimination on the basis of sex or gender prejudices. *Bostock* v. *Clayton Cnty., Georgia,* 140 S. Ct. 1731, 1741 (2020) (''[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.'').

[60] *E.g. Bowman* v. *United States Dep't of Agric.,* 363 F.2d 81, 85 (5th Cir. 1966) (''the Act is designed to '* * * prevent potential injury by stopping unlawful practices in their incipiency. Proof of a particular injury is not required.' '').

[61] For the purposes of this preamble, a cooperative is an incorporated or unincorporated association of producers, with or without capital stock, formed for mutual benefit of its members. Farm cooperatives are formed under state, not Federal law, even though cooperatives have Federal protections. *See* James B. Dean & Thomas Earl Geu, *The Uniform Limited Cooperative Association Act: An Introduction,* 13 Drake J. Agric. L. 63, 67 (2008) (''There is, however, no single type of cooperative. Although much of the law that has developed around cooperatives has developed with respect to agricultural cooperatives, cooperatives exist in many areas . . . including housing, insurance, banking, health care, and retail sales, among others.''). Cooperatives can both be buyers and sellers of agricultural products. Cooperatives made up of sellers, because they jointly fix the prices of their goods, are legally permitted to market the products they produce when the cooperative organization meets the requirements of the Capper-Volstead Act (see 7 U.S.C. 291) or the Clayton Act (see 15 U.S.C. 17).

[62] *See* 7 U.S.C. 193. *C.f. Mitchell* v. *United States,* 313 U.S. 80, 94, 61 S. Ct. 873, 877, 85 L. Ed. 1201 (1941) (''We have repeatedly said that it is apparent from the legislative history of the Act that not only was the evil of discrimination the principal thing aimed at, but that there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach.'').

Commerce Act that not only was the evil of discrimination the principal thing aimed at, but that there is no basis for the contention that Congress intended to exempt any discriminatory action or practice of interstate carriers affecting interstate commerce which it had authority to reach.'' [63] Further, the Court isolated a section of the Interstate Commerce Act and noted that, ''Paragraph 1 of Section 3 of the Act says explicitly that it shall be unlawful for any common carrier subject to the Act 'to subject *any particular person* * * * *to any undue or unreasonable prejudice or disadvantage* in any respect whatsoever.'' [64] (Emphasis added) The Court found that unreasonable prejudice against an individual based on race was a violation and concluded that, ''the Interstate Commerce Act expressly extends its prohibitions to the subjecting of 'any particular person' to unreasonable discriminations.'' [65]

The P&S Act contains similar but broader language than the Interstate Commerce Act sec. 3 in sec. 202, which reads, ''It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to: (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or (b) Make or give any undue or unreasonable preference or *advantage to any particular person* or locality in any respect, *or subject any particular person* or locality to any *undue or unreasonable prejudice or disadvantage* in any respect. . .'' (emphasis added). Table 1 illustrates where the text between the two Acts is similar, and also how the Packers and Stockyards Act is broader.[66]

TABLE 1—COMPARISON OF THE INTERSTATE COMMERCE ACT AND THE PACKERS & STOCKYARDS ACT

Interstate Commerce Act (1887 text) Sec. 3.	P&S Act, Section 202 [7 U.S.C.192]. Unlawful practices enumerated
That it shall be unlawful for any common carrier subject to the provisions of this act to make or **give any undue or unreasonable preference or advantage to *any particular person***, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, **or to subject *any particular person***, company, firm, corporation, or locality, or any particular description of traffic, **to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.** Every common carrier subject to the provisions of this act . . . **shall not discriminate in their rates and charges between such connecting lines[.]** (emphasis added).	It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to: (a) Engage in or use any unfair, unjustly ***discriminatory***, or deceptive practice or device; or (b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject ***any particular person*** or locality to any **undue or unreasonable prejudice or disadvantage in any respect;** (emphasis added).

As shown in Table 1, unlike the Interstate Commerce Act, the P&S Act in secs. 202(a) and (b) prohibits undue or unreasonable prejudices or disadvantages *as well as* deception *and* unjust discrimination (without limitation to discrimination in rates and charges in particular). In this proposed rulemaking, AMS incorporates the language from sec. 202 to prohibit acts of unreasonable prejudice and to prevent unreasonable discrimination including but not limited to the race discrimination that the Court found to be violative of the Interstate Commerce Act in *Mitchell*.

This proposed regulation sets forth specific prohibitions on prejudicial or discriminatory acts or practices against individuals that are sufficient to demonstrate violation of the P&S Act without the need to further establish broad-based, market-wide prejudicial or discriminatory outcomes or harms. The prohibitions on regulated entities adversely treating individual producers set forth in this proposed rule address the types of harms the P&S Act is intended to prevent. AMS believes that preventing broad-based exclusion is most effectively enforced at the individual producer level when the conduct is in its incipiency.[67] To further allow for effective enforcement of the statute, AMS is also proposing a recordkeeping requirement to support evaluation of regulated entity compliance.

ii. Economic Rationale

Marketplace integrity and market access were leading policy goals at the time of the Act's passage. ''The primary purpose of [the P&S Act] is to assure fair competition and fair-trade practices in livestock marketing and in the meatpacking industry . . . The Act provides that meatpackers subject to its provisions shall not engage in practices that *restrain commerce* or create a monopoly. They are also prohibited from engaging in any . . . *unjust discriminatory practice or device.* . .'' (emphasis added). AMS believes that discrimination in the form of prejudice or retaliation against a covered producer on the basis of certain non-economic prejudices restrains commerce, including competition, and effects undue and unjust trade practices by denying or inhibiting full market access for producers. These limitations on market access are contrary to the primary purposes of the Act—assuring fair trade practices and competitive markets that producers can access, as well as prohibiting unjust discrimination. For these reasons, AMS has determined that prejudice on certain non-economic bases, as set forth under ''market vulnerable individual,'' is undue and unjust.

[63] *Id.* at 94.

[64] *Id.* at 95.

[65] *Id.* at 97.

[66] For more on the relationship between the Interstate Commerce Act and the P&S Act in this area, *see* Michael Kades, ''Protecting Livestock Producers and Chicken Growers,'' Washington Center for Equitable Growth, at 66 (May 2022) discussing *Wheeler* v. *Pilgrim's Pride Corp.,* 591 F.3d 355, 368–369 (5th Cir 2009) (en banc) (J. Jones concurring): ''In all the cases discussed by the concurrence dealing with both terms [under the ICA], the defendant faced charges that it treated customers differently. According to the court, 'railway companies are only bound to give the same terms to all persons alike under the same conditions.' If the conditions are different, then different treatment is merited. Further, 'competition between rival routes is one of the matters which may lawfully be considered in making rates.' Differential treatment driven by competitive forces is not a violation. Acknowledging that competition can justify differential treatment of customers is different than requiring the plaintiff to prove anticompetitive harm to establish a violation.''

[67] ''[T]he purpose of the Act is to halt unfair trade practices in their incipiency, before harm has been suffered.'' *See Farrow* v. *U.S. Dep't of Agr.,* 760 F.2d 211, 215 (8th Cir. 1985) (citing *De Jong Packing Co.* v. *U.S. Dep't of Agric.,* 618 F.2d 1329, 1336–37 (9th Cir. 1980)); *Swift & Co.* v. *United States,* 393 F.2d 247, 252 (7th Cir. 1968); *Armour and Company* v. *United States,* 402 F.2d 712, 723 n. 12 (7th Cir.1968).

Undue prejudice is, furthermore, a market abuse that undermines market integrity, deprives the producer of the benefit of the market, and prevents the producer from obtaining the true market value of the livestock, or their services.[68] While such a pathway for harm is sufficient justification for the rulemaking, prejudicial discrimination is also anti-competitive and leads to economic inefficiencies. This section addresses the economics of these issues, including by describing the history of prejudice and discrimination and their economic consequences in the agricultural sector and other economic sectors for market vulnerable individuals and groups.

Background and History of Economic Impacts of Prejudice and Unjust Discrimination in Agricultural and Other Economic Sectors

While not necessarily tied exclusively to the operation of livestock markets, it is well-documented that undue prejudice has occurred and persists in agricultural markets and has led to market abuse. For example, in the earlier part of the 1900s agricultural landholders conspired to restrict land sales and the administration of Federal farm support programs to Black people, including those engaged in livestock production.[69] A 1959 paper reported ''significant market discrimination'' against Black American producers in the Southern United States.[70] The loss of heirs' property—land that is passed down from generation to generation without a will or other legal documentation—has been the leading cause of Black land loss in US agriculture.[71] Some of the loss of heirs' property was the direct result of predatory and discriminatory abuse of partition sales processes and inequities in access and use of legal and other estate planning tools among Black populations.[72]

The Federal Government also played a role in discriminatory practices, which had significant economic consequences for Black producers especially. Reports from the U.S. Commission on Civil Rights in 1965 and 1982 documented discrimination in the provision of USDA programs and other prejudicial factors leading to the decline in Black farming.[73] In the late 1990s, Black producers won a lawsuit filed against USDA for engaging in discriminatory practices in its farm loan programs—practices which led to financial ruin and land loss for many Black farmers.[74]

These, and other widespread discriminatory practices, help explain the relative greater decrease in the number of Black producers over the course of the twentieth century.[75] Indeed, White farm ownership declined 62 percent and Black farm ownership 96 percent between 1930 and 2012.[76] Over the same period, total acres operated by Whites declined 9 percent and Blacks by 90 percent.[77]

Other racial and ethnic minorities have also been negatively impacted by prejudicial acts. Latino and Indigenous people farming on reservations lost their farmland through the same abuses of partition sale processes as Black farmers. Between 1900 and 2017, the percent of all producers identifying as White increased nine percentages points to 96 percent, while American Indian or Alaska Native producers increased by only 1.3 percentage points, to 2.3 percent.[78] Hispanic or Latino farmers increased by only 2.4 percentage points between 1920 and 2017, to 3.4 percent. Racial and ethnic inequities in farmland ownership and indicators of farm-related wealth have also been observed in recent years.[79] Concerns have also been highlighted regarding the treatment of Asian American and Pacific Islander poultry growers, in particular that immigrant communities may not appreciate the risks of contractual arrangements due to language barriers.[80]

Complete foreclosure of market access, for example through the loss of land or other capital, has clear adverse economic outcomes for protected groups who wish to engage in the agricultural sector but cannot. At the same time, discriminatory acts reduce economic opportunity for individuals in protected groups who are able to maintain market access. This not only causes economic harm to these groups but also has broader impacts.

Studies documenting these economic impacts of prejudicial discrimination in the agricultural sector are relatively sparse, partly due to data limitations. However, economic studies focused on employment practices, financial transactions, housing, and other markets outside the agricultural sector demonstrate how discrimination may cause economic harm across all types of markets, including agricultural ones. As early as the 1950s, economic studies documented racial wage gaps between

[68] See *Stafford* v. *Wallace,* 258 U.S. 495 (1922).

[69] Francis, Dania V., Darrick Hamilton, Thomas W. Mitchell, Nathan A. Rosenberg, and Bryce Wilson Stucki. ''Black Land Loss: 1920–1997.'' In AEA Papers and Proceedings, vol. 112, pp. 38–42. American Economic Association, 2022.

[70] Tang, Anthony M. ''Economic development and changing consequences of race discrimination in Southern agriculture.'' *Journal of Farm Economics* 41, no. 5 (1959): 1113–1126.

[71] U.S. Department of Agriculture, National Agricultural Library, ''Heirs' Property,'' *https://www.nal.usda.gov/farms-and-agricultural-production-systems/heirs-property* (last accessed Aug. 2022).

[72] Mitchell, Thomas W. 2019. Historic Partition Law Reform: A Game Changer for Heirs' Property Owners. In Heirs' property and land fractionation: fostering stable ownership to prevent land loss and abandonment. *https://www.fs.usda.gov/treesearch/pubs/58543* (last accessed 8/9/2022).

[73] U.S. Commission on Civil Rights. 1965. Equal Opportunity in Farm Programs: An Appraisal of Services Rendered by Agencies of the U.S. Department of Agriculture. *https://files.eric.ed.gov/fulltext/ED068206.pdfUS* Commission on Civil Rights. 1982. ''The Decline of Black Farming in America.'' *https://eric.ed.gov/?id=ED222604.*

[74] Feder, J. and T. Cowan. 2013. ''Garcia v. Vilsack: A Policy and Legal Analysis of a USDA Discrimination Case'', Congressional Research Service report number 7–5700, February 22, 2013.

[75] Touzeau, Leslie. 2019. ''Being Stewards of Land Is Our Legacy': Exploring the Lived Experiences of Young Black Farmers.'' *Journal of Agriculture, Food Systems, and Community Development* 8 (4): 1–6. *https://doi.org/10.5304/jafscd.2019.084.007.*

[76] Francis, Dania V., Darrick Hamilton, Thomas W. Mitchell, Nathan A. Rosenberg, and Bryce Wilson Stucki. ''Black Land Loss: 1920–1997.'' In *AEA Papers and Proceedings,* vol. 112, pp. 38–42. American Economic Association, 2022; Wood, S., & Gilbert, J. (2000, Spring). Returning African-American farmers to the land: Recent trends and a policy rationale. The Review of Black Political Economy, 27, 43–64. Available at *https://doi.org/10.1007/BF02717262.*

Touzeau, Leslie. 2019. '''Being Stewards of Land Is Our Legacy': Exploring the Lived Experiences of Young Black Farmers.'' Journal of Agriculture, Food Systems, and Community Development 8 (4): 1–6. *https://doi.org/10.5304/jafscd.2019.084.007.*

[77] The Agricultural Census figures on farm operations for 2012 are downloaded from the National Agricultural Statistics Service's Quick Stats and figures from 1930 are from volume 4 of the 1930 Census, *https://agcensus.library.cornell.edu/census_year/1930-census/.*

[78] Casey, Alyssa R. Racial Equity in U.S. Farming: Background in Brief 2021. Congressional Research Service. *https://crsreports.congress.gov/product/pdf/R/R46969.*

[79] Horst, M., Marion, A. ''Racial, ethnic and gender inequities in farmland ownership and farming in the U.S.'' *Agric Hum Values* 36, 1–16 (2019). *https://doi.org/10.1007/s10460-018-9883-3.*

[80] Christopher Leonard, ''The Meat Racket,'' (2015) and Witt, Howard. ''Hmong poultry farmers cry foul, sue'' Chicago Tribune. May 15, 2006. Available online at: *https://www.chicagotribune.com/news/ct-xpm-2006-05-15-0605150155-story.html.*

workers.[81] Enabled by a lack of competition among employers, this discrimination not only had adverse economic impacts for protected groups but also for employers who, due to their own discriminatory actions, ultimately paid higher wages for some equally productive workers.[82] Recent studies highlight how racial wealth disparities reduce labor market competition, since reduced wealth hinders job search abilities.[83] On the flip side, recent research shows that increased labor market participation among racial minorities and women contributed to increased economic output during the second half of the twentieth century.[84] Research on the U.S. patent system finds that racially-motivated violent acts reduced the number of patents by Black inventors in the U.S. during the late 1800s and through the middle of the twentieth century.[85] These patents could have led to new wealth for the inventors and increased business investments, potentially contributing to overall economic growth. In an analysis of data from the National Survey of Small Business Finances, Black led-businesses were found to have been more frequently issued loans with higher interest rates and other unfavorable terms relative to white or male-led businesses, which could reduce productivity and innovation in the broader economy.[86] In housing, recent evidence shows that minority households are steered towards areas with higher rates of poverty, crime, and pollution, and less economic opportunity.[87] Combined, these discriminatory practices have large economic consequences. A 2020 study estimates that if racial gaps in wages, housing, access to higher education, and lending were closed, the U.S. would experience a $5 trillion dollar increase in gross domestic product (GDP) from 2020 to 2025.[88]

Undue Prejudice and Economic Inefficiency

Prejudicial discrimination has been theorized and observed to be an artificial barrier to market activities, and as such, it can create a market distortion.[89] A variety of pathways for agricultural market distortions due to discrimination are possible. For example, if prices paid for otherwise identical cattle differed because of the race, ethnicity, or other producer characteristics that do not have any bearing on productivity, rather than the on the value of the marginal product of the cattle, then the prejudice based on these characteristics distorts prices and in turn both output and investment. While the specifics of producer returns in contract production are different from marketed production, producers receiving a lower contract payment rate or other unfavorable contract terms simply because of the producers' race or other personal characteristics would likewise induce market distortions.

Prejudicial discrimination can take other forms besides wage, contract, or price differentials, such as exclusionary practices in product purchases or sales, or higher lending costs. These examples of artificial barriers preventing resources from moving to their highest and best uses via allocative efficiency, such that marginal benefits equal marginal costs, lead to market inefficiency. Lowering the level of this market distortion would increase market efficiency, albeit noting there is limited information to empirically assess the impacts of discrimination on efficiency in agricultural markets.

Undue Prejudice and Potential Market Abuse in Concentrated Livestock Markets

Like in other parts of the economy and in other types of markets, those participating in agricultural markets from groups that have and continue to suffer racial, ethnic, gender, and religious prejudices may be particularly vulnerable to market abuses, especially in concentrated markets such as in the livestock sector. This is because they currently represent not only a very small share of producers in the industry, including those in the livestock sector and among producers who have production contracts, but their size, sales, and incomes are lower than other producers, leaving them more economically isolated and with fewer economic resources to counteract concentrated market forces and actors.

In the livestock sector, the results of historical prejudice and the risk of present-day prejudice are apparent when looking at data from the 2017 Census of Agriculture, which show that currently a very small fraction of livestock farms with production contracts are operated by Black, Asian, American Indian, or Native Hawaiian producers (Figure 1). As described earlier in this section, discriminatory acts, especially against Black producers, undoubtedly contributed to the current low levels of racial and ethnic minority participation in the livestock sector, including among producers with production contracts. These remaining producers may be particularly vulnerable to market abuses in concentrated livestock markets.

[81] Bayer, P., and K. K. Charles. ''Divergent Paths: A New Perspective on Earnings Differences Between Black and White Men since 1940.'' *The Quarterly Journal of Economics* (2018), 1459–1501. Becker, G.S. *The Economics of Discrimination.* First Edition, *The University of Chicago Press,* 1957.

[82] Becker, G.S. *The Economics of Discrimination.* First Edition, The University of Chicago Press, 1957.

[83] Kate Bahn, Mark Stelzner, and Emilie Openchowski, ''Wage discrimination and the exploitation of workers in the U.S. labor market,'' *Washington Center for Equitable Growth,* September 2020, available at *https://equitablegrowth.org/research-paper/wage-discrimination-and-the-exploitation-of-workers-in-the-u-s-labor-market/?longform=true.*

[84] Hsieh et al., ''The Allocation of Talent and U.S. Economic Growth,'' 2019, available at *https://onlinelibrary.wiley.com/doi/epdf/10.3982/ECTA11427.*

[85] Cook, Lisa D. ''Violence and economic activity: evidence from African American patents, 1870–1940.'' *Journal of Economic Growth* 19, no. 2 (2014): 221–257.

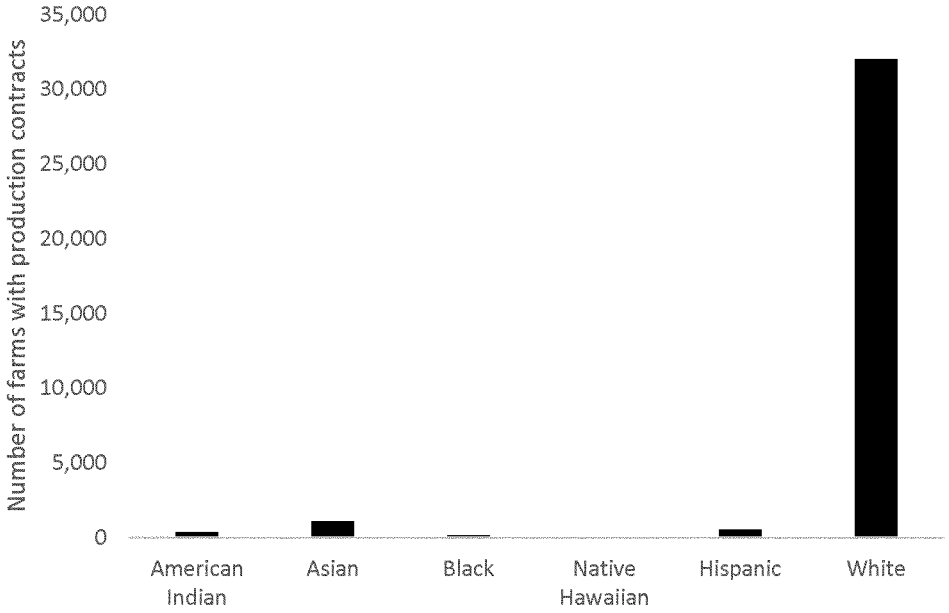
[86] Laura Alfaro, Ester Faia, and Camelia Minoiu, ''Distributional Consequences of Monetary Policy Across Races: Evidence from the U.S. Credit Register'' April 2022, available at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4096092;* Ken S. Cavalluzzo, Linda C. Cavalluzzo, and John D. Wolken, ''Competition, Small Business Financing, and Discrimination: Evidence from a New Survey,'' *The Journal of Business,* October 2022, available at *https://www.jstor.org/stable/pdf/10.1086/341638.pdf?refreqid=excelsior%3Ab05443d9a80629ef03bbe4cb6e7747e4&ab_segments=&origin=&acceptTC=1.*

[87] Christensen, Peter, and Christopher Timmins. ''Sorting or steering: The effects of housing discrimination on neighborhood choice.'' *Journal of Political Economy* 130, no. 8 (2022): 2110–2163.

[88] *Closing the Racial Wealth Gap: The Economic Costs of Black Inequality in the United States. Citi GPS: Global Perspectives and Solutions.* 2020. Available at *https://ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeHCMI%3D.*

[89] Stiglitz, J. ''Approaches to the Economics of Discrimination'', *American Economic Review,* vol. 63/2, May 1973: 287–295.

Figure 1. Number of livestock and poultry farms with production contracts by race and ethnicity of their producers



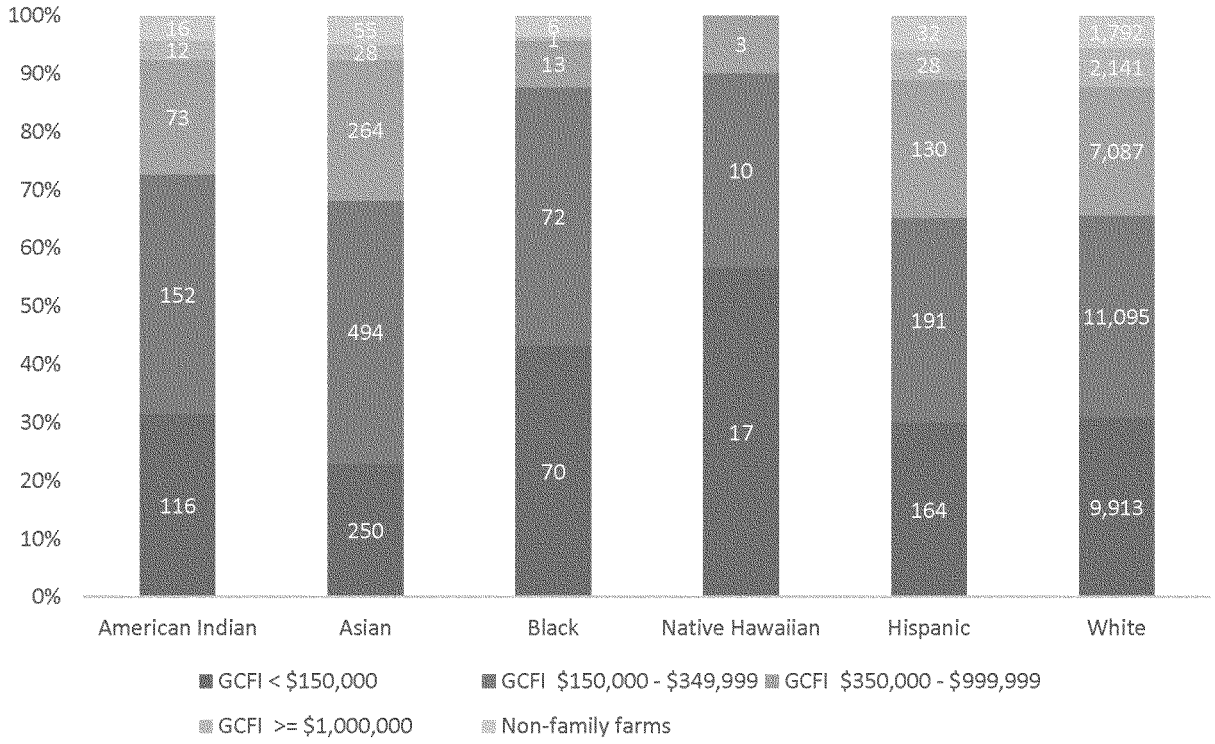
Data source: 2017 Agricultural Census, National Agricultural Statistics Service, USDA.

Disparities in farm size and income across racial and ethnic groups also exist among livestock and poultry farms with production contracts, highlighting additional vulnerability for particular groups in the sector. Figure 2 shows the percentage and number of livestock and poultry farms with production contracts by the reported race or ethnicity of their producers, categorized by level of Gross Cash Farm Income (GCFI), which includes commodity cash receipts, farm-related income, and Government payments.[90] USDA's Economic Research Service (ERS) classifies small farms as having a GCFI less than $150,000 and up to $349,999 per year, mid-sized farms as having GCFI between $350,000 and $999,999, and large-scale farms as having a GCFI equal to or greater than $1,000,000. Farms are also classified as being non-family farms, which are farms in which an operator or persons related to the operator do not own a majority of the business.[91] These data indicate that contracted livestock and poultry farms with producers who identify as Black and Native Hawaiian are more likely to be in the lower income GCFI categories than their white counterparts. To a lesser extent, farms with producers identifying as Native American also tend to be in the lower income GCFI categories than their White counterparts' farms. Markets dominated by one or a few large packers or live poultry dealers may be less accessible to these smaller farms, which have limited financial or other economic resources with which to engage. They may also be more vulnerable to discriminatory acts or market abuses such as retaliation.

[90] U.S. Department of Agriculture, Economic Research Service, ''Most farms are small, but large-scale farms account for almost half of production,'' available at: *https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=58288* (last accessed Aug, 2022).

[91] U.S. Department of Agriculture, Economic Research Service, ''Farm Structure and Contracting,'' available at: *https://www.ers.usda.gov/topics/farm-economy/farm-structure-and-organization/farm-structure-and-contracting/* (last accessed Aug. 2022).

Figure 2. Percentage and number of livestock and poultry farms with production contracts by GCFI and family farm status and by race and ethnicity of their producers.



Notes: Number of farms displayed on bars in white text. Percentages reported by the bar height on the vertical axis.
Data source: 2017 Agricultural Census, National Agricultural Statistics Service, USDA.

iii. Specific Proposed Bases

In determining the proposed bases for protection under this section, AMS looked to several sources, including the Statement of General Policy Under the Packers and Stockyards Act published by the Secretary of Agriculture in 1968 (Statement of General Policy) (9 CFR 203.12(f)), the regulations governing USDA-conducted programs, and a series of statutes identifying producers that Congress has determined face special disadvantages, are underserved, or are otherwise more vulnerable to prejudices.

The Statement of General Policy reflects the current USDA policy on the enforcement of the P&S Act. The Statement of General Policy provides in part that it's a violation of sections 304, 307, and 312(a) of the Packers and Stockyards Act for a stockyard owner or market agency to discriminate, in the furnishing of stockyard services or facilities or in establishing rules or regulations at the stockyard, because of *race, religion, color, or national origin* of those persons using the stockyard services or facilities. Such services and facilities include, but are not limited to, the restaurant, restrooms, drinking fountains, lounge accommodations, those furnished for the selling, weighing, or other handling of the livestock, and facilities for observing such services.

While this part of the Statement of General Policy applies to violations of secs. 304, 307, and 312(a) of the Act—related to the provision of services and facilities at stockyards on an unreasonable and discriminatory basis, almost identical prohibitive language is used in sec. 202 of the Act. Section 202 pertains to packers, swine contractors, and live poultry dealers. Section 202(a) of the Act prohibits any unjustly discriminatory practice or device with respect to livestock, meats, meat food products or livestock products in manufactured form, or live poultry.

AMS also considered USDA's general regulatory prohibition against discrimination in USDA programs, which governs how USDA provides services to producers and growers. Most recently updated in 2014, it offers a more current interpretation of anti-discrimination standards. The relevant provision provides that no agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or gender identity, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.[92]

In that rulemaking, USDA identified areas where discrimination against a producer is an unacceptable denial of access to USDA's services.

[92] 7 CFR 15d.3; U.S. Department of Agriculture, ''Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture,'' 79 FR 41406, July 16, 2014, available at *https://www.federalregister.gov/documents/2014/07/16/2014-16325/nondiscrimination-in-programs-or-activities-conducted-by-the-united-states-department-of-agriculture* (last accessed 8/9/2022).

AMS also looked to the legislative mandates that emerged over the last thirty years, directing USDA to make extra efforts to overcome the barriers that prevent members of those groups from accessing USDA's services and agricultural markets generally.[93] Congress adopted numerous statutes seeking to remedy market access barriers on the basis of prejudices across a wide range of areas, including: 7 U.S.C. 8711 (base acres); 7 U.S.C. 2003 (target participation rates); 7 U.S.C. 7333 (Administration and operation of noninsured crop assistance program); 7 U.S.C. 1932 (Assistance for rural entities); 16 U.S.C. 2202a, 3801, 3835, 3839aa–2, 3841, and 3844 (conservation); 7 U.S.C. 8111 (Biomass Crop Assistance Program); 7 U.S.C. 1508 (Federal crop insurance, covering underserved producers defined as new, beginning, and socially disadvantaged farmers or ranchers and including members of an Indian tribe); and 16 U.S.C. 3871e(d) (conservation, covering historically underserved producers defined as beginning, veteran, socially disadvantaged, and limited-resource farmers and ranchers). In 25 U.S.C. 4301(a) and elsewhere, Congress has clearly expressed its intent for the United States government to encourage and foster tribal commerce and economic development.[94]

The definitions and coverage in these statutes varies to some extent. Some focus principally on members of groups that have experienced racial or ethnic prejudices, while others include gender prejudices. Additionally, some provide further assistance to new and beginning farmers and military service veterans who are farmers. In sum, these statutes reflect the now multi-decade priority of U.S. agricultural policy to overcome barriers that stand in the way of full market access for all producers and growers, with significant emphasis placed on overcoming certain persistent forms of racial, ethnic, and gender prejudices that obstruct full market access for some producers.

In interpreting the P&S Act, AMS has sought to propose a rule that would remove barriers to market access for producers and growers most vulnerable to being denied access. For the purposes of this proposed rule, AMS is proposing a prohibition on undue prejudice on the basis of a covered producer's membership in a vulnerable group. We seek comment on whether to adopt one of several options for the term ''market vulnerable individual,'' and if so, which one we should adopt. We are also seeking comment on whether to specifically delineate certain protected classes.

Because of the Act's broad application discussed in an earlier section, ''II.B.i., Authority provided by the Act,'' the similar language used in secs. 202, 304, 305, and 312 of the Act, and the series of statutes outlining a range of prejudices identified as being deserving of public policy efforts to ensure full market access, AMS finds it reasonable that members of groups who have been subjected to discrimination, prejudice, disadvantage, or exclusion on the basis of race, ethnicity, or gender should be considered vulnerable and covered by the prohibitions against undue prejudice or disadvantage and unjust discrimination as enumerated by sec. 202 of the Act.

AMS is proposing, and seeking comment on, whether a flexible definition of vulnerable group would be advantageous to ensuring inclusive market access for covered producers by permitting an evolving as well as market-specific application of the regulation. Such an approach could address barriers to inclusion as they may arise. At the same time, AMS is seeking comment on how to ensure that most persons that would be protected under the Statement of General Policy and under USDA's general regulations prohibiting discrimination, as noted above, could be protected under this regulation.[95] In particular, as noted above AMS seeks comment on whether to delineate certain specific groups as examples of market vulnerable groups, and also seeks comment on whether it is preferable instead to prohibit discrimination based on protected classes, such as on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, age, disability, marital status, and family status. AMS seeks additional comment on the appropriate approach to protect market access for and stop unjust discrimination against Indian tribes and tribal members.

Refusing to deal, providing less compensation, or any other type of discrimination because of a person's particular non-economic characteristics is the type of behavior both the Act and USDA aim to prevent.

C. Cooperatives—Proposed § 201.304(a)(1)

Proposed § 201.304(a)(1) also specifies that regulated entities, which include packers, swine contractors, or live poultry dealers, may not discriminate against a cooperative of covered producers—*i.e.,* covered producers who collectively work together. For example, individual covered producers may form a cooperative to meet volume or other contractual requirements when they may not be able to meet those requirements by themselves. A covered producer is defined in the proposed regulations at § 201.302 as a livestock producer as defined in this section or swine production contract grower or poultry grower as defined in section 2(a) of the Act. Covered producers acting as a cooperative are an association or group made up of one or more producers collectively processing, preparing for market, handling, and marketing livestock or poultry. The P&S Act includes cooperative associations in the definition of ''person'' at 7 U.S.C. 182(1), providing that when used in the Act ''[t]he term ''person'' includes individuals, partnerships, corporations, and associations. . .''

Covered producer cooperatives improve economic conditions for individual producers. They have been demonstrated to be competitive and responsive to meeting the needs of regulated entities and the market.[96] For example, smaller livestock producers may move towards cooperative agreements on a regional basis to meet buyers' volume requirements.

Producers have indicated to AMS that they feel such a move is necessary, owing to the rise of concentration in the markets and the decline in options for smaller producers. Small cattle producers have expressed their concerns to AMS about disparate treatment by packers between large and small producers. Large packers have commonly shown limited interest in dealing with producers that operate on a smaller capacity. On this point, producers have informed AMS that packers are in search of deals with large quantities of product, and if a producer is unable to meet demand for readily available bulk quantities, that producer is unable to compete in the industry.

[93] For background, *see* Congressional Research Service, *Defining a Socially Disadvantaged Farmer or Rancher (SDFR): In Brief* (March 19, 2021), available at *https://crsreports.congress.gov/product/pdf/R/R46727/6.*

[94] See, *e.g.,* Native American Business Development Act, 25 U.S.C. 4301(a).

[95] *See, e.g.,* Pregnancy Discrimination Act, *see also Bostock* v. *Clayton Cnty.,* Georgia, 140 S. Ct. at 1741.

[96] At least some of the drafters of the Act fully expected the Act to be consonant to the goals of cooperatives: ''My own conviction is that the cooperative effort of producers and consumers to get closer together in an effort to reduce the spread between them is the most favorable tendency of our time, so far as the question of marketing and distribution is concerned.'' 61 Cong. Rec. 1882 (1921).

Producers testified in 2010 about packer buyers pulling out of their small-scale feedlots for months in retaliation for producers seeking higher prices and not allotting their entire herd capacity. Packer buyers often prefer to include large quantities on single transactions to lower transactions costs and maximize profits.[97] Adding protections for smaller producers that wish to work together to form cooperatives would enable smaller producers to (1) form cooperatives without fear of prejudice or disadvantage, and (2) reduce transactions costs for individual member producers.

This proposed regulation is intended, in part, to benefit smaller producers—who lack the necessary land, capital, or financing (or for other reasons may not wish) to establish a large enough operation to meet preferred contractual requirements—by preventing discrimination against their cooperative operations. Through cooperation, one or more producers may be able to jointly meet the requirements and participate as a producer in the industry, allowing producers to operate more efficiently. Preventing discrimination against producer cooperatives will provide another avenue for producers who otherwise might not have been able to participate in the market.

While this section proposes that regulated entities may not prejudice or disadvantage cooperatives of covered producers, based on their protected status as a cooperative under this regulation, AMS notes that regulated entities may decline contracting with cooperatives for other justified economic reasons—*i.e.,* for reasons other than the prospective business partner's status as a cooperative. For example, a regulated entity may refuse to contract with a cooperative of covered producers when the contract would not be cost-effective for the entity, regardless of the cooperative status of the producers. In this hypothetical example, the regulated entity would not be unduly prejudicing cooperatives of covered producers based on their status as a cooperative. Instead, the regulated entity would have a nonprejudicial basis for their business decision. AMS notes that antitrust laws also prohibit cooperatives themselves from participating in certain anticompetitive behavior. As discussed earlier, undue prejudice and disadvantage may inhibit producers' ability to obtain fair market value for their livestock and poultry and would be prohibited under proposed § 201.304(a)(1). Proposed § 201.304(a)(1) aims to encourage a diverse agricultural market and prevent undue prejudice and disadvantage and unjust discrimination against cooperatives.

Congress has long protected cooperatives in the agricultural space, acknowledging the need for farmers to meet the economic demands of the market. One year after the passage of the P&S Act, Congress passed the Capper-Volstead Act (Pub. L. 67–146), which permits producer cooperatives to collectively process, prepare for market, handle, and market their products. In a decision related to an antitrust action against a nonprofit cooperative association whose members were involved in production and marketing of broiler chickens, the Supreme Court noted that farmers faced special challenges in the agricultural market and therefore cooperatives are afforded legal protections in helping them address those challenges.[98] Congress also passed the Agricultural Fair Practices Act,[99] which provides enhanced protections to those seeking to form a cooperative. In particular, that statute prevents handlers from performing certain types of pricing and contract discrimination, coercion, and other practices that undermine cooperatives.

This proposed rule would provide additional protection for cooperatives by preventing a regulated entity from isolating cooperatives through contract termination and preventing cooperatives from accessing markets for their products. As noted above, the P&S Act intended to improve the agricultural market and includes associations in the definition of ''person'' when referred to in the Act. The Act affords cooperative associations the same protections against discrimination as are afforded to all other covered producers. 7 U.S.C. 182(1). Thus, protections for cooperatives against discrimination were contemplated at the time of the Act's passage.[100]

D. Enumerated Prejudices

Proposed § 201.302(a)(2) outlines an inexhaustive list of prejudices that, if based upon the covered producer's status, the regulation prohibits. The harm that may be done through discriminatory actions cannot be neatly cataloged, but the proposed § 201.302(a)(2) sets forth injuries that the agency believes are inherently prejudicial: offering less favorable terms, refusing to deal, differential contract enforcement, and contract termination or non-renewal. Under proposed § 201.302(b), prejudicial actions are to be considered together with the covered producer's membership in a market vulnerable group or cooperative, and they would not by themselves be violations. AMS seeks comment on the scope of these acts.

E. Retaliation

i. Retaliation as Discrimination Under the Act

Proposed § 201.304(b) would establish protected activities for covered producers and would prohibit regulated entities from retaliatory conduct on the basis of those activities. Regulated entities wield significant economic power given their vertical relationships with producers. Regulated entities choosing to discriminate among producers using their market power advantages for the purpose of preventing certain producers, or groups of producers, from engaging in the behaviors and activities discussed below, is disparate treatment that is unjustly discriminatory. This type of discrimination is oftentimes exercised through retaliation. The method of retaliation may take many forms. Accordingly, the proposed rule is designed to prohibit a variety of adverse actions. However, the proposed regulations are also narrowly tailored, requiring the adverse action to be linked to specific protected activities. Adverse actions not tied to the activities

[97] U.S. Department of Justice & U.S. Department of Agriculture, Public Workshops, Exploring Competition Issues in Agriculture Livestock Workshop: A Dialogue on Competition Issues Facing Farmers in Today's Agricultural Marketplaces, Fort Collins, Colorado, August 27, 2010. Available at *https://www.justice.gov/sites/default/files/atr/legacy/2012/08/20/colorado-agworkshop-transcript.pdf.*

[98] *Nat'l Broiler Mktg. Ass'n* v. *United States,* 436 U.S. 816, 825–26, 98 S. Ct. 2122, 2129, 56 L. Ed. 2d 728 (1978) (''Farmers were perceived to be in a particularly harsh economic position. They were subject to the vagaries of market conditions that plague agriculture generally, and they had no means individually of responding to those conditions. Often the farmer had little choice about who his buyer would be and when he would sell. A large portion of an entire year's labor devoted to the production of a crop could be lost if the farmer were forced to bring his harvest to market at an unfavorable time. Few farmers, however, so long as they could act only individually, had sufficient economic power to wait out an unfavorable situation. Farmers were seen as being caught in the hands of processors and distributors who, because of their position in the market and their relative economic strength, were able to take from the farmer a good share of whatever profits might be available from agricultural production. By allowing farmers to join together in cooperatives, Congress hoped to bolster their market strength and to improve their ability to weather adverse economic periods and to deal with processors and distributors.'').

[99] Public Law 90–288, Apr. 16, 1968, 82 Stat. 93 (7 U.S.C. 2301 *et seq.*).

[100] H.Rep. No. 85–1048, 1957.

proposed would not be regulated under this proposal.

ii. Economic Rationale

While the statute does not require market-wide harm as a condition to forbid retaliation, which is an abuse that undermines market integrity, this section explains the adverse economic effects of retaliation, which include harm across the marketplace. Indeed, oligopsonistic or monopsonistic market structures can allow firms with large market shares to use their market power advantage to punish certain producer behaviors that the firm believes could offset their market power advantage or even to punish producer behaviors that are unrelated to the product or service they provide. When firms retaliate by canceling contracts, selectively enforcing contract terms, renewing contracts with unfavorable terms for the producer, or otherwise impairing producers' ability to remain economically competitive as a penalty for their engagement in the activities identified in the next section, that conduct likely results in economic inefficiencies and should be prohibited on a market wide basis, even if the specific retaliatory act only affects one individual. Such impacts are especially difficult to address when those firms maintain dominant positions in the markets.

Retaliation against even one seller could presumably have a market-wide chilling effect on others (at least within the area where the retaliating entity is dominant). However, the ability to use such a tool does require the right conditions, such as those that exist in concentrated livestock markets where, in many cases, few or one firm hold a dominate position. It is unlikely that packers or poultry dealers operating in highly competitive markets (in which they are not in a dominant economic position) could effectively use retaliation, since livestock producers could simply find other buyers with whom to do business.

Economic measures of firm concentration may help to identify when retaliation may be more easily employed in a market, albeit noting that an empirical relationship between retaliation and concentration measures in livestock markets has not been established.

The following table shows the level of concentration in the livestock and poultry slaughtering industries for 2010–2020 using four-firm Concentration Ratios (CR4).

TABLE 2—FOUR-FIRM CONCENTRATION RATIO IN LIVESTOCK AND POULTRY SLAUGHTER [101]

Year	Steers & heifers (%)	Hogs (%)	Broilers (%)	Turkeys (%)
2010	85	65	51	56
2011	85	64	52	55
2012	85	64	51	53
2013	85	64	54	53
2014	83	62	51	58
2015	85	66	51	57
2016	84	66	50	57
2017	83	66	51	53
2018	84	70	54	55
2019	85	67	53	55
2020	81	64	53	55

The table shows the combined market share of the four largest steer and heifer slaughterers remained stable between 83 and 85 percent from 2010 to 2019 and dropped to 81 percent in 2020. Four-firm concentration ratios for hog and broiler slaughter has also remained relatively stable between 62 and 70 percent and 51 and 54 percent, respectively. The data above are estimates of national four-firm concentration ratios at the national level, but the relevant economic markets for livestock and poultry may be regional or local, and concentration in the relevant market may be higher than the national level.

As discussed previously, regional concentration is often higher than national concentration for hogs.[102] Based on AMS's experience conducting investigations and monitoring cattle markets, there are commonly only one or two buyers in some local geographic markets, and few sellers have the option of selling fed cattle to more than three or four packers.

Though poultry markets may appear to be the least concentrated in terms of their national four-firm concentration ratios, relevant economic markets for poultry growing services are more localized than markets for fed cattle or hogs, and local concentration in poultry markets is often greater than in hog and other livestock markets. The following table highlights this issue by showing the limited ability a poultry grower has to switch to a different integrator using the Herfindahl-Hirschman Index (HHI).[103] Similar to a CR4, HHI is an indicator of market concentration, with the index being increasing as market shares across firms (packers) become more unequal and/or the number of these firms decrease. Markets with HHIs above 2,500 are in some cases considered highly concentrated. The following table is a modification of a table in MacDonald (2104), adding HHI indices to the latter's calculations of the integrators in the broiler grower's geographic region. The HHIs in the table assume equal market share for each integrator, and as such are the minimum HHIs possible (at least with 2 to 4 growers). They show that 88.4% (72.2%) of growers are facing an integrator HHI of at least 2,500 (3,333). The data suggests that the majority of contract broiler growers in the U.S. are in markets where the sellers have the potential for market power advantage.

[101] U.S. Department of Agriculture, AMS Packers and Stockyards annual reports. Available at *https://www.ams.usda.gov/reports/psd-annual-reports* (last accessed 8/9/2022).

[102] Wise, T. A., S. E. Trist. ''Buyer Power in U.S. Hog Markets: A Critical Review of the Literature,'' *Tufts University, Global Development and Environment Institute (GDAE)* Working Paper No. 10–04, August 2010, available at: *https://sites.tufts.edu/gdae/files/2020/03/10-04HogBuyerPower.pdf.TAbl* (last accessed 8/9/2022).

[103] MacDonald, James M., and Nigel Key. ''Market power in poultry production contracting? Evidence from a farm survey.'' *Journal of Agricultural and Applied Economics* 44, no. 4 (2012): 477–490.

TABLE 3—INTEGRATORS IN THE BROILER GROWERS' REGION AND ASSOCIATED MARKET POWER INDICES

Integrators in grower's area	Minimum HHI of integrators in grower's area	Farms	Birds	Production	Can change to another integrator
Number		Percent of total			Percent of farms
1	10,000	21.7	23.4	24.5	7
2	5,000	30.2	31.9	31.7	52
3	3,333	20.4	20.4	19.7	62
4	2,500	16.1	14.9	14.8	71
>4		7.8	6.7	6.6	77
No Response		3.8	2.7	2.7	NA

Retaliation by oligopolistic or monopolistic firms can be effectuated in the pursuit of economic self-interest or be done against such interest for some nonpecuniary reason.[104] In the case of economic self-interest, oligopsonistic or monopsonistic integrators or packers may use retaliation to facilitate their ability to earn excess rents. However, this use of retaliation, as a means to protect excess profits, is only possible when markets for livestock are characterized by few integrators or packers. Where producers have few, if any, alternative packers, or integrators to engage with, the act of not renewing a contract, as retaliation for unfavorable behavior or actions, can cause economic inefficiencies.

Retaliation may also be used by integrators and packers to ensure that regulators or new entrants cannot discipline their behavior in the marketplace. Both regulators and new entrants may be inhibited by the inability to communicate with market participants. Regulators may be unable to obtain the information needed to learn of or establish violations, while prospective new entrants may be unable to establish necessary market relationships with industry participants.

Many producers have expressed concerns about retaliatory behavior from regulated entities with respect to activities inextricably relevant to the livestock and poultry markets. Examples include contract poultry and hog producers afraid to talk with USDA representatives, file comments with USDA (or not file comments that adopt their integrator's view), seek enforcement of contracts, organize associations, or even attend association meetings, opt out of arbitration, complain about feed outages and company personnel behavior, and question the need for farm upgrades.[105] In cattle and independent hog production, private complaints to AMS include fear that packers will refuse to visit farms or feedlots, offer bids on livestock, purchase livestock from disfavored producers, and other more subtle behaviors, like delaying delivery or shipment and manipulating where producers fall in order of procurement.

In addition, it is also possible that discriminatory or retaliatory acts by packers or integrators intended to prevent the transfer of rents also negatively affect efficiency by reducing the incentives for investment, beneficial coordination of actions, or adoption of innovative production process. In one case, a court found that an integrator retaliated against a grower who was a leader of a growers' association,[106] suggesting both that producer coordination may reduce the packers'/integrators' oligopsony excess profit and that growers' ability to compete in these markets may be harmed by retaliation. In another court case, *James* v. *Tyson Foods, Inc.,* fifty-four poultry growers sued the integrator for retaliatory actions and were awarded $10 million in damages as a result.[107]

F. Prohibition on Retaliation—Proposed § 201.304(b)

To address the dangers of the retaliatory practices described above, AMS is proposing to add § 201.304(b) to the regulations. Proposed § 201.304(b)(1) would prohibit and provide examples of retaliatory practices by regulated entities against covered producers who engage in protected activities. Proposed § 201.304(b)(2)(i) through (vi) lists these protected activities.

Under § 201.304(b)(1), regulated entities would be prohibited from retaliating or otherwise taking an adverse action against a covered producer because the covered producer participated in the activities described in § 201.304(b), to the extent that these activities are not otherwise prohibited by Federal or state antitrust laws. While a group of producers might be protected from retaliation when associating in the production or marketing of livestock, producers would not be protected from the adverse action of packers if the producers engaged in a violation of Federal or state antitrust law. AMS expects that prohibited retaliation would include, but not be limited to termination of contracts, non-renewal of contracts, refusing to deal with a covered producer, and interference in farm real estate transactions or contracts with third parties. The proposed rule is designed to prohibit all such actions with an adverse impact on a covered producer.

AMS has chosen these specific examples of retaliation because they represent the retaliatory practices that have been the most common causes for complaints or because AMS has otherwise determined them to be recurring problems in the livestock and poultry industries. Covered producers have experienced termination or non-renewal of their contracts for numerous reasons. Covered producers who have not personally experienced these forms of retaliation have nevertheless expressed fear of such retaliation through direct communication with AMS personnel, at workshops, and in comments on previous related rulemakings. Related to termination and non-renewal of contracts is a regulated entity's refusal to deal. This proposed rule extends protections against retaliation to covered producers who are refused a new contract due to their involvement in protected activities. A regulated entity would also be prohibited from interfering in a covered producer's farm real estate transactions

[104] Fehr, Ernst, and Simon Gächter. ''Fairness and retaliation: The economics of reciprocity.'' *Journal of economic perspectives* 14, no. 3 (2000): 159–181.

[105] U.S. Department of Justice & U.S. Department of Agriculture, Public Workshops Exploring Competition in Agriculture, Poultry Workshop, May 21, 2010, Alabama A&M University Normal, Alabama. Available at *Poultry Workshop Transcript* (*justice.gov*).

[106] *Terry* v. *Tyson Farms, Inc.,* 604 F.3d 272 (6th Cir. 2010).

[107] *James* v. *Tyson Foods, Inc.,* 292 P.3d 10 (Okla., 2012).

or contracts with third parties. Impeding or obstructing a covered producer's attempts to sell his or her farm or ability to contract with a third party as a result of his or her participation in certain activities hinders a covered producer's ability to freely participate in the market. AMS believes that punishing covered producers or denying them opportunities afforded to other covered producers because they engaged in certain activities is an unjustly discriminatory practice. Not only do retaliatory practices harm individual covered producers; recurrent instances and patterns of retaliation erode market integrity and discourage fairness and competition in the livestock and poultry markets.

The specific examples of retaliatory practices listed in the proposed regulation are not meant to be exhaustive; other retaliatory actions with an adverse impact on covered producers would be prohibited as well. When investigating complaints of retaliatory practices that do not conform to one of these examples, AMS would, as it has in the past, continue to use its expertise to determine whether a regulated entity's action has an adverse impact on the covered producer.

G. Bases for Protected Activities—Proposed § 201.304(b)

AMS has identified three categories of producer activities that we propose to be protected due to concerns about retaliatory behavior from packers, live poultry dealers, and swine contractors. Starting with the recognition that these activities are related to the business of being a producer or grower or involvement in that sectoral or geographic community, the criteria used to establish the three categories—consistent with the Act's purpose to safeguard farmers and ranchers against receiving less than the true market value of their livestock [108]—include the extent to which the activities are supported under existing legal doctrine and the activities' potential to mitigate market power abuses or enhance economic efficiency. The following sections discuss three categories of protected activities: (i) assertion of rights, (ii) associational participation, and (iii) lawful communication, in the context of the criteria.

i. Assertion of Rights

The basis of rights in this context is two-fold, including both legal rights derived under various statutes and contractual rights contained in agreements with regulated entities. Assertions of rights may be necessary to ensure that covered producers are receiving appropriate treatment in their dealings with regulated entities. Disputes relating to contract terms and legal compliance could be over differences between the buyer and seller over what constitutes mutually agreeable returns or could even be over issues extraneous to the actual product or service provided by the covered producer. Access to existing legal remedies under state and Federal law may be necessary for covered producers to effectuate their bargained-for exchange in contracting and to address their inability to make complete contracts and associated hold-up risk, which leads to under investment and less efficient market allocations. Hold-up is the risk growers face at the time of contract renewal when integrators make contract renewal dependent on further grower investments not disclosed at the time of the original agreements.[109]

Some regulated entities may prefer to limit, minimize, or otherwise eliminate producer assertions or legal and contractual rights, as they are likely associated with additional economic costs. For example, a poultry grower may seek to enforce a production contract term providing the grower with the right to five flocks annually, when the grower only received four flocks. If a regulated entity sought to punish a grower seeking enforcement of this term, the grower's risk of contract termination would likely outweigh the benefit to them of contract enforcement, and thereby undermine their contract, from the grower's perspective. On the other hand, the regulated entity's cost of breaching or terminating the agreement may be lower than their cost of performance under the contract. Systemic conduct of this type would be an abuse of market power and result in reduced allocative efficiency. Attempts to limit, deter, or curtail producers' assertions of rights mitigates or removes a primary producer tool for proper enforcement of their rights.

ii. Associational Participation

While individual producers and growers operate at a tremendous informational deficit compared to the larger sophisticated packer operations, producer and grower organizations and associations can mitigate incomplete and asymmetric information frictions in the market. Producer and grower organizations may provide individual covered producers the opportunity to counter other market power imbalances that exist in the livestock and poultry industries. Associational participation is connected to the provision of the product or service of growing poultry or raising livestock and can serve to improve producer productivity. Agriculture associations and organizations have historically been favored under Federal [110] and state laws and exempted from certain types of Federal antitrust violations under the Capper-Volstead Act.[111] By narrowing the asymmetrical information gap and creating other benefits, associations can enhance production and allocative efficiencies.

Growers have expressed concern that associations and organizations have repeatedly been targets of retaliatory behavior, and in some instances, USDA and DOJ have intervened under the P&S Act. In the 1960s, poultry growers in Arkansas and Mississippi joined organizations to try to advance their interests and protections in their contracts with poultry companies. The poultry companies with which they had contracts engaged in harassment, threats, intimidation, and retaliation against the associations and the growers that joined them. A USDA Administrative Law Judge held that the poultry companies' conduct was a violation of the P&S Act and ordered the companies to cease and desist from their unlawful actions and reinstate the growers who were retaliated against.[112]

In 1989, a company operating a poultry slaughtering complex in northern Florida, terminated its contract with a poultry grower who was the president of a poultry growers' association. The U.S. District Court issued an injunction against the company, finding that it acted to hamper legal action by the growers' association and to discourage other growers from presenting grievances to

[108] *Stafford* v. *Wallace,* 258 U.S. 495 (1922).

[109] Vukina, Tom, and Porametr Leegomonchai. ''Oligopsony Power, Asset Specificity, and Hold-Up: Evidence from the Broiler Industry.'' *American Journal of Agricultural Economics* 88 (2006).

[110] *See* 7 U.S.C. 2301; 7 U.S.C. 291. The Agriculture Fair Practices Act prevents agricultural handlers from discrimination and coercion against individuals who belong to cooperatives. Among other things, this statute prohibits handlers from undermining a cooperative's ordinary operations by either bribing members of the cooperative or making false reports about the cooperative's operations.

[111] For example, under Missouri's Nonprofit Cooperative Marketing Law, RSMo 1939 section 14362, a nonprofit cooperative is exempt from a number of taxes (including sales tax), and only pay an annual fee of ten dollars.

[112] *See In re: Arkansas Valley Industries, Inc., Ralston Purina Company, and Tyson's Foods, Inc.,* 27 Ag. Dec. 84 (January 23, 1968), and *In Re: Curtis Davis, Leon Davis, and Moody Davis d/b/a Pelahatchie Poultry Company,* 28 Ag. Dec. 406 (April 3, 1969).

governmental authorities. USDA and DOJ filed a lawsuit,along with poultry growers, to enjoin the company's actions as constituting an unfair, unjustly discriminatory, and deceptive practice and device, and an undue and unreasonable prejudice and disadvantage, in violation of the P&S Act.[113] The Court agreed and also determined that the company's actions would constitute obstruction of justice, extortion, mail fraud, and wire fraud in furtherance of a pattern of racketeering activity.

In these cases, courts determined that attempts to limit, deter, or curtail associational participation limits lawful information exchanges and prevents or dilutes the potential for covered producers to engage in pro-competitive collaboration. This proposed regulation seeks to codify this line of analysis, which has arisen under direct enforcement of the statutory terms, and in the face of more recent court decisions involving private litigation, to provide clarity to market participants regarding USDA enforcement priorities going forward.[114]

iii. Lawful Communications

Under this proposed rule, covered producer communications would include any lawful communications with government agencies or other persons for the purpose of improving the production or marketing of livestock or poultry, exploring a possible business relationship, or supporting proceedings under the Act against a regulated entity. Broadly, these types of communication improve transparency, facilitate compliance with and enforcement of relevant laws and regulations, and can serve to mitigate market power abuse and enhance production and allocative efficiencies, as well as protect market integrity.

Communications With Government Agencies and Communications Related to Proceedings Under the Act

Related to ''assertions of rights,'' covered producers seeking the enforcement of a regulatory scheme designed to benefit them will likely need to communicate with government representatives. This communication is only incidental to the product or service provided to the regulated entity, and communication with government representatives serves numerous public policy interests. Abuses of market power to restrict communication related to government compliance programs would systematically result in deprivation of legal rights, losses in income or welfare for producers, and costs to markets and society.[115] Covered producers have expressed concerns regarding their communications with government agencies and support for government actions. For example: a cattle producer believes he has been the victim of weight fraud by a regulated entity, but as a producer with limited alternative outlets for sale of his cattle, the producer may be hesitant to report the fraud to USDA or other authorities for fear the regulated entity will refuse to engage in future business.

Communications for the Purpose of Improving Production/Marketing or Exploring a Business Relationship

As with communications related to enforcement, communications for the purpose of improving production or marketing or exploring business relationships aid covered producers in obtaining fair market value for their livestock and poultry. Protecting such communications would protect the producer's ability to obtain help from experts and professionals unaffiliated with the regulated entity. In addition, covered producers would be able to explore business opportunities without fear of reprisal from firms with which they currently do business. Communications of this type can improve production efficiency and price discovery mechanisms.

Retaliatory actions can also result from a blend of protected activities. In *Philson* v. *Cold Creek Farms, Inc.,* turkey growers alleged in part that the poultry company provided them with lower quality poults than it provided to other growers, and that the company's motivation for doing that was to punish and discourage growers from voicing their complaints (lawful communication) about the company's practices. Some of the turkey growers also alleged that their poultry contracts were terminated in retaliation for their objections to the poultry company's weighing and computing practices (assertion of rights). The Court noted that ''[s]uch a retaliatory act is properly challenged under the PSA as it adversely affects competition and could be considered unfair, unjustly discriminatory or deceptive.'' [116] Here, we see retaliation related to two categories of protected activities.

H. Delineation of Protected Activities

Paragraphs (b)(2)(i) through (vi) of proposed § 201.304 list activities that would be protected. Regulated entities would be prohibited from retaliating against covered producers due to the covered producer's participation in these protected activities. AMS has determined that a covered producer's ability to freely participate in these activities without fear of retaliation is essential to promoting fair and competitive markets in the livestock and poultry industries. Many of these activities also represent activities for which covered producers have experienced or expressed fear of retaliation.

Specifically, proposed paragraph (b)(2)(i) would protect a covered producer's ability to communicate with a government agency regarding the production of poultry or livestock, or to petition for redress of grievances before a court, legislature, or government agency. A covered producer's ability to communicate with a government agency is an essential tool for ensuring that a covered producer's rights are protected. Likewise, a covered producer must be able to freely petition for the redress of grievances for the protections afforded to covered producers by laws and regulations to have their intended effect.

Proposed paragraph (b)(2)(ii) would protect a covered producer's ability to assert any of the rights granted under the Act or the regulations in 9 CFR part 201, or to assert rights afforded by their contact. These rights include, for example, growers' rights to view the weighing of flocks, which is legally protected but which growers have complained is not practically enforceable. Although these rights are ostensibly protected by laws, regulations, or legal contracts, they lose their efficacy if covered producers suffer repercussions for asserting them.

Proposed paragraph (b)(2)(iii) would protect a covered producer's ability to assert the right to formor joinaproducer or grower association or organization, or to collectively process, prepare for market, handle, or market livestock or poultry.An assertion of rights in this context may involve expressing interest

[113] *Baldree* v. *Cargill, Inc.* and *United States* v. *Cargill, Inc., et al.,* 758 F.Supp.704 (M.D.Fla. 1990)

[114] See, *e.g., Terry* v. *Tyson Farms Inc.* 604 F.3d 272, 275 (6th Cir. 2009). On these line of cases, see also 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/.*

[115] Heese, Jonas, and Gerardo Pérez-Cavazos. ''The effect of retaliation costs on employee whistleblowing.'' *Journal of Accounting and Economics* 71, no. 2–3 (2021): 101385. European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Rossi, L., McGuinn, J., Fernandes, M., *Estimating the economic benefits of whistleblower protection in public procurement: final report,* Publications Office, 2017, *https://data.europa.eu/doi/10.2873/125033* (last accessed Aug. 2022).

[116] *Philson* v. *Cold Creek Farms, Inc.,* 947 F. Supp. 197 at 202 (E.D.N.C. 1996).

or intent to engage in these activities or engaging in these activities. Associations and organizations provide a means for covered producers to share information regarding the production of poultry and livestock, to potentially uncover recurrent problematic practices in the industry, and to potentially organize to seek redress of grievances, among other benefits. Collectively processing, preparing for market, handling, or marketing livestock or poultry affords covered producers the opportunity to combine their resources to potentially counteract market imbalances. AMS believes that retaliating against producers for engaging in these activities hinders the free flow of information and hampers producers' ability to fairly compete in the market.

Proposed paragraph (b)(2)(iv) would protect a covered producer's ability to communicate or cooperate with a person for the purposes of improving production or marketing of livestock or poultry. Such communication may include, for example, communication with extension programs or with independent veterinarians and animal health experts.

Proposed paragraph (b)(2)(v) would protect a covered producer's ability to communicate or negotiate with a regulated entity for the purposes of exploring a business relationship. A covered producer may want to seek information from a regulated entity with which they do not currently have a business relationship regarding the possibility of a future business relationship, such as entering into a contract. Protecting this activity would allow covered producers to freely compare potential business relationships and choose between several regulated entities, encouraging competition.

Finally, proposed paragraph (b)(2)(vi) would protect a covered producer's ability to support or participate as a witness in any proceeding under the Act or a proceeding that relates to an alleged violation of law by a regulated entity. Owing to the close-knit and concentrated markets in which covered producers operate, protecting some covered producers as witnesses may enable *other* covered producers to effectuate their rights under the Act and related laws. Without such protections, enforcement of the Act may be frustrated overall.

I. Recordkeeping

To help lessen these threats of retaliation, the proposed rule contains compliance systems for monitoring and facilitating compliance and change within companies. Vital to such an effort will be AMS's ability to inspect relevant records, as they may exist, such as policies and procedures, staff training and producer information materials, data and testing, board of directors' oversight materials, and other relevant materials. AMS may utilize compliance inspections, company reports to AMS, and public analyses to benchmark industry practice and improve market standards. AMS believes that its recordkeeping approach will enable it to monitor and facilitate a regulated entity's approach to compliance at the highest levels, including the tone at the top: chief executive officers and boards of directors. The tone and compliance practices set by senior executives can be expected to play a vital role in establishing a corporate culture of compliance, which is a critical defense against legal and regulatory violations and a first step towards more inclusive market practices.

Proposed paragraph (c) would ensure appropriate recordkeeping regarding compliance. It indicates certain specific records should be kept for a period of 5 years. Specifically, regulated entities would be required to retain, to the extent that they produce them, policies and procedures, staff training materials, materials informing covered producers about reporting mechanisms and protections, compliance testing, board of directors' oversight materials, and records about the number and nature of complaints received relevant to prejudice and retaliation. AMS is proposing 5 years to provide a broader ability to monitor the evolution of compliance practices over time in this area, and to ensure that records are available for what may be complex evidentiary cases.

Recordkeeping, as described in the proposed rule, is a commonly utilized regulatory compliance and monitoring mechanism among market regulators.[117] Access to these records will assist AMS in assessing the effectiveness of the regulated entity's compliance with § 201.304. Existing gaps in both generally applicable agricultural and PSD-specific data collection make addressing widespread reports of discriminatory behavior difficult. Recordkeeping is critical if AMS is to fulfill its duties to prevent and secure enforcement against undue prejudice and unjust discrimination in the relevant agricultural sector.

J. Request for Comments on Proposed § 201.304

AMS specifically invites comments on various aspects of the proposal to prohibit undue prejudices and unjust discrimination as described above. Please fully explain all views and alternative solutions or suggestions, supplying examples and data or other information to support those views where possible. Parties who wish to comment anonymously may do so by entering ''N/A'' in the fields that would identify the commenter. While comments on any aspect of the proposed rule are welcome, AMS specifically solicits comments on the following.

Undue Prejudices and Unjust Discrimination

1. Would the regulatory protections provided by the prohibition on undue prejudices for market vulnerable individuals and cooperatives, as described above, assist those producers and growers in overcoming barriers to market access or equitable and reasonable treatment, or otherwise address prejudices or the threat thereof in the marketplace? If so, why? If not, why not?

2. With respect to undue prejudices, are the proposed prohibited bases of market vulnerable individuals and cooperatives broad enough to provide appropriate flexibility and ensure equitable market access? If not, please suggest changes.

3. Should AMS delineate specific examples of groups that are market vulnerable? If so, please provide supportive evidence regarding historical adverse treatment of such groups.

4. Should AMS delineate specific forms of prejudice, such as racial, ethnic, gender, or religious prejudices, that would apply for producers who are members of the relevant group without regard to their individual qualities?

5. Is the proposed list of undue prejudices appropriately clear and inclusive—for example, is it sufficiently clear that prejudices relating to gender include sexual orientation?

6. As an alternative or in addition to the market vulnerable individual approach, should AMS prohibit discrimination based on protected classes (*i.e.,* prohibit discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political

[117] *See, e.g.,* generally, Board of Governors of the Federal Reserve System, ''Federal Trade Commission Act, Section 5: Unfair or Deceptive Acts or Practices,'' *Consumer Compliance Handbook,* available at *https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf* (last accessed June 2022).

beliefs, or gender identity)? Why or why not?

7. Should prejudices be more specifically delineated in the rulemaking to cover some or all of the bases governing non-discrimination in conducted programs as discussed in the section on specific proposed bases, and specifically: race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or gender identity? Why or why not?

8. With respect to undue prejudices, should localities be addressed in any special way, such as localities where producers or growers are underserved or otherwise face persistent challenges of equitable and reasonable market access owing to the locality or related reasons? Please provide specific examples, if possible.

9. What specific challenges or burdens may regulated entities face in complying with the undue prejudices provisions of the proposed rule? How do they differ from existing policies, procedures, and practices of regulated entities?

10. Should AMS clarify how producers and growers demonstrate qualification for the protections as market vulnerable individuals in a local market? If so, what factors should be included?

11. Are the specific prejudicial acts specified in proposed § 201.304(a)(2) appropriate? Are there additional forms of prejudicial conduct that should be specifically delineated? If so, please identify them and provide examples of how such actions have been used to target market vulnerable individuals or cooperatives.

12. Are there different types of purchase arrangements than those generally or ordinarily offered, such as forward contracts, formula contracts, other alternative marketing agreements, or cash market purchases, which could be employed in a prejudicial manner as a class of contract or in specific circumstances? If so, please identify them and provide examples of how such actions have been used to target market vulnerable individuals or cooperatives.

13. Does the undue prejudices provision provide sufficient protection regardless of the type of business organization of the covered producer? If not, please suggest specific changes.

14. Should prejudicial discrimination and retaliation provisions be extended to all persons buying or selling meat and meat food products, including poultry, in markets subject to the Act? Why or why not?

15. Does the proposed rule appropriately enable the production of religiously compliant meats? Do any concerns turn on whether the prohibited prejudices in proposed § 201.304(a)(1) are defined to include religious bases? Please explain your views and suggest specific approaches to address any concerns.

16. Do the provisions on undue prejudice adequately address concerns regarding inequitable market access for Tribal members and Tribes? If not, what additional changes should be proposed?

17. How should AMS handle Tribal government entities that sponsor or manage regulated entities? Should AMS permit compliance with proposed § 201.304(a) be substituted for compliance with Tribal government rules, policies, or guidance governing equitable market access?

18. AMS is aware of at least one private industry program aimed at establishing preferences intended to create ''a more equitable agricultural economy''—in response to ''systemic inequality''—by partnering with Black producers.[118] Were such a program (or a similar program designed to address socially inclusive supply chains) present in livestock and poultry markets, should AMS evaluate and determine that such program is an undue preference pursuant to the criteria set forth in 9 CFR 201.211? Please explain views and offer suggestions on ways to address relevant concerns.

19. Does the proposed regulation provide appropriate protection for cooperatives, in particular as the structure and organization of cooperatives vary across livestock and poultry markets? Please explain any particular concerns that should be better addressed by the proposed regulation.

20. Prejudice and other prohibited actions the agency proposes refers to offering contract terms that are less favorable than those generally or ordinarily offered. Should the agency be more specific to include differential contract terms, such as: price terms, including any base or formula price; formulas used for premiums or discounts related to grade, yield, quality, or specific characteristics of the animals or meat; the duration of the commitment to purchase or to contract for the production of animals; transportation requirements; delivery location requirements; delivery date and time requirements; terms related to who determines date of delivery; the required number of animals to be delivered; layout periods in production contracts; financing, risk-sharing, and profit-sharing; or terms related to the companies' provision of inputs or services, grower compensation, and capital investment requirements under production contracts? Please explain why or why not, and what terms the agency could add or change.

21. Should the Agency include among the prejudices, the action of offering less favorable price terms, contract terms, and other less favorable treatment in the course of business dealings than those generally offered to similarly situated producers? Should an allowance be made for legitimate business reasons? Please explain why or why not, and what terms the Agency could add or change.

Retaliation

22. Would the regulatory protections provided by the prohibition on retaliation, as described above, assist producers and growers in avoiding unjust discrimination in the market or otherwise help them access markets, obtain meaningful and accurate price discovery, or avoid anticompetitive or unjust practices or the threats thereof? If so, why; if not, why not?

23. Are the specific acts of retaliation listed in proposed § 201.304(b)(3) appropriate? Are there additional forms of retaliatory conduct that should be specifically delineated?

24. Should prohibitions on retaliation protect producers and growers who choose not to participate in protected activities? For example, should the provision prohibit the giving of any premiums or discounts with respect to joining or not joining livestock or poultry associations?

25. Are the bases of protected activities appropriate, including their nexus to the business, industry, and community, criteria for selection, and application of those criteria? Should they be broader, narrower, or different in some way? Please explain your views.

26. Should the protected activities relating to communication and cooperation, beyond government entities, be limited to USDA extension and USDA supported (grantees and cooperators) non-profit entities? Why or why not?

27. Does the proposed anti-retaliation provision provide sufficient protection regardless of the covered producer's type of business organization? If not, please suggest specific changes.

28. Should protections for exploring a business relationship be extended to such activities with any person, or

[118] Cargill's ''Black Farmer Equity Initiative'': *https://www.cargill.com/about/black-farmer-equity-initiative* (last accessed 8/9/2022).

should they be limited, as they are in the proposal, to exploring a business relationship with a regulated entity?

29. Should the proposed list of retaliatory actions include a catch-all clause, such as ''offering unfavorable contract terms that otherwise effect reprisal'' or ''offering contract terms that are less favorable than those generally or ordinarily offered''? That is, is the offering of a contract term a proper subject of retaliation? If so, should we also include a non-exclusive list of contract terms that could affect reprisal, such as price terms, including any base or formula price; formulas used for premiums or discounts related to grade, yield, quality, or specific characteristics of the animals or meat; the duration of the commitment to purchase or to contract for the production of animals; transportation requirements; delivery location requirements; delivery date and time requirements; terms related to who determines date of delivery; the required number of animals to be delivered; layout periods in production contracts; financing, risk-sharing, and profit-sharing; or terms related to the companies' provision of inputs or services, grower compensation, or capital investment requirements under production contracts? Please explain why or why not, and what terms the agency could add or change.

30. What specific challenges or burdens might regulated entities face in complying with the anti-retaliation provisions of the proposed rule? How do the proposed provisions differ from existing policies, procedures, and practices of regulated entities?

Recordkeeping

31. Are the recordkeeping obligations of the proposed regulation appropriate to permit AMS to monitor regulated entities for compliance? Why or why not, and what changes, if any, should be made?

32. Should AMS require regulated entities to produce and maintain specific policies and procedures, specific compliance practices or certifications, or specific disclosures to help ensure compliance with the undue prejudices and anti-retaliation provisions of the proposed rule? Please explain why for specific items.

33. What specific challenges or burdens might regulated entities face in complying with recordkeeping duties of the proposed rule? How do they differ from existing policies, procedures, and practices of regulated entities?

III. Deceptive Practices

AMS also proposes a new § 201.306 designed to prohibit regulated entities from specified deceptive practices in contracting. Because of the power of the regulated entities over their vertical relationships, deceptions in contracting are of considerable concern.

Similar to its broad prohibition of unjustly discriminatory practices, the Act does not specifically define the ''deceptive practices'' it prohibits in sec. 202(a). The agency's interpretation of ''deceptive practices'' here relates to trends underlying the Act's passage. At the time of the Act's passage, state common law already prohibited deceptive practices, such as fraudulent inducement of contract and misattribution of the source of goods. These are not, as the Act is not, limited to deceived and injured contracting parties, but also include deceptions that directly injure competitors. Regardless, courts were cautiously expanding common law beyond misrepresentations of source to misrepresentations concerning other characteristics or qualities of the seller's goods.[119] Likewise, in 1920—shortly before the passage of the Act—Congress passed a Federal trademark law that prohibited intentional deception regarding the origin of goods. Public Law 66–163, 41 Stat. 534 (1920). So, in 1921, the Act was one of the earliest Federal prohibitions against deceptive practices. It did not remain so for long.

Less than a decade after the passage of the Act, in 1930, the Perishable Agricultural Commodities Act followed with its prohibitions against ''deceptive practices in connection with the weighing, counting, or in any way determining the quantity of any perishable agricultural commodity received, bought, sold, shipped, or handled in interstate or foreign commerce.'' See 7 U.S.C. 499b. In 1938, the Federal Trade Commission Act was amended to declare unlawful ''deceptive acts or practices in or affecting commerce.'' Public Law 75–447, 52 Stat. 111 (1938). As observed in 1967, ''[d]eceptive trade practices victimize honest merchants as well as consumers, and impair rational allocation of economic resources.'' [120] The FTC has characterized deception as: involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances.[121]

''[I]ntegrity and ethics of those engaged in marketing livestock'' is a vital concern.[122] With respect to regulating deception, the supply of meat to the American consumer depends on a market that is safe, reliable, and *honest.*[123] Protecting the market from the harms of deception starts with protecting suppliers: producers, market agencies, dealers, and packers. To achieve a market free of deceptive practices, the Secretary has established regulations and pursued administrative and Federal enforcement cases.

In the case law and through regulations, as described below, violative deceptions under the Act include false statements or omissions that occur even before contracting that prevent or mislead sellers or buyers from making an informed decision. Thus, obvious falsehoods, such as false weighing and false accounting have always been considered deceptive practices under sec. 202(a) of the Act. Another obvious falsehood, delivering checks drawn on accounts with insufficient funds—whether for livestock or meat—is also deceptive. Moreover, the Act requires honest dealing, so misleading omissions are also prohibited. Prohibited omissions include failure to tell a business partner that the regulated entity was receiving a commission from a competitor, sales tactics that omit relevant information, or failure to have the required bond. And finally, where regulated entities have close business relationships, secret payments and bribes undermine the ability of producers and consumers to rely on an honest market and are therefore deceptive.

This proposed regulation would not be the first to prohibit deception. Current Packers and Stockyards regulations require honesty in weighing (§§ 201.49, 201.71), price reporting (§ 201.53), fees (§ 201.98), and business relationships (§ 201.67). Even in the consideration of whether termination of a contract violated the Act, AMS currently considers the quality of the communication, and therefore considers its honesty. (See § 201.217.)

Producers and consumers cannot make rational decisions in a dishonest market, and honest competitors cannot compete when regulated entities deceive. For example, if one packer is paying more for livestock by weight but is also deceptively weighing livestock to lower the total value of the livestock during processing, the honest packer

[119] Restatement (Third) of Unfair Competition sec. 2 (1995), comment b.

[120] Richard F. Dole, Jr., Merchant and Consumer Protection: The Uniform Deceptive Trade Practices Act, 76 Yale L.J. 485 (1967).

[121] Federal Trade Commission, Policy Statement on Deception, 1983, available at *https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception* (last accessed Aug. 2022).

[122] *See, e.g., Midwest Farmers* v. *United States,* 64 F. Supp. 91, 95 (D. Minn. 1945).

[123] *In re: Frosty Morn Meats, Inc.,* 7 B.R. 988, 1020 (M.D. Tenn. 1980).

must compete with that deception. On the other hand, if the weight of livestock from a packer were to be regularly more favorable, due to falsely increasing the weight, honest competitors would have to respond to a reputation that their weights are lower. A packer that fails to pay for meat promptly is not only deceiving the seller—by financing their operations using the seller's goods—but is also forcing honest meat packers to compete without financing their operations in this deceptive manner. Proposed § 201.306—Deceptive practices—would name practices and devices that AMS considers deceptive in violation of sec. 202(a) of the Act, which prohibits deceptive practices and devices by packers, swine contractors, and live poultry dealers. AMS intends that this proposed regulation would address broad areas of specific concern, but it may not exhaustively identify all deceptive practices that would violate sec. 202(a) of the Act.

As outlined extensively in the separately proposed transparency rule, poultry growers face incomplete information regarding contracting and tournaments and have complained of inaccurate information influencing their decisions to be growers or make additional capital investments. While AMS has separately proposed specific disclosures relating to transparency in poultry growing contracts and tournaments in another proposed rule, Transparency in Poultry Growing Contracting and Tournaments, 87 FR 34980 (June 8, 2022), the provisions of this proposed rule are broader. These provisions also encompass poultry growing contracting and tournaments; for example, this proposed rule would address communications by the live poultry dealer and its agents in the context of contracting or tournaments. Further, this rulemaking addresses deception in hog and cattle markets, which is not addressed in the proposed transparency rule.

The provisions of this proposed rule would also focus on general circumstances that may give rise to the provision of false or misleading information in the production or growing of poultry or livestock. Such circumstances could include where a live poultry dealer's poultry nutrition adviser provides misleading advice to a contract grower, where a swine production contract provides false information regarding manure compliance procedures, or where a packer provides false or misleading information about cash market trading in livestock.

These proposed provisions respond, in part, to the range of complaints lodged with USDA, Congress, and the media over the years regarding inaccurate, incomplete, or otherwise misleading representations or pretexts that affect the decision-making or access to markets by producers and growers of livestock and poultry. For example, packers and industry representatives have routinely indicated that producers may choose the form of pricing mechanism for their transactions. However, as cash-negotiated markets have declined, producers have increasingly complained to USDA that they are not provided such a choice, and in fact are commonly given a take-it-or-leave-it offer to buy their cattle off of a pricing formula provided by the company. Producers have complained that they have been told their cattle are not of sufficiently high quality or that formula market arrangements are necessary to incentivize such quality, but cattle procured under those marketing arrangements may not in fact be of any higher quality. This raises legitimate concerns that certain refusals to deal are based upon pretext or deception, which hinders the free flow of livestock from producer to consumer. If producers have been misled, they are hindered from organizing their operations so that they can correctly identify competitor packers that will accept their livestock or otherwise contract with them.

Poultry growers have complained over the years regarding unfavorable provision of inputs made to certain producers despite statements by live poultry dealers that there are no differences in treatment. Growers have also complained of terminations, suspensions, or reductions in flocks on the basis of pretext, such as animal welfare contractual violations, when in fact other reasons may exist for the termination, including but not limited to the discrimination and retaliation noted above, or other unreasonable bases such as a preference for family or friends of the local agent of a live poultry dealer or for a poultry grower connected to a senior executive of a live poultry dealer.[124] If misleading information in connection with a termination is provided to a bank that forecloses on the grower, this may be actionable as well by the grower who was the victim of the deception. While this would not necessarily be an undue preference or unjust discrimination, it would be covered by this deception rulemaking. Therefore, the proposed rule supports market integrity more broadly by ensuring that producers and growers can make decisions and operate in the market based on complete and accurate information.

Hog producers and growers, as well as cattle producers, have also highlighted concerns regarding preferential market access for company-owned or controlled livestock. Again, while this part of the proposed rule would not prohibit undue preferences, this deception rulemaking would establish a clearer duty on regulated entities regarding honesty and market integrity in the relationships with covered producers, including with respect to statements made regarding market access and other aspects of contracting.

The high levels of oligopsony in the local marketplaces in which many producers and growers operate today, and the extensive reliance on vertical integration, forward contracting, and long-term marking agreements, mean that producers and growers are more vulnerable to being excluded from, or to suffering adverse pricing in, the marketplace by these deceptions in contracting, if and where they may arise.

More than 100 years of history illustrate the types of conduct prohibited as deceptive by the Act, which provide a foundation for some of the specific deceptions that this proposed rule addresses. The FTC employed a similar approach when developing its policy on deceptive practices. Recognizing that there was no single definitive statement of the FTC's authority on ''deceptive acts or practices,'' it reviewed its own history of decided cases to identify the most important principles of general applicability and provide a greater sense of certainty as to how the concept of deception will be applied. The FTC's approach informs AMS in identifying and prohibiting deceptive practices. Past cases indicate that USDA's approach, generally, is to view representations, omissions, and practices from the perspective of a reasonable party receiving them and determine if those deceptions affect the conduct or decision of the recipient. As the court explained in *Gerace* v. *Utica Veal Co.,* 580 F. Supp. 1465, 1469 (N.D.N.Y. 1984), regulated entities are liable to anyone for the damages they sustain in consequence of an entity's deceptive practice, even if they are not a direct party to the transaction.

AMS believes that a substantial arc of deceptive practices in the marketplace that this specific rulemaking intends to prohibit can be organized and summarized as deceptions in contract formation, contract operation, contract cancellation, and refusals to contract.

[124] *Wheeler* v. *Pilgrim's Pride,* 536 F.3d 455 (5th Cir. 2008).

Deceptions in the contracting process present harms that cause the type of injury the Act was designed to prevent. This proposed regulation addresses these four types of deceptions.

A. Scope of Deceptive Practices Regulated

Proposed § 201.306(a), Deceptive practices, sets forth the scope of the prohibition of deceptive practices in the rest of § 201.306. The P&S Act limits the Secretary's jurisdiction to the regulated entities' operations subject to the P&S Act. Thus, the proposed regulation's scope relates to those operations with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry.

B. Deceptive Practices in the Offering or Formation of Contract

Proposed § 201.306(b) would prohibit a regulated entity from making or modifying a contract when the entity employs a pretext, false or misleading statement, or fails to state a material fact necessary to make the statement made not otherwise false or misleading. Therefore, this proposed regulation is intended to prevent deception in contract offering or formation.

Deception in the offering or formation of a contract has taken many forms through the Act's history. One example is false advertising, specifically bait and switch advertising, which occurs through advertising on price when, in fact, the customer has to pay a higher price at the point of sale. This practice is illegal under both the P&S Act and the FTC Act. In the case under the P&S Act, *In re: Larry W. Peterman, d/b/a Meat Masters,* 42 Agric. Dec. 1848 (1983), *aff'd Peterman* v. *United States Dep't of Agric,* 770 F.2d 888 (10th Cir. 1985), the packer advertised meat at a very attractive low price. Customers responded to the advertised price, only to be subjected to deceptive sales tactics, causing them to purchase higher priced meats. The advertised meat was ''so fat [the customer] could see very little red muscle tissue in it,'' causing the customer to purchase primal cuts rather than what they intended to buy because the packer represented that the fat loss and yield would be a better option. After their purchase, customers determined that they had paid significantly more than they were led to believe, and they could have paid much less even at retail grocery stores.

Under certain circumstances, failures to disclose information are also deceptive. The Act's purposes include protecting farmers and ranchers from receiving less than fair market value for their livestock and protecting consumers from unfair practices. *Solomon Valley Feedlot, Inc.* v. *Butz,* 557 F.2d 717, 718 (10th Cir. 1977). ''Among the means employed to accomplish this purpose is the use of surety bonds.'' *Id.* at 720. Sellers of livestock are entitled to the protection of a packer, dealer, or market agency's surety bond securing its obligations. Failure to maintain an adequate bond is therefore a deceptive practice.[125] When a packer fails to maintain a bond, the seller does not know that the sale is unsecured, and therefore the seller is at greater risk of nonpayment.

Deception in contract formation is not limited to false statements and omissions with respect to regulatory requirements. The Act includes affirmative duties to be truthful. For instance, a court has recognized that the P&S Act prohibits a regulated entity from negotiating using published prices it knows are inaccurate because using incorrect prices deceives the livestock seller. See *Schumacher* v. *Tyson Fresh Meats, Inc.,* 434 F.Supp.2d 748 (Dist. S.D. 2006). In *Schumacher,* the packer failed to disclose inaccurately reported boxed beef prices when it negotiated the purchase of cattle on the basis of those prices. Because the Act prohibits deceptive practices with respect to the price paid to the producer, the court found that those deceptive practices do not need to adversely affect competition to violate the Act. *Id.*

Likewise, *Bruhn's Freezer Meats of Chicago, Inc.* v. *U.S. Dept. of Agriculture,* 438 F.2d 1332 (8th Cir. 1971), affirmed that a variety of deceptions violate the Act, including short weighing, misrepresenting grades and cuts of meat, and false advertising in the selling of meat to customers. The agency's proposed regulation with respect to deceptive practices in contract formation prohibits all these types of deception.

More importantly, AMS is concerned that transparency in market transactions—reported prices, offered contracts, and long-term contracts—is inhibited by potentially deceptive practices and statements. AMS has long received complaints regarding statements that entice producers to contract to their eventual detriment. This provision would make clear that statements at the time of contract formation will be evaluated to determine if there is deception in order to prevent injury to the producers in their inception.

C. Deceptive Practices in the Operation of Contract

Proposed § 201.306(c) would prohibit a regulated entity from performing under or enforcing a contract by employing a pretext, false or misleading statement, or omission of a material fact necessary to make the statement not false or misleading.

Deceptive practices take many forms throughout the operation of a contract. USDA and the courts have recognized these forms in a variety of administrative and Federal enforcement actions, including false weighing, false or deceptive grading (including failure to disclose the formulas for determining payment), commercial bribery, and failing to pay for purchases.

False or inaccurate weighing has long been recognized as deceptive under secs. 202(a) and 312 of the Act. See *Bruhn's Freezer Meats,* 438 F.3d 1337 (8th Cir. 1971); *Solomon Valley Feedlot,* 557 F.2d at 717; *Gerace* v. *Utica Veal Co.,* 580 F. Supp. 1465, 1470 (N.D.N.Y. 1984). False weighing can occur in various ways. In some cases, the regulated entity records inaccurate weights using an improperly calibrated scale. In other cases, a regulated entity uses the scale improperly. Among examples where packers have been found to have committed this deceptive practice, in *in re: DuQuoin Packing Company, Decatur Packing Division and William S. Martin,* 41 Agric. Dec. 1367 (1982), a weigher committed a deceptive practice when he failed to properly adjust an otherwise properly working scale to a zero balance prior to weighing, which caused the scale to register less than actual weights. Weighing is ''a serious matter and one of paramount importance to the farmer, industry and consumers.'' *In re Trenton Livestock, Inc.,* 33 Agric. Dec. 499, 510 *aff'd* 510 F.2d 966 (4th Cir. 1975). Even if a regulated entity does not intentionally set out to deceive with respect to the weight of livestock, the Act does not require proof of a particularized intent. *Parchman* v. *U.S. Dep't of Agric.,* 852 F.2d 858, 864 (6th Cir. 1988) (interpreting sec. 312 of the Act). Short weighing alone is enough to be an unfair and deceptive practice under the Act, without regard to the competitive injury the short weighing causes. *Garace,* 580 F. Supp. at 1470.

False or inaccurate grading has the same effect as false weighing because deceptive grading prevents the seller from receiving the full value of their livestock or poultry. USDA's Judicial Officer found a deceptive practice when

[125] *United States* v. *Hulings,* 484 F. Supp. 562, 567 (D. Kan. 1980). *See also In Re: Mid-W. Veal Distributors,* 43 Agric. Dec. 1124, 1139–40 (1984), *citing In re: Norwich Veal and Beef, Inc.,* 38 Agric. Dec. 214 (1979), *In Re: Raskin Packing Co.,* 37 Agric. Dec. 1890, 1894–6 (1978).

a packer failed to inform hog producers of a change in the formula it used to estimate lean percent in hogs. Lean percent was one factor used in determining price when the packer purchased hogs on a carcass merit basis. USDA determined that nearly twenty thousand lots of hogs were purchased under the changed formula without notice to producers, resulting in payment of $1.8 million less than they would have received under the previous formula. *In re: Excel Corporation,* 63 Agric. Dec. 317 (2004), aff'd *Excel Corp.* v. *United States Dep't of Agric.,* 397 F.3d 1285, 1293 (10th Cir. 2005). This type of deceptive practice harms honest competitors because ''[h]ad hog producers been alerted to the change, they could have shopped their hogs to other packers.'' 397 F.3d at 1291.

Paying ''kickbacks'' and commercial bribery may occur both in the contract formation and during the operation of a contract. Whether the payment comes before or after the contract was formed, those payments are a deceptive practice. For example, in *Holiday Food Serv., Inc.* v. *Dep't of Agric.,* 820 F.2d 1103, 1105 (9th Cir. 1987), a packer paid the purchasing agents of hotels and restaurants ''kickbacks'' after they purchased meats for their principals. And, in *Nat'l Beef Packing Co.* v. *Sec'y of Agric.,* 605 F.2d 1167, 1168 (10th Cir. 1979), not only was the commercial bribery a violation of the Act, but the court also agreed with the Secretary that a packer's executives had a positive duty to inquire into the payment of commissions that served as bribes. *Id.*

Payment violations can be deceptive, especially issuance of insufficient funds checks. *E.g. In Re: Mid-W. Veal Distributors, d/b/a Nagle Packing Co., & Milton Nagle,* 43 Agric. Dec. 1124, 1140 (1984). Failing to pay for meat has also been found to be deceptive in numerous instances.[126] Under the similar language of sec. 312 of the Act, the Eighth Circuit explained that timely payment was unfair and deceptive even prior to the enactment of sec. 409 of the Act: ''Timely payment in a livestock purchase prevents the seller from being forced, in effect, to finance the transaction.'' *Van Wyk* v. *Bergland,* 570 F.2d 701, 704 (8th Cir. 1978).

The live poultry dealer's honesty is vitally important to poultry growers. Because much of the payment system relies on information that is wholly within the live poultry dealer's control, deception is particularly dangerous. The Department has received complaints regarding statements made during the operation of the contract that led producers to believe that specific terms would not be enforced, only to see the live poultry dealer implement policy changes that led to immediate changes to contracting requirements. These sorts of communications may reach the level of unlawful deception under the P&S Act, which reaches beyond common-law fraud. Likewise, for the market to function, livestock producers must be able to reasonably rely on a packer's calculation of value, and they must be able to rely on statements and accountings the packers deliver.

D. Deceptive Practices in the Termination of Contract

Proposed § 201.306(d) would prohibit regulated entities from terminating a contractortaking any otheradverse action against a covered producer by employing pretext, false or misleading statements, or omission to state a material fact necessary to make the statement not false or misleading.

AMS notes, for example, that poultry growers complain of companies terminating their broiler production contracts based on pretext or for a deceptive reason. Contract termination puts the grower at severe risk of significant economic loss. A production broiler house often has significant long-term financial obligations. The potential loss includes not only the loss of production income, but construction is often financed with mortgages on the grower's farm or family home. Pretextual cancellation may make even the sale or transfer of the broiler production house impossible because purchasers may be unable to determine if the broiler houses have value.

E. Deceptive Practices in Refusal To Deal

Proposed § 201.306(e) would prohibit the deceptive practice of providing false or misleading information to a producer, grower, or association of producers or growers concerning the regulated entity's refusal to contract. AMS proposes this ban to meet producer concerns that packers use pretext to deny access to certain livestock transactions and pretextual refusals to renew growing contracts. This proposal also supports the statutory prohibition in sec. 202(a) of the Act of unjust discrimination and the sec. 202(b) prohibition of undue preferences and prejudices. A refusal to contract may be lawful or unlawful. So, while an ordinary refusal to deal is not a violation of the Act, some refusals have unlawful purposes or effects. Group boycott, for example, has unlawful purpose and effect. See *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.,* 359 U.S. 207 (1959). Group boycott—or blanket refusal to deal—forces the boycotted party to adopt conforming trade practices, or they must quit the business entirely. *Id.* Under the P&S Act, unlawful practices have included attempts to force livestock markets to adopt terms that were favorable to the packer. See *De Jong Packing Co.* v. *U.S. Dep't of Agric.,* 618 F.2d 1329, 1336 (9th Cir. 1980). Packers may not ''exert a coercive influence upon the trade practices of third parties in order to exact more favorable terms than they could otherwise obtain.'' *Id.* Moreover, refusal to deal was firmly on the minds of the legislature when the Act passed. 61 Cong. Rec. 1861 (1921) (explaining that packers refused to bid on a load of cattle in more than one market, thereby preventing sellers from re-consigning livestock to different markets). Deceptions related to these refusals to deal may conceal other unlawful practices designed to pose barriers to entry for farmers that may wish to enter these markets.

A regulated entity that refused to contract on unlawful grounds may well choose to hide their motives with misleading or deceptive statements. This proposed regulation would recognize misleading statements in a refusal to enter into a contract as ''deceptive'' within the meaning of the Act.

F. Request for Comments on Proposed § 201.306

AMS invites comment on (1) the proposed addition of new § 201.306 to the regulations and (2) the specific proposed prohibitions on deceptive practices. Parties who wish to comment anonymously may do so by entering ''N/A'' in the fields that would identify the commenter. While comments on any aspect of the proposed new section are welcome, AMS specifically solicits comments on the following:

1. Do the proposed regulations accurately and adequately identify recurrent deceptive practices in the livestock and poultry industries? Please

[126] *See, e.g. Milton Abeles, Inc.* v. *Creekstone Farms Premium Beef, LLC,* No. 06–CV–3893(JFB)(AKT), 2009 WL 875553, at *19 (E.D.N.Y. Mar. 30, 2009) (*citing Liberty Mutual Ins. Co.* v. *Bankers Trust Co.,* 758 F.Supp. 890, 896 n. 7 (S.D.N.Y.1991); *In re FLA Packing & Provision, Inc., and C. Elliot Kane,* P & S Docket No. D–95–0062, 1997 WL 809036, at *6 n. 1 (1997); *In re: Central Packing Co., Inc. d/b/a Plat–Central Food Services Co., Inc., a/k/a Plat–Central Food Service Supply Co., and Albert Brust, an individual,* 48 Agric. Dec. 290, 297–99 (1989)); *see also In Re: Ampex Meats Corp. & Laurence B. Greenburg.,* 47 Agric. Dec. 1123, 1125 (1988) (*citing In Re: Rotches Pork Packers, Inc. & David A. Rotches.,* 46 Agric. Dec. 573, 579–80 (U.S.D.A. Apr. 13, 1987) *In Re: George Ash,* 22 Agric. Dec. 889 (1963); *In re Goldring Packing Co.,* 21 Agric. Dec. 26 (1962); *In Re: Eastern Meats, Inc.,* 21 Agric. Dec. 580 134 (1962)).

explain why or why not and explain in detail any areas of deception that may be missing.

2. Are there recurrent deceptive practices that are not adequately addressed by these regulations? Please discuss.

3. Should deception in contract refusal be governed by the categorical approach as proposed, or should it be governed by a single statement setting out one standard for contract formation, performance, and termination? Why or why not?

4. Should deception be structured instead around prohibiting the deceptive pretext, statement, or omission, rather than prohibiting the contractual activity based on the deceptive statement or omission? Why or why not?

5. Do the prohibitions against ''employing'' certain false or misleading statements, pretexts, and omissions in the formation, operation, etc., of a contract appropriately capture the importance or effect of the misleading statement (its materiality or relevance to the producer or the formation/operation/etc., of the contract)? Or should a regulated entity be prohibited from employing any pretext, false or misleading statement, or omission of material facts necessary to make a statement not false or misleading, *in connection with* making, enforcing, or cancelling contact? In either case, if not, how could AMS better approach this issue, including using elements or defenses?

6. Are there other elements, such as the reasonableness of the recipient, that AMS should explicitly consider in a rule on deception? Why or why not?

7. What specific challenges or burdens might regulated entities face in complying with the deceptive practices provisions of the proposed rule? How do they differ from existing policies, procedures, and practices of regulated entities?

8. Should AMS propose specific recordkeeping provisions relating to these deceptive practices? If so, what should they include?

9. Should AMS require that all contracts with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry be in writing? Why or why not?

10. Do the provisions on deception provide sufficiently clarity regarding deception with respect to a regulated entity's course of business dealings generally or ordinarily offered? If not, how might such a provision be structured?

11. Should a failure to continue to buy in the cash market, following a regular or dependable pattern or practice of such buying, be treated for the purposes of this proposed rule as more similar to termination of a contract, rather than as refusal to deal? Why or why not?

IV. Severability

AMS proposes to add a new § 201.390 to 9 CFR part 201 of the Packers and Stockyards regulations. This provision would ensure that if any provision of part 201 was declared invalid, or if the applicability of any of its provisions to any person or circumstances was held invalid, the validity of the remaining provisions of part 201 or their applicability to other persons or circumstances would not be affected. Such a provision is typical in AMS regulations that may cover several different topics and is proposed for addition here as a matter of housekeeping.

V. Required Regulatory Analyses

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), AMS has requested Office of Management and Budget (OMB) approval of the information collection and recordkeeping requirement of proposed § 201.304(c). AMS invites comments on this new information collection. All comments received on this information collection will be summarized and included in the final request for OMB approval. Below is detailed information on the burdens of these new information collection and recordkeeping requirements. A similar amount of detail can be found in the Regulatory Impact Analysis (RIA), as the recordkeeping costs apply to both the PRA and the RIA. Comments on this section will be considered in the final rule analysis.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of a New Information Collection.

Abstract: This rulemaking has been determined to be significant for the purposes of Executive Order (E.O.) 12866 and, therefore, has been accordingly reviewed by the Office of Management and Budget. As a required part of the regulatory process, AMS prepared an economic analysis of the costs and benefits of the proposed §§ 201.302, 201.304, 201.306, and 201.390.

In the late 1910s, Congress was concerned about the monopoly power wielded by the five large meatpackers and the consequent constraint to competition and diminished economic opportunities for rural communities, agricultural producers and small food manufacturers.[127] Congress believed the existing the Sherman Act and Federal Trade Commission Act was inadequate in its protections of agricultural producers.[128] Consequently, Congress expanded and furthered its protections of farmers and ranchers by enacting the 1921 Packers and Stockyards Act and giving the Secretary of Agriculture authority to regulate the meat packing industry.

Proposed § 201.304(a) ensures full and non-discriminatory market access for producers who would be considered vulnerable to prejudice, disadvantage, or exclusion from the marketplace. The provision would also prohibit undue prejudices and disadvantages based upon the status of the covered producer as a cooperative. Proposed § 201.304(b) would address retaliation by setting out protected activities that a covered producer may engage in but that a regulated entity may not use as grounds for unjust discrimination or undue prejudice.

Proposed § 201.304(c)(1) would require live poultry dealers, swine contractors, and packers to incur recordkeeping costs by requiring regulated entities to retain all relevant records relating to their compliance with proposed § 201.304(a) and (b) for no less than 5 years. AMS is proposing this information collection and recordkeeping requirement to assist in evaluating compliance with proposed § 201.304 and to facilitate investigations and enforcements based on producer and grower complaints. Costs of recordkeeping include maintaining and updating records by regulated entities as will be discussed and quantified below.

Proposed § 201.304(c)(2) lists records that may be relevant and that must be retained if they exist. Specifically, regulated entities would be required to retain records relating to policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, board of directors' oversight materials, and the number and nature of complaints received relevant to proposed § 201.304.

The information collection and recordkeeping requirement in this

[127] *See* 61 Cong. Rec. 1860 (1921) (House Floor Debate).

[128] *See,* Shively, J. and Roberts, J., ''Competition Under the Packers and Stockyards Act: What Now?'' 15 Drake Journal of Agricultural Law 419, 422–423 (2010); and Current Legislation, 22 Columbia Law Review 68, 69 (1922).

request may be valuable in reducing instances of undue prejudices, discrimination, and retaliation in the livestock and poultry industries, in accordance with the purposes of the P&S Act, 1921. The information collection request and recordkeeping requirement may also bolster AMS's ability to review the records of regulated entities during compliance reviews and investigations based on complaints of undue prejudices, discrimination, and retaliation in the livestock and poultry industries.

Live Poultry Dealer, Swine Contractor, and Packer Recordkeeping Costs

Estimate of Burden: Public reporting burden for maintaining records for this information collection is estimated to average 4.25 hours per response in the first year, and 3.50 hours thereafter.

Respondents: Live poultry dealers, swine contractors, and packers

Estimated Number of Respondents: 1,026

Estimated Total Annual Burden on Respondents: 4,361 hours in the first year and 3,591 hours thereafter.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection and Recordkeeping Costs of Proposed § 201.304(c)

Costs to comply with the proposed recordkeeping are likely relatively low. Proposed § 201.304(c), requires certain specific records that, if the regulated entity maintains, should be kept for a period of five years, including policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, board of directors' oversight materials, and the number and nature of unduly prejudicial or discrimination-based complaints received relevant to proposed § 201.304(a) and (b).

Costs of recordkeeping include regulated entities maintaining and updating compliance records. From the perspective of the regulated entity, recordkeeping is a direct cost. Some smaller regulated entities that currently don't maintain records, may voluntarily decide to develop formal policies, procedures, training, etc., to comply with the rulemaking and would then have records to maintain.

AMS expects the recordkeeping costs would be comprised of the time required by regulated entities to store and maintain records. AMS expects that the costs will be relatively small because some packers, live poultry dealers, and swine contractors may currently have few records concerning policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, board of directors' oversight materials, and the number and nature of complaints received related to prejudicial and discriminatory treatment. Some firms might not have any records to store. Others already store the records and may have no new costs.

The amount of time required to keep records were estimated by AMS subject matter experts. These experts were economists and supervisors with many years of experience in AMS's PSD conducting investigations and compliance reviews of regulated entities. AMS used the May 2020 U.S. Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics for the time values in this analysis.[129] BLS estimated an average hourly wage for general and operations managers in animal slaughtering and processing to be $65.84. The average hourly wage for lawyers in food manufacturing was $80.39. In applying the cost estimates, AMS marked-up the wages by 41.56 percent to account for fringe benefits.

AMS expects that recordkeeping costs would be correlated with the size of the firms. AMS ranked packers, live poultry dealers, and swine contractors by size and grouped them into quartiles, estimating more recordkeeping time for the largest entities in the first quartile than for the smallest entities in the fourth quartile. The first quartile contains the largest 25 percent of entities, and the fourth quartile contains the smallest 25 percent of entities. AMS estimated that proposed § 201.304(c) would require an average of 4.00 hours of administrative assistant time, 1.50 hours of time each from managers, attorneys, and information technology staff for packers, live poultry dealers, and swine contractors in the first quartile to setup and maintain the required records in the first year. AMS expects the packers, live poultry dealers, and swine contractors in the second quartile would require an average of 2.00 hours of administrative assistant time, 0.75 hours of time each from managers, attorneys, and information technology staff for first year costs. The third quartile would require 1.33 hours of administrative assistant time, 0.50 hours of time each from managers, attorneys, and information technology staff for first year costs, and the fourth quartile would require 0.67 hours of administrative assistant time, 0.25 hours of time each from managers, attorneys, and information technology staff.

AMS also expects that packers, live poultry dealers, and swine contractors will incur continuing recordkeeping costs in each successive year. AMS estimated that proposed § 201.304(c) would require an average of 3.00 hours of administrative assistant time, 1.50 hours of time each from managers, attorneys, and 1.00 hour of time from information technology staff for packers, live poultry dealers, and swine contractors in the largest quartile to setup and maintain the required records in each succeeding year. AMS expects that packers, live poultry dealers, and swine contractors in the second quartile would require an average of 1.50 hours of administrative assistant time, 0.75 hours of time each from managers, attorneys, and 0.50 hours of time from information technology staff in each succeeding year. The third quartile would require 1.00 hour of administrative assistant time, 0.50 hours of time each from managers, attorneys, and 0.33 hours of time from information technology staff in each succeeding year, and the smallest quartile would require 0.50 hours of administrative assistant time, 0.25 hours of time each from managers, and attorneys, and 0.17 hours from information technology staff.

Estimated first-year costs for recordkeeping requirements in proposed § 201.304(c) totaled $26,000 for live poultry dealers,[130] $170,000 for swine contractors,[131] and $107,000 for

[129] Estimates are available at U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, available at *https://www.bls.gov/oes/special.requests/oesm20all.zip* (accessed 8/9/2022).

[130] 89 live poultry dealers x ($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manger cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours))/4 = $26,390.

[131] 575 swine contractors × ($39.69 per hour admin. cost ×(4 hours + 2 hours + 1.33 hours + .67

packers.[132] Estimated yearly continuing costs for recordkeeping requirements in § 201.304(c) totaled $23,000 for live poultry dealers,[133] $147,000 for swine contractors,[134] and $93,000 for packers.[135]

Breaking out costs by market, AMS expects recordkeeping requirements in proposed § 201.304(c) to cost beef packers $47,000 in the first year and $41,000 in each following year. Proposed § 201.304(c) would cost lamb packers $21,000 in the first year and $18,000 in successive years. Proposed § 201.304(c) would cost pork packers $39,000, and it would cost swine contractors $170,000 for a total of $209,000 in the first year. Proposed § 201.304(c) would cost swine contractors $147,000 in successive years, and it would cost pork packers $33,000 for a total $180,000.

Executive Order 12866 and the Regulatory Flexibility Act

This rulemaking has been determined to be significant for the purposes of E.O. 12866 and, therefore, has accordingly reviewed by the Office of Management and Budget. As a required part of the regulatory process, AMS prepared an economic analysis of the costs and benefits of the proposed §§ 201.302, 201.304, 201.306, and 201.390. This regulatory filing is comprised of definitions in § 201.302, specific prohibited discriminatory and unduly prejudicial practices in § 201.304, specific prohibited deceptive practices in § 201.306, and a statement of severability among the provisions in § 201.390. The definitions in § 201.302 of a covered producer, market vulnerable individual, livestock producer, and regulated entity would apply to proposed §§ 201.304 and 201.306, and the regulatory impacts of the definitions are captured in the regulatory impacts of §§ 201.304 and 201.306, which are highlighted in this analysis.

The statement of severability in proposed § 201.390 has no quantified regulatory impact, as it only serves to ensure that if any provision of § 201.302, § 201.304, or § 201.306 is declared invalid or the applicability to any person or circumstance is invalid, the remainder of the provisions would remain valid.

Proposed § 201.304 would provide notice to the industry regarding unduly prejudicial and discriminatory practices that are prohibited and if they occur would be a violation of sec. 202(a) of the P&S Act. Practices that would be prohibited as unduly prejudicial and discriminatory under proposed § 201.304(a) include prejudice, disadvantage, or discrimination that otherwise inhibits market access to a covered producer with respect to livestock, poultry, meats, and meat food products based on a covered producer's status as a market vulnerable individual or as a cooperative. Examples of prejudice or disadvantage are included in proposed § 201.304(a)(3) and include offering less favorable contract terms than those generally offered, refusing to deal, or adversely differential performance, enforcement, or termination of contracts.

Proposed § 201.304(b)(1) prohibits retaliation or otherwise taking an adverse action against a covered producer because of the covered producer's participation in certain activities described in § 201.304(b)(2). Proposed § 201.304(b)(2)(i)-(vi) list activities that are protected under § 201.304(b)(1). A covered producer that communicates with a government agency, or petitions a court, legislature, or government agency for redress of grievances is protected from retaliation with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry. A covered producer who asserts rights granted under the P&S Act, contract rights, or rights to form or join a producer or grower association to collectively market livestock or poultry would also be protected from retaliation. Additionally, covered producers would be protected from retaliation if they communicate or cooperate with a person for purposes of improving production or marketing of livestock or poultry, negotiate with a regulated entity for purposes of exploring a business relationship, or support or participate as a witness in any proceeding under the P&S Act or a proceeding that relates to an alleged violation of law by a regulated entity.

Proposed § 201.306(a) would provide notice to the industry regarding specific deceptive practices in which a regulated entity may not engage with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry. Proposed § 201.306(b)-(e) would prohibit deceptive practices in contract formation, contract performance, contract termination, and contract refusal with respect to livestock and meats and lists specific practices that would constitute a violation of sec. 202(a) of the P&S Act. The prohibited deceptive practices include making or modifying a contract, performing under or enforcing a contract, terminating a contract, or refusing to contract with a covered producer based on pretext, omission of material facts, or false or misleading statements.

Proposed § 201.390 would ensure that if any provision of § 201.302, § 201.304, or § 201.306 is declared invalid or the applicability to any person or circumstance is invalid, the remainder of the provision would remain valid.

Protecting rights in contracting is an important feature of both proposed §§ 201.304 and 201.306. Proposed § 201.304 prohibits retaliation by regulated entities through termination of contracts, non-renewal of contracts, refusing to deal, and interference in farm real estate contracts as unduly prejudicial and discriminatory practices. Proposed § 201.306 prohibits deceptive practices by regulated entities in contracting with covered producers including making or modifying a contract, performing under or enforcing a contract, terminating a contract, or refusing to contract with a covered producer based on pretext, false or misleading statements, or omission of material facts. A discussion of contracting in these industries is, therefore, useful in explaining the need for these additional regulations. As will be seen in the next three tables below defining market shares of regulated entities and the discussion that follows, the unduly prejudicial, discriminatory, and deceptive practices, including retaliation, that proposed §§ 201.304 and 201.306 would prohibit are partially attributable to the structure of the livestock and poultry industries, the imbalance of market power between

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hours)) + ($93.20 per hour manger cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + (113.80 legal cost ×(1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours))/4 = $170,496.

[132] 362 packers × ($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manger cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours))/4 = $107,338.

[133] 89 live poultry dealers ×($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manger cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + $82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours))/ 4 = $22,788.

[134] 575 swine contractors × ($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manger cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + $82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours))/ 4 = $147,225.

[135] 362 packers × ($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manger cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours))/4 = $92,688.

regulated entities, producers, growers, and the potential market failure of asymmetrical information, which, along with imperfect competition, contributes to hold-up.

Prevalence of Contracting in Cattle, Hog, and Poultry Industries

Growing, production, and marketing contracts feature prominently in the livestock and poultry industries. As outlined above, several provisions in proposed §§ 201.304 and 201.306 would affect the process of making, enforcing, and terminating contracts for livestock, poultry, and meat grown or marketed under contract.

The type of contracting varies among cattle, hogs, and poultry. Broilers, the largest segment of poultry, are almost exclusively grown under production contracts, in which the live poultry dealers, a regulated entity, own the birds and provide poultry growers with feed and medication to raise and care for the birds until they reach the desired market size. Poultry growers provide the housing, the skill and efforts of labor, water, electricity, fuel, and provide for waste removal. Fed cattle marketing contracts typically take the form of marketing agreements as discussed below. Hog production falls between these two extremes.

As shown in the table below, over 96 percent of all broilers and over 42 percent of all hogs are grown under contractual arrangements. Similar to poultry contracts, swine contractors typically own the slaughter hogs and sell the finished hogs to pork packers. The swine contractors typically provide feed and medication to the swine production contract growers who own the growing facilities and provide growing services. The following table shows that the percentage of contract growing arrangements by species has remained relatively stable between 2007 and 2017.

TABLE 4—PERCENTAGE OF POULTRY AND HOG RAISED AND DELIVERED UNDER PRODUCTION CONTRACTS [136]

Species	2007	2012	2017
Broilers	96.5	96.4	96.3
Turkeys	67.7	68.5	69.5
Hogs	43.3	43.5	42.4

Other types of contracts include marketing agreements and forward contracts. Under marketing agreements, livestock producers market their livestock to a packer for slaughter under a verbal or written agreement. Under forward contracts, producers and packers agree to terms on a future sale and purchase of livestock. These types of agreements and contracts are commonly referred to as Alternative Marketing Arrangements (AMAs). Pricing mechanisms vary across AMAs. Some AMAs rely on a reported spot, or negotiated, market price or exchange-based futures price for at least one aspect of its price, while others involve complicated pricing formulas with premiums and discounts based on carcass merits. The livestock producer and packer agree on a pricing mechanism under AMAs, but usually not on a specific price.

AMS reports the number of cattle sold to packers under formula, forward contract, and negotiated pricing mechanisms. The following table illustrates the prevalence of contracting in the marketing of fed cattle. Formula pricing methods and forward contracts are two forms of AMA contracts. Thus, the first two columns in the following table are cattle marketed under contract and the third column represents the spot market, or negotiated market, for fed cattle including negotiated grid. The data in the below table show that the AMA contracting of cattle has increased since 2010. Approximately 55 percent of fed cattle were marketed under contracts in 2010. By 2021, the percentage of fed cattle marketed to packers under AMA contracts had increased to just over 72 percent. These data also show the declines in the percentage of cattle sold on the spot market from 45.6 in 2010 to 27.6 in 2021.

TABLE 5—PERCENTAGE OF FED CATTLE SOLD BY TYPE OF PURCHASE [137]

Year	Formula	Forward contract	Negotiated
2010	44.9	9.5	45.6
2011	48.4	10.9	40.7
2012	54.7	11.4	33.8
2013	60.0	10.2	29.8
2014	58.1	14.2	27.6
2015	58.2	16.5	25.3
2016	58.2	12.0	29.8
2017	58.7	11.4	29.9
2018	62.0	8.8	29.2
2019	65.7	9.8	24.4
2020	64.1	9.0	27.0
2021	61.5	10.9	27.6

As previously discussed, and illustrated in Table 4 above, over 40 percent of hogs are grown under production contracts. These hogs are then sold by swine contractors or to other contract production growers to packers under marketing contracts.

[136] Agricultural Census, 2012 and 2017, available at *https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf* (last accessed 8/9/2022).

[137] U.S. Department of Agriculture, Agricultural Marketing Service, available at: *https://mpr.datamart.ams.usda.gov/menu.do?path=Products\Cattle\Weekly%20Cattle* (last accessed Aug. 2022).

As can be seen in the below table, the percentage of hogs sold under marketing contracts has increased since 2010 to over 98 percent in 2020. The spot market for hogs has declined from 5.2 percent in 2010 to 1.5 percent in 2020. As these data demonstrate, almost all hogs are marketed to packers under some type of marketing contract.

TABLE 6—PERCENTAGE OF HOGS SOLD BY TYPE OF PURCHASE [138]

Year	Other marketing arrangements [139]	Formula [140]	Negotiated
2010	45.4	49.4	5.2
2011	47.6	48.2	4.2
2012	47.7	48.6	3.6
2013	48.3	48.4	3.2
2014	45.9	51.4	2.7
2015	46.0	51.4	2.6
2016	50.0	47.6	2.5
2017	52.5	45.0	2.5
2018	56.5	41.3	2.2
2019	59.8	38.4	1.8
2020	61.3	37.1	1.5

Structural Issues in the Cattle, Hog, and Poultry Industries

The livestock and poultry industries are characterized by a high volume of growing, production, and marketing contracts. High volume of this type of contracting, coupled with high levels of market concentration, may increase the risk for anticompetitive behaviors of undue prejudice and discrimination, retaliation, and deception by regulated entities, which can harm market vulnerable producers.

Despite various policy and public concerns with contracting, growing, production, and marketing contracts can offer certain benefits to the contracting parties. Properly tailored, benefits can include helping farmers, livestock producers, and processors manage price and production risks, elicit the production of products with specific quality attributes by tying prices to those attributes, and facilitate the smooth flow of commodities to processing plants. Such attributes may encourage certain efficiencies in use of farm and processing capacities. Quality-related attributes and standards can incentivize farmers to deliver products that consumers desire and produce products in ways that reduce processing costs.[141]

There are, however, trade-offs with the use of these contracts. In concentrated industries, like the cattle, hog, and poultry industries, where market power is present, these types of contracts may result in increased opportunities for undue prejudices and discrimination, retaliation, and deception, among other concerns, which cause inefficiencies in the markets for livestock, poultry, and meat.[142] Heightened market concentration implies that livestock producers and poultry growers face fewer marketing and contract options compared to less concentrated markets. Livestock producers and poultry growers may find themselves in a take-it-or-leave it situation when a new or renewal contract is presented due to a limited number of packers and live poultry dealers with which to contract. Thus, livestock producers and poultry dealers entering into new or renewal contracts may be taken advantage of through discriminatory, deceptive, or retaliatory practices.

Livestock and poultry contracts may hold producers and growers captive, due to limited number of packers and live poultry dealers and therefore susceptible to unjust, prejudicial and retaliatory practices. For example, a contract that limits a poultry grower's services to a single integrator, even if the contract provides for fair compensation to the grower, still leaves the grower subject to retaliation risks. The grower may face the hold-up risk that the contractor may require additional capital investments or may face retaliation, when the contractor imposes lower returns at the time of contract renewal.[143] Some growers make substantial long-term capital investments as part of livestock or poultry production contracts, including land, poultry or hog houses, and equipment. Those investments may tie the grower to a single contractor or integrator, furthering the indebtedness, and thus also imbalance of power.

In the poultry industry, limited integrator choice may accentuate contract risks. The data in Table 3 above show that 52 percent of broiler growers, accounting for 56 percent of total production, report having only one or two integrators in their local areas. Even where multiple growers are present, there are high costs to switching, owing to the differences in technical specifications that integrators require. The growers likely need to invest in new equipment and learn to apply different operational techniques due to different breeds, target weights and grow-out cycles.

[138] U.S. Department of Agriculture, Agricultural Marketing Service, available at: *https://mpr.datamart.ams.usda.gov/menu.do?path=\Products* (last accessed Aug. 2022).

[139] Includes Packer Owned and Packer Sold, and Other Purchase Arrangements.

[140] Includes Swine Pork Market Formula, and Other Market Formula.

[141] RTI International, 2007, GIPSA Livestock and Meat Marketing Study, Prepared for USDA, GIPSA; Stephen R. Koontz, ''Another Look at Alternative Marketing Arrangement Use by the Cattle and Beef Industry,'' in Bart Fischer et al., ''The U.S. Beef Supply Chain: Issues and Challenges Proceedings of a Workshop on Cattle Markets,'' 2021. But see C. Robert Taylor, ''Market Structure of the Livestock Industry,'' Testimony before the House Committee of Agriculture, April 16, 2007, available at *https://www.iatp.org/documents/c-robert-taylor-testimony-market-structure-of-the-livestock-industry;* 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/(contesting quality incentives delivered through these agreements).*

[142] Nathan H. Miller, *et al.,* ''Buyer Power in the Beef Packing Industry: An Update on Research in Progress,'' April 13, 2022, available at *http://www.nathanhmiller.org/cattlemarkets.pdf.* See also 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/.*

[143] *See* Vukina and Leegomonchai, ''Oligopsony Power, Asset Specificity, and Hold-Up: Evidence From The Broiler Industry,'' *American Journal of Agricultural Economics,* 88(3): 589–605 (August 2006).

In 2013, production contracts covered $58 billion in agricultural production, 83 percent of which was poultry and hog contracts.[144] Most hogs are produced and marketed under production and marketing contracts. Open market negotiated trade represented 9 percent of total trades for hogs in 2008 and dropped to 2 percent in 2020.[145] In effect, the only production/marketing choice for a hog producer is to enter a contract.

In the cattle sector, cow-calf operations incur a significant investment in breeding stock and typically sell steers and heifers once a year. Price risk can therefore rise from the months-long production process.[146] Access to competitive markets, absent from discrimination, undue prejudice, and retaliation, is important to the economic livelihood of vulnerable producers. Reduced marketing options—fewer options to sell on the spot market, or lack of access to contracts—can leave producers susceptible to unfair trade practices. Spot market trades, or negotiated trades, as opposed to marketing agreements or contracts, for fed cattle accounted for 51 percent of all trades in 2008 and fell to 27 percent in 2020.[147]

A 2006 survey indicated that growers with access to a single integrator received 7 to 8 percent less compensation, on average, than farmers located in areas with 4 or more integrators.[148] If live poultry dealers already possess some market power to reduce prices for poultry growing services, some contracts can extend that power by raising the costs of entry for new competitors or allowing for price discrimination.[149]

One indication of potential market power is industry concentration.[150] Table 2 presented earlier, shows the level of concentration in the livestock and poultry slaughtering industries for 2010–2020. The table shows the combined market share of the four largest steer and heifer slaughterers remained stable between 83 and 85 percent from 2010 to 2019 and dropped to 81 percent in 2020. Four-firm concentration ratios for hog and broiler slaughter has also remained relatively stable between 62 and 70 percent and 51 and 54 percent, respectively.

As discussed previously, the data in Table 2 are estimates of national four-firm concentration ratios at the national level, but the relevant economic markets for livestock and poultry may be regional or local, and concentration in the relevant market may be higher than the national level. For example, while poultry markets may appear to be the least concentrated in terms of the four-firm concentration ratios presented above, relevant economic markets for poultry growing services are more localized than markets for fed cattle or hogs, and local concentration in poultry markets is often greater than in hog and other livestock markets. The data presented earlier in Table 3 highlights this issue by showing the limited ability a poultry grower has to switch to a different integrator. As a result, national concentration may not demonstrate accurately the options poultry growers in a particular region face.

The levels of industry concentration shown in Tables 2 and 3 may contribute to oligopolistic market power and asymmetric information. The result is that the contracts bargained between the parties may leave livestock producers, swine production contract growers, and poultry growers vulnerable to detrimental risks of anticompetitive conduct such as prejudice and discrimination, retaliation, and deception due to the structural issues discussed above and may result in inefficiencies in the marketplace.

Asymmetric Information

There is asymmetry in the information available to livestock producers and livestock and poultry growers and the packers, swine contractors, and live poultry dealers with whom they contract. The larger packers, swine contractors, and live poultry dealers generally have more information (costs of production, input quality, and consumer demand, for example) that is useful in contracting than the smaller livestock producers and livestock and poultry growers. This asymmetry of information can lead to deceptive practices by regulated entities with superior information in making or modifying production, marketing, or growing contracts, performing under, enforcing, or terminating these contracts, or refusing to contract with a covered producer based on pretext, omission of information, or false or misleading statements.

Some marketing contracts for fed cattle, for example, use various plant averages in the calculation for the base price of the cattle in the marketing contract. Only the packer has the information about the plant averages and producers cannot independently verify the information. Similar issues exist in hog marketing contracts. For contracts based on the pork cutout, the hog packer has more information about the direct retail pork demand and hence pork cutout prices than hog sellers.

Asymmetric information is particularly acute in all contracts between poultry growers and live poultry dealers. Live poultry dealers hold information on how individual poultry growers perform under a variety of contracts. The average number of contracts for the live poultry dealers filing annual reports with AMS in 2020 was 251. The largest live poultry dealers contracted with several thousand growers.[151] Most growers producing poultry under production contracts are paid under a poultry grower ranking or ''tournament'' pay system. Under tournament systems, the contract between the poultry grower and the company for whom the grower raises poultry for slaughter pays the grower based on a grouping, ranking, or comparison of poultry growers delivering poultry to the same company during a specified period. Generally, live poultry dealers provide most of the inputs to all the growers in each poultry tournament used to determine grower pay. In these tournaments, the live poultry dealers have information about the quality of the inputs, while each grower only knows what he or she can observe. Due to a lack of scales and tools to evaluate feed quality, a grower may not be able to weigh, measure or evaluate the inputs it received such as chicks and feed, and he or she almost

[144] MacDonald, J.M. ''Trends in Agricultural Contracts.'' Choices. 2015. Quarter 3. Available at *https://www.choicesmagazine.org/choices-magazine/theme-articles/current-issues-in-agricultural-contracts/trends-in-agricultural-contracts,* accessed 9–19–22.

[145] USDA, AMS, FTPP, Packers and Stockyards Division. Packer Annual Reports, 2021 and 2012. Available at *https://www.ams.usda.gov/reports/psd-annual-reports,* accessed 9–19–22.

[146] Martinez, C.C., Maples, J.G. and Benavidez, J. Beef Cattle Markets and COVID–19. Applied Economics Perspectives and Policy, (2021) 43: 304–314. Available at *https://doi.org/10.1002/aepp.13080,* accessed 9/19/22.

[147] USDA, AMS, FTPP, Packers and Stockyards Division. Packer Annual Reports, 2021 and 2012. Available at *https://www.ams.usda.gov/reports/psd-annual-reports,* accessed 9–19–22.

[148] MacDonald, J. and N. Key. ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey.'' *Journal of Agricultural and Applied Economics.* 44(4) (November 2012): 477–490.

[149] *See, e.g.,* Williamson, Oliver E. ''Markets and Hierarchies: Analysis and Antitrust Implications,'' *New York: The Free Press* (1975); Edlin, Aaron S. & Stefan Reichelstein (1996) ''Holdups, Standard Breach Remedies, and Optimal Investment,'' *The American Economic Review* 86(3): 478- 501 (June 1996).

[150] For additional discussion see MacDonald, J.M. 2016 ''Concentration, contracting, and competition policy in U.S. agribusiness,'' *Competition Law Review,* No. 1–2016: 3–8.

[151] 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.*

certainly will not know about the inputs received by other growers. Live poultry dealers also have historical information concerning growers' production and income under many different circumstances for all the growers with which it contracts, while an individual grower, like most other producers, only has information concerning his or her own production and income. Prohibiting deception may serve to reduce the negative impacts from asymmetric information. Prohibiting retaliation against producers or growers because they joined a cooperative or association, shared information to improve their production or growing practices, or communicated with the government should lead to reducing the information asymmetry between regulated entities and producers and growers.

Hold-Up Risk

Hold-up is another risk that is particularly acute in the service contracts between poultry growers and live poultry dealers. Hold-up is far less of a risk for hog and cattle producers, so the discussion here is limited to poultry growing to highlight this risk to poultry growers. Substantial gaps exist between the periods of time covered by the contract and the mortgage on poultry housing, creating uncertainty around whether growers will be able to repay their debt and recoup their investments, introducing hold-up risk into the contracting process. As discussed in the preamble, hold-up is the risk growers face at the time of contract renewal when integrators make contract renewal dependent on further grower investments not disclosed at the time of the original agreements.[152]

This is of concern in poultry production contracts because the capital requirements related to growing chickens are significant and highly specialized (that is, they have little value outside of growing chickens). As a result, growers entering the market are tied to growing chickens to pay off the financing of the capital investment. Growers have reported that they must accept unfavorable contract terms or endure unfavorable treatment during a contract—including inappropriate limits on their ability to form associations, assert their rights under the law or contract (such as viewing the weighing of broilers), communicate with government entities, and seek alternative business relationships—because they are tied to production to pay off lenders and they have few, if any, alternative integrators with whom they can contract. Hog producers which invest heavily in production facilities face may similar risks.

Long term, this behavior may result in underinvestment in production, which is inefficient. Alternatively, if growers do not anticipate hold-up, then growers may spend too much on investments because the integrator who demands them is not incurring any cost. The resulting over-investment in capital by those growers facing hold-up is also inefficient. Hold-up risk is a manifestation of both market power and asymmetric information.

Hold-up risk can be alleviated with a prohibition on retaliation for certain protected activities that enhance the competitive environment and market integrity, as well as a prohibition on deception and the accompanying reduction in asymmetric information. Increased information to growers by allowing growers to freely communicate and share information without fear of retaliation would allow growers to be make more informed decision about the efficient level of capital in which to invest.

Contracting, Industry Structure, and Market Failure: Summary of the Need for Regulation

Growing, production, and marketing contracts benefit the livestock and poultry industries. Existing structural issues may result in imperfect competition, risks of undue prejudice and discrimination, retaliation, deception, unequal bargaining power, and information asymmetries, potentially increasing hold-up risk.

USDA's long-standing policy has been that the P&S Act prohibits the type of conduct that this proposed rule addresses.[153] Sections 201.304 and 201.306 will serve to fill-in gaps where other Federal and state statutes, not specific to the agricultural sector, overlap and fail to provide full protections. Proposed § 201.304 would prohibit packers, swine contractors, and live poultry dealers from unduly discriminating and employing undue prejudices against market vulnerable producers and cooperatives.

Proposed § 201.304 would also prohibit retaliation including termination of contracts, refusing to deal, refusing to renew a contract, and interference in farm real estate transactions or contracts with third parties. Retaliation would only be effective if producers and growers had a small number of packers and live poultry dealers to market their livestock or growing services. If producers and growers had lots of choices among packers and live poultry dealers, producers and growers would simply market their livestock or growing services to a different packer or live poultry dealer if they were being retaliated against. Thus, retaliation is more likely to occur in markets with imperfect competition and an oligopsonistic structure, such as the cattle, hog, and poultry markets. This clear statement regarding prohibitions on retaliation could reduce instances of retaliation against livestock producers and livestock and poultry growers.

Proposed § 201.304 would also protect various activities that would allow covered producers to freely communicate with each other and governmental entities. To establish a climate of compliance, regulated entities would be required to maintain all relevant records in compliance with proposed § 201.304.

Proposed § 201.306 would prohibit packers, swine contractors, and live poultry dealers from employing deceptive practices against producers and growers in forming, performing, and terminating contracts and refusing to contract based on false or misleading information.

By setting forth specific prohibitions on unduly prejudicial and discriminatory and deceptive practices, the proposed rule would reinforce producers' and growers' existing rights to gather and share information, while reducing the fear of retaliation and interference in the contracting process. The prohibitions in the proposed rule would also continue to support, and possibly promote more efficient and equitable reducing information asymmetries and hold-up risk, reducing retaliation, pretext, false and misleading information, and increasing communication, cooperation, and retention of legal rights. The prohibitions specified in proposed §§ 201.304 and 201.306 would ultimately assist in mitigating the impacts of imperfect competition.

[152] Vukina, Tom, and Porametr Leegomonchai. ''Oligopsony Power, Asset Specificity, and Hold-Up: Evidence from the Broiler Industry.'' *American Journal of Agricultural Economics* 88 (2006).

[153] Agricultural Marketing Service, USDA, ''Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act,'' Final Rule, December 11, 2020, 85 FR 79779, 79787, available at *https://www.federalregister.gov/documents/2020/12/11/2020-27117/undue-and-unreasonable-preferences-and-advantages-under-the-packers-and-stockyards-act;* Agricultural Marketing Service, USDA, ''Frequently Asked Questions on the Enforcement of Undue and Unreasonable Preferences under the Packers and Stockyards Act,'' August 2021, available at *https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/faq* (last accessed Aug. 2022).

Cost-Benefit Analysis of Proposed §§ 201.304 and 201.306

Regulatory Alternatives Considered

Executive Order 12866 requires an assessment of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulations and an explanation of why the planned regulatory action is preferable to the potential alternatives.[154] AMS considered three regulatory alternatives. The first alternative that AMS considered is to maintain the *status quo* and not propose §§ 201.304 and 201.306. The second alternative that AMS considered is to issue proposed §§ 201.304 and 201.306 as presented in this proposed rule.[155] This second alternative is AMS's preferred alternative as will be explained below. The third alternative that AMS considered is proposing §§ 201.304 and 201.306, but exempting small businesses, as defined by the Small Business Administration (SBA), from having to comply with the recordkeeping requirement of § 201.304(c).

Regulatory Alternative 1: Status Quo Alternative

If proposed §§ 201.304 and 201.306 are never promulgated, there are no marginal costs and marginal benefits as industry participants will not alter their conduct. From a cost standpoint, this Status Quo Alternative is the least-cost alternative compared to the other two alternatives. This alternative also has no marginal benefits. Since there are no changes from the *status quo* under this regulatory alternative, it will serve as the baseline against which to measure the other two alternatives.

Regulatory Alternative 2: The Proposed Alternative

As discussed above, proposed § 201.304 prohibits undue prejudice, discrimination, and retaliation by regulated entities and adds a requirement for regulated entities to maintain records, for a period of five years, related to its compliance with proposed § 201.304. Proposed § 201.306 would prohibit deceptive practices by regulated entities in contracting with covered producers including making or modifying a contract, performing under or enforcing a contract, terminating a contract, or refusing to contract with a covered producer based on pretext, omission of information, or false or misleading statements.

Regulatory Alternative 2: Benefits of the Proposed Alternative

Reductions in prejudicial, discriminatory, retaliatory, and deceptive practices by packers, swine contractors, and live poultry dealers would benefit livestock and poultry producers and growers. These types of anticompetitive conduct do not have procompetitive benefits and are generally conduct that occurs outside of written contracts. Retaliation, for example, is not written into a contract, but can occur by a packer terminating a contract based on pretext if a livestock producer takes an action for which a packer disapproves, such as joining a producer group that the packer denounces. There need not be any changes to the contracting process or changes in the use of marketing, production, or growing arrangements for producers and growers to receive benefits. Any reductions in prejudicial, discriminatory, retaliatory, and deceptive practices by packers, swine contractors, and live poultry dealers would benefits producers and growers. The amount of benefits that would be received by producers and growers depends on the extent to which the proposed rule reduces prejudicial, discriminatory, retaliatory, and deceptive practices. That, in turn, is bounded by the degree to which any of these types of activities are occurring in the baseline. The following discussion is about the types of benefits that producers and growers would receive from a reduction in prejudicial, discriminatory, retaliatory, and deceptive practices by packers, swine contractors, and live poultry dealers. If the reductions are small, the benefits would be small. The greater the reductions, the greater the potential benefits.

AMS discusses the potential benefits to livestock producers and growers from the Proposed Alternative (proposed §§ 201.304 and 201.306) compared to the *Status Quo* Alternative. USDA's long-standing policy has been that the P&S Act prohibits the type of conduct that the Proposed Alternative (proposed §§ 201.304 and 201.306) addresses. The Proposed Alternative adds specificity to deceptive, unjustly discriminatory practices (retaliation), and unreasonable prejudices. Consequently, AMS expects packers, live poultry dealers, and swine contractors would review the proposed rule and assess compliance of their contracts and conduct with the proposed rule. Some packers, swine contractors, and live poultry dealers may make some minor modifications if they believe their contracts or conduct are not in compliance. AMS expects all regulated entities to maintain relevant records relating to their compliance with proposed § 201.304, which would provide further benefits to the industry.

The size of the benefits is difficult to quantify as they depend on the amount of undue prejudice, discrimination, and deception that will be avoided should the provisions in the Proposed Alternative be adopted by the Agency. The more undue prejudice, discrimination, and deception that will be avoided, the larger the benefits. AMS is unable to quantify the benefits and will present a qualitative discussion of the types of potential benefits that accrue from reductions in prejudice, discrimination, retaliation, and deception.

The following discussion is for the benefits, in general, to the livestock and poultry industries from the provisions in the Proposed Alternative, and similar provisions that USDA has long viewed as violations of P&S Act. The added benefits to the industry from the Proposed Alternative over the *Status Quo* Alternative occur when packers, swine contractors, and live poultry dealers alter their contracts and/or conduct of their employees to reduce instances of deceptive, prejudicial, and discriminatory practices, including retaliation, and keep records about their compliance programs. The potential benefits include protecting producer and grower rights, improved corporate culture and the ability to investigate compliance through recordkeeping requirement, addressing asymmetric information, prohibiting deceptive practices, and other benefits.

Protecting Producer and Grower Rights

Concentration and lack of competition in livestock procurement markets and poultry contracting can lead to abuses of market power such as undue prejudice and discrimination, retaliation, deception, fraud, and restrictions of producer and grower rights. A key purpose of specifying certain prohibitions on unduly prejudicial, discriminatory, and deceptive practices, including those in the Proposed Alternative, is to protect livestock producers, swine contractors and poultry growers' rights under the P&S Act. The Proposed Alternative would also help protect producers and growers from unfair and deceptive practices stemming from market power

[154] *See* Section 6(a)(3)(C) of Executive Order 12866.

[155] This proposed rule includes § 201.302, which defines a covered producer, livestock producer, and regulated entity. These definitions would apply to proposed §§ 201.304 and 201.306. The definitions proposed in § 201.302 are captured in the regulatory impacts of proposed §§ 201.304 and 201.306. The proposed rule also includes § 201.390 which states all provisions are severable in case any provision is declared invalid. Proposed § 201.390

imbalances such as undue prejudice, discrimination, retaliation, and deception by using pretext and false and misleading information in contracting by packers and live poultry dealers. These benefits of prohibiting prejudicial, discriminatory, and deceptive practices, including those in the proposed rule, would accrue not only to the market's vulnerable and cooperative producers and growers who have been subjected to the prohibited practices, but also to those for whom the proposed rule's deterrence effects would protect from future potential abuses.

For example, proposed § 201.304(a)(1) and (2) in the Proposed Alternative would prohibit undue prejudice and discrimination by packers, swine contractors, and live poultry dealers against market vulnerable producers and growers and cooperatives. This prohibition would protect vulnerable producers and growers and cooperatives who would potentially face these types of discrimination. Proposed § 201.304(a)(3) in the Proposed Alternative includes examples of unduly prejudicial and discriminatory conduct, including termination of contracts, refusing to deal, and interference in farm real estate transactions or contracts with third parties. Unfair termination of contracts and refusal to deal can lead to an inefficient allocation of resources.

Proposed § 201.304(b)(1) in the Proposed Alternative would prohibit packers, swine contractors, and live poultry dealers from retaliating against producers and growers for engaging in certain protected activities. Additionally, proposed § 201.304(b)(2) would protect producers and growers from retaliation by regulated entities for engaging in various activities, including communicating with a government agency, seeking redress before a court, or asserting rights to join a producer or grower association, collectively process and market livestock or poultry, or supporting or participating as a witness in any proceeding under the P&S Act, or a proceeding that relates to an alleged violation of law by a regulated entity. These provisions would also protect producers and growers from retaliation resulting from communication or cooperating with a person to improve the production of livestock or poultry and from communicating with a regulated entity to explore a business relationship. These types of protections can improve market efficiency.

The Proposed Alternative's § 201.306 would add a prohibition on packers, swine contractors, and live poultry dealers of committing the deceptive practices of pretext, providing false and misleading information, or omission of material facts in forming, performing, and terminating contracts and refusing to contract with producers and growers with respect to livestock poultry and meat. Prohibitions on deception could also improve efficiency by reducing instances where resources are allocated based on pretext, false or misleading information, or omission of material facts. That is, incorrect or incomplete information can misguide the allocation of resources such as land, labor, and capital away from their best use. The benefits of a more efficient allocation of resources from these types of prohibitions would be captured by producers, growers, packers, and live poultry dealers. These types of benefits would be directly related to the reduction in prejudicial, discriminatory, retaliatory, and deceptive practices. These proposed provisions would further promote integrity in the market and should give current and prospective producers and growers more confidence that they would be treated fairly.

Recordkeeping

There are multiple potential benefits of the record-keeping provision in the Proposed Alternative's proposed § 201.304(c). Record-keeping regulations can reduce AMS investigative costs and improve the quality of the investigations. Access to essential records would improve AMS enforcement and assist AMS in assessing the effectiveness of the regulated entity's compliance with proposed § 201.304(c). Information that AMS would gather when conducting compliance reviews, can enable AMS to promote market competitiveness and efficiency, as well as protect market participants against discrimination and other abusive practices. The rights of vulnerable producers and cooperatives can be better upheld when records of regulated entities are maintained and can be reviewed by AMS.

Another potential benefit of the recordkeeping requirement in the Proposed Alternative's § 201.304(c) is that regulated entities would know that AMS may be able to obtain and review records during investigations. This may result in a change in corporate culture of regulated entities in favor of increased voluntary compliance with proposed § 201.304 and reductions in undue prejudice, discrimination, and retaliation because regulated entities would know their records can be reviewed. Company leaders may shift the corporate culture in order to comply with the proposed rule.

Addressing Asymmetric Information

Several provisions in the Proposed Alternative would enhance the protection of the rights of producers and growers to lawfully communicate and to associate with others to explore business relationships and improve production practices and in the marketing of livestock, poultry, and meat. These provisions would benefit producers and growers by encouraging the use of their currently existing legal rights to cooperate that would solidify and enhance their access to information. This in turn, would help address information asymmetry and thus help producers and growers make better business decisions, enhance their competitiveness, reduce hold-up risk, and promote innovation and economic efficiency in the industry.

The Proposed Alternative, by protecting the rights of growers and producers to form associations and communicate freely with one another and to communicate with other regulated entities for the purpose of exploring a business relationship, would help close this information gap. This would benefit producers and growers by improving industry transparency, enhancing the bargaining power of supplier groups if they elect to organize in such a way.

This proposed rule would prohibit retaliation against covered producers due to their association with other producers and regulated entities, which could increase the information available to growers that is important in decision making. Improved safeguarding of protected activities may enable the producer or grower to improve business decision-making and manage risk, including potentially acquiring external insurance and risk-management products. In addition, facilitating producers and growers' ability to gain more and better information would help correct information asymmetry and improve transparency and completeness in contracts.

More information would also reduce the risks associated with hold-up as discussed above. By protecting rights to freely communicate and associate, this proposed rule would facilitate communication across the industry that may help disseminate information regarding new innovations and best practices within the industry. These types of provisions that could provide producers and growers with access to more and better information should promote innovation and economic efficiency in the industry.

The Proposed Alternative may also serve to reduce the risk of violating sec.

202(a) of the P&S Act because it would provide clarification to the livestock and poultry industries as to the discriminatory and deceptive practices that would be prohibited under that section of the Act. Less risk through the clarification provided in the Proposed Alternative would likely foster fairness in contracting by providing explicit protections for livestock producers, swine production contract growers, and poultry growers.

Prohibiting Deceptive Practices

Proposed Alternative's § 201.306 specifies prohibited practices that would be considered deceptive, and thus in violation of sec. 202(a) of the P&S Act. Though USDA already protects producers and growers from deceptive practices, the proposed rule would explicitly protect suppliers from deception by packers and live poultry dealers from pretextual justifications, providing false and misleading information, and the omission of material facts in contracting. Prohibited deceptions, including false statements, pretext, or omissions, can prevent or mislead producers and growers, sellers, or buyers from making informed decisions and thus represents a market inefficiency. The provisions in the Proposed Alternative would help give producers and growers confidence that the information provided by processors is reliable, which would help them to make better and more informed business decisions and manage risk.

Other Benefits

While some of these protections already benefit individual producers and growers, ensuring they cover the full marketplace and can be enforced individually adds to the overall integrity and fairness of livestock and poultry contracting. Specifying these protections may bring additional benefits above the *Status Quo* Alternative.

Growing, production, and marketing contracting has many benefits in the livestock and poultry industries. The Proposed Alternative can further enhance the documented benefits of contracting by prohibiting unduly prejudicial, discriminatory, and deceptive practices. Packers, swine contractors, and live poultry dealers have at times exploited their market power through business practices that have unjustly harmed producers and livestock and poultry growers. These abuses have led to a climate of fear among producers and growers that certain actions they might undertake such as communication with government or other regulated entities to pursue business relationships, association with certain groups, or making lawful public complaints about the packers, swine contractors, or live poultry dealers might result in harmful retaliations. AMS intends the Proposed Alternative to promote integrity to the marketplace by enhancing the protection of the rights of the producers and growers and alleviating those fears.

The literature and data on these topics are not sufficient to allow AMS to estimate the magnitude of the inefficiencies that the Proposed Alternative may correct above the *Status Quo* Alternative, nor the degree to which the additional producer and grower protections would address inefficiencies. Though AMS is unable to quantify the benefits of the proposed regulation, this analysis has explained the types of benefits that would be derived from reductions in prejudice, discrimination, retaliation, and deception. If the reductions are small, the benefits would be small. The greater the reductions, the greater the potential benefits.

Regulatory Alternative 2: Costs of the Proposed Alternative

Under the Proposed Alternative, the proposed rule would not impose any restrictions on numbers or types of production or marketing contracts that can be utilized, use of AMAs, tournaments, or base price mechanisms in contracts for packers, swine contractors, and live poultry dealers. Instead, the Proposed Alternative enhances the prohibited unduly prejudicial, unjustly discriminatory, and deceptive practices that AMS already considers violations of secs. 202(a) and 202(b) of the P&S Act. AMS does not expect the Proposed Alternative's §§ 201.304 and 201.306 to result in any measurable indirect costs resulting from adjustments by the livestock and poultry industries to reduce their use of AMAs, poultry tournaments, pricing mechanisms, or to result in a significant number of substantial changes to existing marketing or production contracts. Nor does AMS expect the Proposed Alternative's §§ 201.304 and 201.306 to have any material effect on the quantity of meat or poultry produced.

Litigation Costs

AMS expects the Proposed Alternative's §§ 201.304 and 201.306 to reduce litigation. The Proposed Alternative clarifies the prohibited unduly prejudicial, discriminatory, and deceptive practices that would violate sec. 202(a) of the P&S Act. The clarification could result in a reduction in litigation costs if companies come into compliance without any enforcement action. This regulation encourages regulated entities to proactively avoid prejudicial, discriminatory, and deceptive practices that could otherwise lead to costly litigation. Further, some firms may develop policies and procedures to comply with the proposed recordkeeping requirements. This effect could reduce litigation and thus result in reduced litigation costs for regulated entities.

However, there are several provisions in the Proposed Alternative's § 201.304 that could result in additional litigation. AMS has received formal and informal complaints against packers, swine contractors, and live poultry dealers for retaliation for belonging to various producer and grower associations, contacting AMS to file a complaint, asserting legal rights, and contacting a competing regulated entity to pursue a contractual relationship. Similarly, there are several provisions in the Proposed Alternative's § 201.306 that could result in additional litigation, including refusals by regulated entities to enter into or renegotiate contracts and contract terminations by producers and growers. The clarity of the practices that AMS considers to be discriminatory and deceptive in the Proposed Alternative's §§ 201.304 and 201.306 could offer producers and growers new hope for relief from courts for perceived undue prejudicial, discriminatory, and deceptive practices by regulated entities. This effect could result in increased litigation.

AMS is uncertain as to which effect will dominate and to what extent. Given both effects, AMS does not expect large increases or decreases in litigation from the proposed rule and, therefore, does not estimate litigation costs in this analysis.

Direct Costs of the Proposed Option

AMS expects the Proposed Alternative's §§ 201.304 and 201.306 would only result in direct administrative and recordkeeping costs to the industry. AMS expects that packers, swine contractors, and live poultry dealers would incur direct administrative costs of learning the proposed rule and then reviewing and, if necessary, revising marketing and production contracts to ensure compliance with the Proposed Alternative's §§ 201.304 and 201.306. Regulated entities would also incur recordkeeping costs from keeping the records required under the Proposed Alternative's § 201.304. The expected total costs of the Proposed Alternative's

§§ 201.304 and 201.306 will be the direct administrative costs and recordkeeping costs of that regulatory alternative. The direct administrative costs and recordkeeping costs will be estimated below.

Direct Administrative Costs

AMS expects that the Proposed Alternative's §§ 201.304 and 201.306 would prompt packers, live poultry dealers, and swine contractors to first review and learn the proposed rule and then review their procurement policies and production contracts and make any necessary changes to ensure compliance with the new regulations. Expected costs are estimated as the total value of the time required to review and learn the rulemaking and then review and, if necessary, revise procurement and production contracts.

AMS expects the direct administrative costs of complying with the Proposed Alternative's §§ 201.304 and 201.306 would be relatively small. USDA policy has long held that several of the provisions in the Proposed Alternative's §§ 201.304 and 201.306 or similar provisions were violations of the P&S Act, although the position has not been established in regulations. Consequently, AMS expects packers, live poultry dealers, and swine contractors to make changes to relatively few contracts.

Estimates of the amount of time required to review and learn the proposed rule and to review and revise contracts and keep records were provided by AMS subject matter experts. These experts were economists and supervisors with many years of experience in AMS's PSD conducting investigations and compliance reviews of regulated entities. In May 2020, U.S. Bureau of Labor Statistics (BLS) released Occupational Employment and Wage Statistics that AMS used for the time values in this analysis.[156] BLS estimated an average hourly wage for general and operations managers in animal slaughtering and processing to be $65.84. The average hourly wage for lawyers in food manufacturing was $80.39. In applying the cost estimates, AMS marked-up the wages by 41.56 percent to account for fringe benefits.

AMS expects that each packer, swine contractor, and live poultry dealer would spend one hour of legal time and one hour of management time to review and learn the rulemaking and then review and, if necessary, revise production and marketing contracts to ensure compliance with the rulemaking.

Live poultry dealers are currently required to file form PSD 3002, ''Annual Report of Live Poultry Dealers,'' OMB control number 0581–0308, with AMS. Eighty-nine live poultry dealers filed annual reports with AMS for their 2020 fiscal year.

Packers are currently required to file form PSD 3004, ''Annual Report of Packers'' OMB control number 0581–0308, with AMS. Among other things, each packer reports the number of head of cattle or calves, hogs, and lamb, sheep, or goats that it processed. Three hundred sixty-two packers that processed cattle or calves, hogs, or lamb, sheep or goats filed reports with AMS for their fiscal year 2020. Two hundred forty-eight were beef or veal packers. Two hundred eight were pork packers, and 147 were lamb, sheep, or goat packers.[157] The number of beef, pork, and lamb packers do not sum to 362 because many firms slaughtered more than one species of livestock. For instance, 119 packers slaughtered both beef and pork, and 75 slaughtered beef, pork, and lamb.

AMS expects that packers processing more than one species of livestock will not incur additional costs for each species. That is, AMS expects that each packer will require one hour of attorney's time and one hour of management time regardless of how many species of livestock it processes. To allocate costs across (1) beef, (2) pork, and (3) lamb processors, AMS allocated one-third of the costs to each of (1) beef, (2) pork, and (3) lamb for packers that processed all three species. For packers processing any two, AMS allocated one half the costs to each.

AMS estimated that all live poultry dealers that are regulated under the Proposed Alternative would require 1 hour of an attorney's time costing the industry $10,000 [158] and 1 hour of management time costing the industry $8,000 [159] for learning the rulemaking, reviewing, and adjusting contracts. The total costs for learning, reviewing, and adjusting contracts would be $18,000 [160] for live poultry dealers. AMS also expects that rulemaking will cost all 575 swine contractors an hour of an attorney's time and 1 hour of management time costing a total of $119,000 across all swine contractors.[161]

AMS expects that packers would require an estimated 1 hour of an attorney's time and 1 hour of management time costing the industry $75,000.[162] Pork packers' share of the packers' costs would be $27,000. Combining costs to pork packers with costs to swine contractors arrives at a total cost of $146,000 for hogs and pork markets.

AMS estimates that beef packers and lamb packers would also require 1 hour of attorney's time and 1 hour of management time to learn the rulemaking, review, and revise contracts. The total costs for would be $33,224 for beef packers and $14,697 for lamb packers.

Direct Recordkeeping Costs

As presented in detail in the Paperwork Reduction Act (PRA) section, costs to comply with the proposed recordkeeping requirements are likely relatively low. Proposed § 201.304(c) requires specific records that, if the regulated entity maintains, should be kept for a period of five years, including policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, board of directors' oversight materials, and any records of the number and nature of unduly prejudicial or discrimination-based complaints received.

Costs of recordkeeping, as described in detail in the PRA, include regulated entities maintaining and updating compliance records, and is considered a direct cost. Some smaller regulated entities that currently don't maintain records, may voluntarily decide to develop formal policies, procedures, training, etc. to comply with the rulemaking and would then have records to maintain.

As described in detail in the PRA section, AMS expects the recordkeeping costs would be comprised of the time required by regulated entities to store and maintain records. AMS expects that the costs will be relatively small because many packers, live poultry dealers, and swine contractors may currently have few records concerning policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, and board of

[156] Estimates are available at U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, available at *https://www.bls.gov/oes/special.requests/oesm20all.zip* (accessed 8/9/2022).

[157] For brevity, all beef and veal packers will be collectively referred to as beef packers and all lamb, sheep, and goat packers will be collectively referred to as lamb packers.

[158] 89 live poultry dealers × $113.80 per hour × 1 hour = $10,128.

[159] 89 live poultry dealers × $93.20 per hour × 1 hour = $8,295.

[160] $10,128 + $8,295 = $18,423.

[161] 575 × ($113.80 per hour × 1 hour + $93.20 per hour × 1 hour) = $119,027.

[162] 362 × ($113.80 per hour × 1 hour + $93.20 per hour × 1 hour) = $74,935.

directors' oversight materials related to prejudicial treatment. Some smaller firms might not have any records to store. Others already store the records and may have no new costs.

As described in detail in the PRA, AMS estimated that recordkeeping time for larger entities will be greater than for smaller entities, and thus estimated costs by quartiles, from largest entities to smallest. AMS estimated that proposed § 201.304(c) would require packers, live poultry dealers, and swine contractors in each quartile an average 4.00 hours, 2.00 hours, 1.33 hours, and 0.67 hours of administrative time for the first, second, third, and fourth quartiles, respectively. Additionally, AMS estimated that the hours required of managers, attorneys, and information technology staff each will average 1.50 hours, 0.75 hours, 0.50 hours, and 0.25 hours for the first, second, third, and fourth quartiles, respectively.

As delineated in detail in the PRA, AMS also expects that packers, live poultry dealers, and swine contractors will incur continuing recordkeeping costs in each successive year. AMS estimated that proposed § 201.304(c) would require an average of 3.00 hours, 1.50 hours, 1.00 hour, and 0.50 hour of administrative assistant time; 1.50 hours, 0.75 hour, 0.50 hour, and 0.25 hour of time each from managers and attorneys; and 1.00 hour, 0.50 hour, 0.33 hour, and 0.17 hour of time from information technology staff for packers, live poultry dealers, and swine contractors in the first, second, third, and fourth quartiles, respectively, to setup and maintain the required records in each succeeding year.

As described in detail in the PRA, estimated first-year costs for recordkeeping requirements in proposed § 201.304(c) total $26,000 for live poultry dealers,[163] $170,000 for swine contractors,[164] and $107,000 for packers. Estimated yearly continuing costs for recordkeeping requirements in § 201.304(c) total $23,000 for live poultry dealers,[165] $147,000 for swine contractors,[166] and $93,000 for packers.[167]

Breaking out costs by market, AMS expects recordkeeping requirements in proposed § 201.304(c) to cost beef packers $47,000 in the first year and $41,000 in each following year, as described in detail in the PRA. Proposed § 201.304(c) would cost lamb packers $21,000 in the first year and $18,000 in successive years. Proposed § 201.304(c) would cost pork packers $39,000, and it would cost swine contractors $170,000 for a total of $209,000 in the first year. Proposed § 201.304(c) would cost swine contractors $147,000 in successive years, and it would cost pork packers $33,000 for a total $180,000.

Total Direct Administrative and Recordkeeping Costs

The below table summarizes combined expected administrative and recordkeeping costs for regulated entities in the first year and in succeeding years. AMS expects that administrative and recordkeeping costs associated with Proposed Alternative §§ 201.304 and 201.306 would cost each packer, swine contractor, and live poultry dealer an average $504 in the first year and an average $256 in each succeeding year. First-year costs would total $45,000 for live poultry dealers, $290,000 for swine contractors, and $182,000 for packers. Costs in successive years would be due to recordkeeping requirements and would total $23,000 for live poultry dealers, $147,000 for swine contractors, and $93,000 for packers annually.

TABLE 7—EXPECTED FIRST-YEAR COST AND SUCCEEDING YEARS COSTS FOR LIVE POULTRY DEALERS, PACKERS, AND SWINE CONTRACTORS

	First-year cost ($)	Cost for each succeeding year ($)
Average Cost per Live Poultry Dealer	504	256
Average Cost per to Swine Contractor	504	256
Average Cost per Packer	504	256
Total Cost to Live Poultry Dealers	45,000	23,000
Total Cost to Swine Contractors	290,000	147,000
Total Cost to Packers	182,000	** 93,000
Beef Packers *	80,000	41,000
Pork Packers *	66,000	33,000
Lamb Packers *	36,000	18,000
Total Cost	517,000	263,000

* Many packers process more than one species of livestock, but AMS expects that each packer will require one hour of attorney's time and one hour of management time regardless of how many species of livestock it processes. To allocate costs across (1) beef, (2) pork, and (3) lamb processors, AMS allocated one-third of the costs to each of (1) beef, (2) pork, and (3) lamb for packers that processed all three species.

** Column total may not sum due to rounding.

[163] 89 live poultry dealers × (($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manager cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours))/4 = $26,390.

[164] (575 swine contractors × (($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manager cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + (113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours)))/4 = $170,496.

[165] (89 live poultry dealers × (($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manager cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + $82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours)))/4 = $22,788.

[166] (575 swine contractors × (($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manager cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours)))/4 = $147,225.

[167] (362 packers × ($39.69 per hour admin. cost × (4 hours + 2 hours + 1.33 hours + .67 hours)) + ($93.20 per hour manager cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($113.80 legal cost × (1.5 hours + .75 hours + .5 hours + .25 hours)) + ($82.50 information tech cost × (1.5 hours + .75 hours + .5 hours + .25 hours)))/4 = $92,688.

The total direct administrative and recordkeeping costs are estimated to be $517,000 in the first year. Estimated first year total direct administrative and recordkeeping costs for the cattle and beef industry, hogs and pork, lamb, and poultry industries rounded to the nearest thousand dollars are listed in the following table.

TABLE 8—DIRECT ADMINISTRATIVE AND RECORDKEEPING COSTS FOR PROPOSED §§ 201.304 AND 201.306 IN 2022

Cattle ($ Th)	Hogs ($ Th)	Lambs ($ Th)	Poultry ($ Th)	Total ($ Th)
80	355	36	45	517

Regulatory Alternative 2—Proposed Alternative: Ten-Year Total Direct Administrative and Recordkeeping Costs

Expected administrative and recordkeeping costs of proposed §§ 201.304 and 201.306 for each year from 2022 through 2031 appear in the table below.

TABLE 9—TEN-YEAR TOTAL DIRECT ADMINISTRATIVE AND RECORDKEEPING COSTS OF PROPOSED §§ 201.304 AND 201.306 *

Year	Cattle ($ Th)	Hogs ($ Th)	Lambs ($ Th)	Poultry ($ Th)	Total ($ Th)
2022	80	355	36	45	517
2023	41	181	18	23	263
2024	41	181	18	23	263
2025	41	181	18	23	263
2026	41	181	18	23	263
2027	41	181	18	23	263
2028	41	181	18	23	263
2029	41	181	18	23	263
2030	41	181	18	23	263
2031	41	181	18	23	263
Totals	449	1,982	200	250	2,881

** Column total may not sum due to rounding.

Based on the analysis, AMS expects the ten-year total direct administrative and recordkeeping costs of proposed §§ 201.304 and 201.306 to be $2.9 million.

Regulatory Alternative 2—Proposed Alternative: Present Value of Ten-Year Total Direct Administrative and Recordkeeping Costs

Costs to be incurred in the future are lower than the same costs to be incurred today. This is because the money that will be used to pay the costs in the future can be invested today and earn a return on investment until the period in which the cost is incurred. After the cost has been incurred, the earned returns will still be available.

To account for the time value of money, the administrative costs to be incurred in the future are discounted back to today's dollars using a discount rate. The sum of all costs discounted back to the present is called the present value (PV) of total costs. AMS relied on both a three percent and seven percent discount rate as discussed in Circular A–4.[168]

AMS calculated the PV of the ten-year total direct administrative and recordkeeping costs of the proposed regulations using a three percent and seven percent discount rate and the PVs appear in the following table.

[168] Circular A–4. December 17, 2003, available at *www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf* (accessed 01/10/2022).

TABLE 10—PV OF TEN-YEAR DIRECT ADMINISTRATIVE AND RECORDKEEPING COST OF §§ 201.304 AND 201.306

Discount rate	Proposed alternative ($ th)
3 Percent	2,487
7 Percent	2,082

AMS expects the PV of the ten-year total administrative and recordkeeping costs of proposed §§ 201.304 and 201.306 to be $2.5 million at a three percent discount rate and $2.1 million at a seven percent discount rate.

Regulatory Alternative 2—Proposed Alternative: Annualized PV of Ten-Year Total Direct Administrative and Recordkeeping Costs

AMS then annualized the PV of the ten-year total administrative and recordkeeping costs (referred to as annualized costs) of proposed §§ 201.304 and 201.306 using both a three percent and seven percent discount rate as required by Circular A–4 and the results appear in the following table.[169]

TABLE 11—ANNUALIZED DIRECT ADMINISTRATIVE AND RECORDKEEPING COSTS OF PROPOSED §§ 201.304 AND 201.306

Discount rate	Proposed alternative ($ th)
3 Percent	292
7 Percent	297

AMS expects the annualized ten-year administrative and recordkeeping costs of proposed §§ 201.304 and 201.306 to be $292,000 at a three percent discount rate and $297,000 at a seven percent discount rate.

Cost-Benefit Comparison of Proposed Alternative

Combined sales of beef, pork, and broiler chicken in the U.S. for 2019 were approximately $240 billion. As discussed above, the total cost of proposed §§ 201.304 and 201.306 in the first year is estimated to be $517,000, or 0.000002 percent of revenues. A reduction in prejudicial, discriminatory, retaliatory, and deceptive practices would lead to benefits that would be directly related to the reductions in these practices. If the reductions are small, the benefits would be small. The greater the reductions, the greater the benefits. AMS expects that the net benefits to society from the proposed rule will be very small in relation to the total value of industry production, leading to negligible indirect effects on industry supply and demand, including price and quantity effects.

Regulatory Alternative 3: Small Business Exemption Alternative

The third regulatory alternative that AMS considered is issuing proposed §§ 201.304 and 201.306, but exempting small businesses, as defined by the SBA, from compliance with the recordkeeping requirement of § 201.304(c).[170] All other provisions of §§ 201.304 and 201.306 would still apply to small businesses. Most packers are small businesses under the SBA definition. Of the 362 packers reporting to AMS, 346 are small businesses. Two hundred forty-two beef packers and 197 pork packers are small businesses. All 147 lamb packers are small businesses. Packers include multi-species packers. One hundred eight swine contractors are small businesses. There are 54 small poultry dealers.

Regulatory Alternative 3: Total Costs of the Small Business Exemption Alternative

The below table summarizes combined expected administrative and recordkeeping costs for regulated entities in the first year and in succeeding years. AMS expects that administrative and recordkeeping costs associated with Proposed Alternative §§ 201.304 and 201.306 would cost each live poultry dealer, swine contractor, and packer an average of $398, $485, $231, respectively, in the first year. AMS expects costs to average $165, $256, and $23 for live poultry dealers, swine contractors, and packers, respectively, in each succeeding year. First-year costs would total $35,000 for live poultry dealers, $279,000 for swine contractors, and $84,000 for packers. Costs in successive years would be due to recordkeeping requirements and would total $15,000 for live poultry dealers, $138,000 for swine contractors, and $8,000 for packers annually. The total direct administrative and recordkeeping costs are estimated to be $398,000 in the first year.

TABLE 12—SMALL BUSINESS RECORD KEEPING EXEMPTION ALTERNATIVE EXPECTED FIRST-YEAR COST AND SUCCEEDING YEARS COSTS FOR LIVE POULTRY DEALERS, PACKERS, AND SWINE CONTRACTORS

	First year cost ($)	Cost for each succeeding year ($)
Average Cost per Live Poultry Dealer	398	165
Average Cost per Swine Contractor	485	256
Average Cost per Packer	231	23
Total Cost to Live Poultry Dealers	35,000	15,000
Total Cost to Swine Contractors	279,000	138,000
Total Cost to Packers	84,000	8,000
Beef Packers*	36,000	3,000
Pork Packers*	33,000	5,000
Lamb Packers*	15,000	0
Total Cost	398,000	161,000

*Many packers process more than one species of livestock, but AMS expects that each packer will require one hour of attorney's time and one hour of management time regardless of how many species of livestock it processes. To allocate costs across (1) beef, (2) pork, and (3) lamb processors, AMS allocated one-third of the costs to each of (1) beef, (2) pork, and (3) lamb for packers that processed all three species.

[169] *Ibid.*

[170] *See,* ''Stay legally compliant (*sba.gov*),'' *available at https://www.sba.gov/business-guide/manage-your-business/stay-legally-compliant* (Last accessed 8/9/2022).

As discussed above, AMS considers the total costs from proposed §§ 201.304 and 201.306 to be increased direct administrative and recordkeeping costs with no indirect costs from adjustments by the cattle, hog, and poultry industries to reduce their use of AMAs, change pricing mechanisms or poultry tournaments, and no substantial changes to existing marketing, growing, or production contracts. AMS estimated the costs to small business from the direct administrative costs of §§ 201.304 and 201.306 but excluded the recordkeeping costs of § 201.304(c) in this alternative option.

AMS estimated the costs to small business to be the value of the time for management, attorneys, administrative staff, and information technology staff to review the rulemaking and the firms' practices determining compliance with the direct administrative costs of §§ 201.304 and 201.306. AMS estimated costs for the Small Business Exemption Alternative similarly to the Proposed Alternative. The only difference is the recordkeeping costs of § 201.304(c) attributable to small business are not included in the costs for the Small Business Exemption Alternative. The estimates appear in the table below. The Proposed Alternative is also shown for convenience.

TABLE 13—ANNUAL TOTAL DIRECT COSTS—SMALL BUSINESS EXEMPTION ALTERNATIVE

Year	Proposed alternative ($ th)	Small business exemption alternative ($ th)
2022	517	376
2023	263	161
2024	263	161
2025	263	161
2026	263	161
2027	263	161
2028	263	161
2029	263	161
2030	263	161
2031	263	161
Totals	2,881	1,809

AMS estimates that proposed §§ 201.304 and 201.306, with the small business exemption, will result in $376 thousand in direct total costs in the cattle, hog, lamb, and poultry industries in the first full year following implementation and $161 thousand each year in ongoing costs. AMS expects the ten-year total costs of proposed §§ 201.304 and 201.306 with a small business exemption to be $1.8 million. Exempting small business would save approximately $140,000 in the first year and $1.1 million over ten years.

Regulatory Alternative 3: PV of Total Costs of the Small Business Exemption Alternative

AMS calculated the PV of the ten-year total costs of the Small Business Exemption Alternative using both a three percent and seven percent discount rate and the PVs appear in the following table. The Proposed Alternative is also shown for convenience.

TABLE 14—PV OF TEN-YEAR TOTAL COST—SMALL BUSINESS EXEMPTION

Discount rate	Proposed alternative ($ th)	Small business exemption alternative ($ th)
3 Percent	2,487	1,567
7 Percent	2,082	1,331

AMS expects the PV of the ten-year total costs of proposed §§ 201.304 and 201.306 with a small business exemption to be $1.6 million at a three percent discount rate and $1.3 million at a seven percent discount rate.

Regulatory Alternative 3: Annualized Costs of the Small Business Exemption Alternative

AMS then annualized the PV of the ten-year total costs of proposed §§ 201.304 and 201.306 with a small business exemption using both a three percent and seven percent discount rate and the results appear in the following table. The Proposed Alternative is also shown for convenience.

TABLE 15—TEN-YEAR ANNUALIZED COSTS—SMALL BUSINESS EXEMPTION

Discount rate	Proposed alternative ($ th)	Small business exemption alternative ($ th)
3 Percent	292	184
7 Percent	297	190

AMS expects the annualized costs of proposed §§ 201.304 and 201.306 with a small business exemption to be $184,000 at a three percent discount rate and $190,000 at a seven percent discount rate.

Cost-Benefit Comparison of Regulatory Alternatives

The status quo alternative has zero marginal costs. AMS compared the annualized costs of the Proposed Alternative to the annualized costs of the Small Business Exemption Alternative by subtracting the annualized costs of the Small Business Exemption Alternative from those of the Proposed Alternative and the results appear in the following table.

TABLE 16—DIFFERENCE IN TEN-YEAR ANNUALIZED COSTS OF PROPOSED §§ 201.304 AND 201.306 BETWEEN PROPOSED ALTERNATIVE AND SMALL BUSINESS EXEMPTION ALTERNATIVE

Discount rate	($ th)
3 Percent	108
7 Percent	107

The annualized costs of the Small Business Exemption Alternative are $108,000 less expensive using a three percent discount rate and $107,000 less expensive using a seven percent discount rate. As is the case with costs, the benefits will be highest for the Proposed Alternative because the full benefits will be received by all livestock producers and growers, not just those doing business with large packers, swine contractors and live poultry dealers.

Though the Small Business Exemption Alternative would save between $108,000 and $106,000 on an annualized basis, this alternative would deny the potential benefits offered by proposed § 201.304(c) to all livestock producers, swine contract growers, and poultry growers who contract with small packers, swine contractors, and live poultry dealers. While most cattle, hogs, and poultry processed and grown are contracted with large businesses, there are many small businesses who would be exempt from keeping records under proposed § 201.304(c) if the Small Business Exemption Alternative is chosen. The Small Business Exemption Alternative of the recordkeeping requirement of § 201.304(c) would exempt all lamb processors and deny the potential benefits to all lamb producers. Under this alternative, these livestock producers, poultry growers and swine production contract growers would be denied the potential benefits of recordkeeping and improved corporate culture as discussed above in the section on *Regulatory Alternative 2: Benefits of the Proposed Alternative*.

AMS considered all three regulatory alternatives and believes that the Proposed Alternative is the best alternative as it benefits all livestock producers, swine production contract growers, and poultry growers, regardless of the size of the packer, swine contractor, or live poultry dealer with

which they contract above the Status Quo Alternative.

Regulatory Flexibility Analysis

Proposed § 201.304 prohibits retaliation by regulated entities by terminating contracts, non-renewal of contracts, refusing to deal, and interfering in farm real estate contracts as unduly prejudicial and discriminatory practices. Proposed § 201.306 prohibits deceptive practices by regulated entities in contracting with covered producers including making or modifying a contract, performing under or enforcing a contract, terminating a contract, or refusing to contract with a covered producer based on pretext, false or misleading statements, or omission of material facts.

Additionally, the Proposed Alternative's § 201.304(c) requires packers, live poultry dealers, and swine contractors to keep relevant records of policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, and board of directors' oversight materials related to prejudicial treatment.

The SBA defines small businesses by their North American Industry Classification System Codes (NAICS).[171] Live poultry dealers, NAICS 311615, are considered small businesses if they have fewer than 1,250 employees. Meat packers, including, beef, veal, pork, lamb, and goat packers, NAICS 311611, are small businesses if they have fewer than 1,000 employees. Swine contractors, NAICS 112210, are considered small if their sales are less than $1 million annually.

AMS maintains data on live poultry dealers from the annual reports these firms file with AMS. Currently, 89 live poultry dealers would be subject to the proposed regulation. Fifty-four of the live poultry dealers would be small businesses according to the SBA standard.

AMS records identified 362 packers that file annual reports with PSD for their 2020 fiscal year. Two hundred forty-eight were beef packers. Two hundred eight were pork packers, and 147 were lamb or goat packers. Many firms slaughtered more than one species of livestock. For instance, 118 packers slaughtered both beef and pork.

Most packers would be small businesses, although large packers are responsible for most meat production. Three hundred forty-six packers would be small businesses. Two hundred forty-two beef packers and 197 pork packers were small businesses. All of the 147 lamb and goat packers were small businesses.

AMS does not have similar records for swine contractors because they are not required to register with AMS or provide annual reports. Table 24 of the 2017 USDA Census of Agriculture indicated that there were 575 swine contractors in 2017. The Census of Agriculture table has categories for the number of head that swine contractors sold, but not the value of the head sold. AMS expects that the 467 swine contractors that sold 5,000 head of hogs or more were large businesses, and the 108 contractors that sold less than 5,000 head were small businesses.

AMS estimated the costs in two parts. First, AMS expects that each packer, swine contractor, and live poultry dealer would review and learn the new rulemaking and then review and, if necessary, revise production and marketing contracts to ensure compliance with the new rulemaking. Second, AMS expects that packers, live poultry dealers, and swine contractors would have additional costs associated with the new recordkeeping requirements in proposed § 201.304(c).

AMS estimated that costs reviewing and learning the Proposed Alternative to small live poultry dealers, small packers, and small swine contractors would consist of one hour of a manager's time and one hour of a lawyer's time to review the requirements of proposed §§ 201.304 and 201.306. Expected first-year costs would be $207 [172] for each live poultry dealer, each swine contractor, and each packer. This would amount to a total $11,000 for the 54 live poultry dealers, $72,000 for the 346 packers, and $22,000 for the 108 swine contractors.

Concerning the recordkeeping requirements in the Proposed Alternative's § 201.304(c), AMS expects the cost would be comprised of the time required to store and maintain records. AMS expects that the costs will be relatively small because packers, live poultry dealers, and swine contractors would likely have few records concerning policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, and board of directors' oversight materials related to prejudicial treatment. Many firms might not have any records to maintain. Others already maintain the records and have no new costs.

AMS expects that recordkeeping costs would be correlated with the size of the firms. AMS ranked packers, live poultry dealers, and swine contractors by size and grouped them into quartiles, estimating more recordkeeping time for larger entities than for the smaller entities. AMS estimated that proposed § 201.304(c) would require an average of 4.00 hours of administrative assistant time, 1.50 hours of time each from managers, attorneys, and information technology staff for packers, live poultry dealers, and swine contractors in the first quartile, containing the largest entities, to setup and maintain the required records in the first year. AMS expects the packers, live poultry dealers, and swine contractors in the second quartile would require an average of 2.00 hours of administrative assistant time, 0.75 hours of time each from managers, attorneys, and information technology staff for first year costs. The third quartile would require 1.33 hours of administrative assistant time, 0.50 hours of time each from managers, attorneys, and information technology staff for first year costs, and the fourth quartile, containing the smallest entities, would require 0.67 hours of administrative assistant time, 0.25 hours of time each from managers, attorneys, and information technology staff.

AMS also expects that packers, live poultry dealers, and swine contractors will incur continuing costs in each successive year. AMS estimated that proposed § 201.304(c) would require an average of 3.00 hours of administrative assistant time, 1.50 hours of time each from managers and attorneys, and 1.00 hour of time from information technology staff for packers, live poultry dealers, and swine contractors in the first quartile to setup and maintain the required records in each succeeding year. AMS expects the packers, live poultry dealers, and swine contractors in the second quartile would require an average of 1.50 hours of administrative assistant time, 0.75 hours of time each from managers and attorneys, and 0.50 hours of time from information technology staff in each succeeding year. The third quartile would require 1.00 hour of administrative assistant time, 0.50 hours of time each from managers and attorneys, and 0.33 hours of time from information technology staff in each succeeding year, and the fourth quartile would require 0.50 hours

[171] U.S. Small Business Administration. *Table of Small Business Size Standards Matched to North American Industry Classification System Codes. effective August 19, 2019.* ''The SBA Issues a Final Rule to Adopt NAICS 2017 for Small Business Size'' (last accessed 8/9/2022). Available at *https://www.sba.gov/article/2018/feb/27/sba-issues-final-rule-adopt-naics-2017-small-business-size-standards.*

[172] $113.80 per hour × 1 hour of an attorney's time + $93.20 per hour × 1 hour of a manager's time = $207.

of administrative assistant time, 0.25 hours of time each from managers and attorneys, and 0.17 hours from information technology staff.

Estimated first-year costs for recordkeeping requirements in the Proposed Alternative's § 201.304(c) totaled $9,000 for live poultry dealers,[173] $11,000 for swine contractors,[174] and $98,000 for packers.[175] Estimated yearly continuing costs for recordkeeping requirements in § 201.304(c) totaled $8,000 for live poultry dealers,[176] $9,000 for swine contractors,[177] and $84,000 for packers.[178]

Total expected first year costs, including one time reviewing costs and recordkeeping cost would be $169,000 for packers, $33,000 for swine contractors, and $21,000 for live poultry dealers. Table 17 lists expected costs for small businesses subject to proposed §§ 201.304 and 201.306. AMS expects marginal costs to total $223,000 in the first year. Ten-year costs annualized at 3 percent would be $94,000 for packers, $12,000 for swine contractors, and $10,000 for live poultry dealers. Total ten-year costs annualized at 3 percent would be expected to be $116,000.

Ten-year costs annualized at 7 percent would be $96,000 for packers, $12,000 for swine contractors, and $10,000 for live poultry dealers. Total ten-year costs annualized at 7 percent would be expected to be $118,000.

TABLE 17—ESTIMATED INDUSTRY TOTAL COSTS TO SMALL BUSINESSES

Estimate type	Packers ($)	Swine contractors ($)	Poultry processors ($)	Total ($)
First-Year Costs	169,000	33,000	21,000	223,000
10 years Annualized at 3 Percent	94,000	12,000	10,000	116,000
10 years Annualized at 7 Percent	96,000	12,000	10,000	118,000

Live poultry dealers annually file reports with AMS that list each firm's net sales. Packers that purchase more than $500,000 annually in livestock also file annual reports that list net sales. While packers that annually slaughter less than $500,000 in livestock also file annual reports with AMS, in order to reduce the reporting requirements for small packers, they are not required to provide annual net sales.

Data from the annual reports enables AMS to compare average net sales for small pork packers, beef packers, and live poultry dealers to the expected costs of proposed §§ 201.304 and 201.306 in the table below. A shortcoming in the comparison is that net sales for smallest packers, those that purchase less than $500,000 in livestock, are not included in the average.

Swine contractors are not required to file annual reports with AMS, and similar net sales data are not available for swine contractors. Census of Agriculture's data have the number of head sold by size classes for farms that sold their own hogs and pigs in 2017 and that identified themselves as contractors or integrators, but not the value of sales nor the number of head sold from the farms of the contracted production. To estimate average revenue per establishment, AMS used the estimated average value per head for sales of all swine operations and the production values for firms in the Agriculture Census size classes for swine contractors.

The following table compares the average per entity first-year costs of the Proposed Alternative's §§ 201.304 and 201.306 to the average revenue per establishment for all regulated small businesses. First-year costs are appropriate for a threshold analysis because all the costs would occur in the first year. First-year costs per regulated entity are considerably higher than annualized costs, and any ratio of annualized costs to revenues will be less than a ratio of first-year costs to revenues.

TABLE 18—COMPARISON OF AVERAGE COSTS PER ENTITY TO AVERAGE REVENUES PER ENTITY FOR SMALL BUSINESSES

NAICS	Number of small businesses	Average revenue or net sales per establishment ($)	First-year costs ($)	First-year cost as percent of revenue (percent)	Annualized cost discounted at 7%	Annualized cost as percent of revenue (percent)
112210—Swine Contractor	108	485,860	306	0.0629	115	0.0236
311615—Poultry Processor	54	50,729,044	381	0.0008	181	0.0004

[173] 9.5 live poultry dealers × ($39.69 per hour admin. cost × 2 hours + $93.20 per hour manger cost × .75 + $113.80 legal cost × .75 hours + $82.50 information tech cost × .75 hours) + 44.5 live poultry dealers × ($39.69 per hour admin. cost × (1.33 hours + .67 hours) + $93.20 per hour manger cost × (.5 hours + .25 hours) + $113.80 legal cost × (.5 hours + .25 hours) + $82.50 information tech cost × (.5 hours + .25 hours))/2 = $9,414.

[174] 108 swine contractors × ($39.69 per hour admin. cost × .67 hours + $93.20 per hour manger cost × .25 hours + $113.80 legal cost × .25 hours + $82.50 information tech cost × .25 hours) = $10,675.

[175] 74.5 packers × ($39.69 per hour admin. cost × 2 hours + $93.20 per hour manger cost × .75 hours + $113.80 legal cost × .75 hours + $82.50 information tech cost × .75 hours + 271.5 packers × ($39.69 per hour admin. cost × (2 hours + 1.33 hours + .67 hours) + $93.20 per hour manger cost × (.75 hours + .5 hours + .25 hours) + $113.80 legal cost × (.75 hours + .5 hours + .25 hours) + $82.50 information tech cost × (.75 hours + .5 hours + .25 hours))/3 = $97,850.

[176] 9.5 live poultry dealers × ($39.69 per hour admin. cost × 1.5 hours + $93.20 per hour manger cost × .75 + $113.80 legal cost × .75 hours + $82.50 information tech cost × .75 hours) + 44.5 live poultry dealers × ($39.69 per hour admin. cost × (1 hours + .5 hours)) + $93.20 per hour manger cost × (.5 hours + .25 hours)) + ($113.80 legal cost × (.5 hours + .25 hours) + ($82.50 information tech cost × (.33hours + .17 hours))/2 = $8,129.

[177] 108 swine contractors × ($39.69 per hour admin. cost × .5 hours + $93.20 per hour manger cost × .25 hours + $113.80 legal cost × .25 hours + $82.50 information tech cost × .17 hours) = $9,217.

[178] 74.5 packers × ($39.69 per hour admin. cost × 3 hours + $93.20 per hour manger cost × 1.5 hours + $113.80 legal cost × 1.5 hours + $82.50 information tech cost × 1 hour) + 271.5 packers × ($39.69 per hour admin. cost × (1.5 hours + 1 hours + .5 hours) + $93.20 per hour manger cost × (.75 hours + .5 hours + .25 hours) + $113.80 legal cost × (.75 hours + .5 hours + .25 hours) + $82.50 information tech cost × (.50 hours + .33 hours + .17 hours))/3 = $84,494.

TABLE 18—COMPARISON OF AVERAGE COSTS PER ENTITY TO AVERAGE REVENUES PER ENTITY FOR SMALL BUSINESSES—Continued

NAICS	Number of small businesses	Average revenue or net sales per establishment ($)	First-year costs ($)	First-year cost as percent of revenue (percent)	Annualized cost discounted at 7%	Annualized cost as percent of revenue (percent)
311611—Meat Packer*	346	83,356,860	490	0.0006	277	0.0003

*Averages exclude net sales for packers that purchased less than $500,000 in livestock annually.

First-year costs as a percent of revenues are small. It is highest for swine contractors because average revenues for swine contractors are considerably smaller than average revenues for packers and live poultry dealers. At 0.0629 percent, the first-year cost is small compared to revenue.

Average net sales for packers listed in Table 18 have the problem of excluding the smallest packers, and consequently the averages are biased toward being too large. However, first-year cost as a percent of net sales is 0.0006 percent. Estimated first year cost for each packer is $490. These are relatively small numbers. If average net sales for each packer were only one hundredth of the amount listed in Table 18, estimated first-year costs would be less than 0.1 percent of net sales.

AMS has limited data on revenues for the smallest packers and live poultry dealers. Eighty-five packers submitted shortened annual reports to AMS because they purchased less than $500,000 in livestock. For the largest of these packers, annual revenues are likely close to $500,000 and expected costs would be about 0.06 percent. AMS encourages comments concerning business sizes for packers that purchase less than $500,000 in livestock each year and the effect the proposed §§ 201.304 and 201.306 would have on their business.

Small Business Exception Alternative

AMS also considered a Small Business Exception Alternative to the Proposed Alternative's §§ 201.304 and 201.306. The Small Business Exception Alternative would be the same as the Proposed Alternative's §§ 201.304 and 201.306 in all respects with the exception that none of the recordkeeping requirements in proposed § 201.304(c) would apply to small businesses. This Small Business Exception Alternative would cost small packers, swine contractors, and live poultry dealers less than proposed §§ 201.304 and 201.306 would cost. Recordkeeping costs comprised the largest share of the costs associated with §§ 201.304 and 201.306.

Although the Small Business Exception Alternative would not require small businesses to keep any additional records, small businesses would still be required to comply with all of the other provisions of §§ 201.304 and 201.306. AMS expects that small live poultry dealers, small packers, and small swine contractors would need to review the new rulemaking and determine whether the proposed rule would require any changes to their procurement contracts or other business practices and make the necessary changes. AMS estimated that costs would consist of one hour of a manager's time and one hour of a lawyer's time to review the requirements of Proposed Alternative's §§ 201.304 and 201.306. This amounts to expected first-year costs of $207 [179] for each live poultry dealer, each swine contractor, and each packer that qualifies as small business. All costs would occur in the first year.

Table 19 lists expected costs for small businesses subject to the Small Business Exception Alternative. AMS expects marginal costs to total $105,000 in the first year. The Small Business Exception Alternative is expected to cost $72,000, $22,000, and $11,000 for packers, swine contractors, and live poultry dealers respectively.

TABLE 19—ESTIMATED INDUSTRY TOTAL COSTS FOR THE SMALL BUSINESS EXCEPTION ALTERNATIVE

Estimate type	Packers ($)	Swine contractors ($)	Poultry processors ($)	Packers ($)
First-Year Costs	72,000	22,000	11,000	105,000
10 years Annualized at 3 Percent	8,000	3,000	1,000	12,000
10 years Annualized at 7 Percent	10,000	3,000	1,000	14,000

Ten-year costs annualized at 3 percent would be $8,000 for packers, $3,000 for swine contractors, and $1,000 for live poultry dealers. This amounts to $24 for each live poultry dealer, swine contractor, and packer. Total ten-year costs annualized at 3 percent would be expected to be $12,000.

Ten-year costs annualized at 7 percent would be $10,000 for packers, $3,000 for swine contractors, and $1,000 for live poultry dealers. This amounts to $28 for each live poultry dealer, swine contractor, and packer. Total ten-year costs annualized at 3 percent would be expected to be $14,000.

Table 20 compares the average per entity first-year costs of the Small Business Exception Alternative to the average revenue for each regulated small business. First-year costs are appropriate for a threshold analysis because all of the costs associated with the alternative would occur in the first year.

[179] $113.80 per hour × 1 hour of an attorney's time + 93.20 per hour × 1 hour of a manager's time = $207.

TABLE 20—COMPARISON OF PER ENTITY COST TO REVENUES FOR THE SMALL BUSINESS EXCEPTION ALTERNATIVE

NAICS	Number of small businesses	First-year costs ($)	Average revenue or net sales per Establishment ($)	First-year cost as percent of revenue (percent)
112210—Swine Contractor	108	207	485,860	0.0426
311615—Poultry Processor	54	207	50,729,044	0.0004
311611—Meat Packer *	346	207	83,356,860	0.0002

* Averages exclude net sales for packers that purchased less than $500,000 in livestock annually.

First-year costs as a percent of revenues are small. Similar to proposed §§ 201.304 and 201.306, relative costs are highest for swine contractors because average revenues for swine contractors are considerably smaller than average revenues for packers and live poultry dealers. At 0.0426 percent, the first-year cost to swine contractors is small compared to revenue.

Average net sales for packers listed in Table 18 have the same problem as the net sales figures in Table 16. They exclude the smallest packers, and consequently the averages are biased toward being too large. However, first-year cost as a percent of net sales for packers purchasing more than $500,000 per year is 0.0002 percent. Estimated first year cost for each packer is $207. Costs would be less than 0.1 percent of revenues for any packer with revenue greater than $20,700. Even for the smallest packer that AMS regulates, $207 would not likely have a significant economic impact.

Comparison of Alternatives

Expected costs for small businesses under the Proposed Alternative's §§ 201.304 and 201.306 would be more than double the expected costs for small businesses under a Small Business Exception Alternative. The cost difference is due to recordkeeping requirements. First-year costs would be $128,000 more for the Proposed Alternative than the Small Business Exception Alternative. While all of the costs associated with the Small Business Exception Alternative occur in the first year, small businesses would continue to incur recordkeeping costs associated with the Proposed Alternative §§ 201.304 and 201.306 into the future. Estimated costs annualized at 7 percent are $104,000 higher for Proposed Alternative §§ 201.304 and 201.306 than for the Small Business Exemption Alternative.

With either the Small Business Exception Alternative, or the Proposed Alternative, AMS expects the costs to be relatively small. The number of regulated entities that could experience a cost increase is substantial. Most regulated packers and live poultry dealers are small businesses. However, AMS expects that few small businesses would experience significant costs. For all three groups of regulated entities: packers, live poultry dealers, and swine contractors, average first year costs are expected to amount to less than one 0.1 percent of annual revenue for either of the alternatives. AMS expects that any additional costs to small packers, live poultry dealers, and swine contractors from this proposed rulemaking will not change their ability to continue operations or place any small businesses at a competitive disadvantage.

AMS chose the Proposed Alternative's §§ 201.304 and 201.306 over the Small Business Exception Alternative because AMS wishes to prevent the kind of undue prejudices and discrimination described in the proposed rule. AMS believes that keeping relevant records serves as constant reminder to all packers, live poultry dealers, and swine contractors that they cannot purchase livestock or enter into contracts for growing services with the kind of undue prejudices and discrimination described in the rulemaking.

The Proposed Alternative's §§ 201.304 and 201.306 are not expected to have a significant economic impact on a substantial number of small business entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While confident in this assertion, AMS acknowledges that individual businesses may have relevant data to supplement our analysis. AMS encourages small stakeholders to submit any relevant data during the comment period.

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.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This proposed rule has been reviewed in accordance with the requirements of E.O. 13175—Consultation and Coordination with Indian Tribal governments. E.O. 13175 requires Federal agencies to consult with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule will impact individual members of Indian Tribes and will impact Tribal governments or instrumentalities of Tribal governments. The rulemaking will also impact the relationship between Tribes and the Federal Government. USDA will hold a consultation with Tribal governments regarding the impact of this proposed rule with respect to Tribal governments and Native American livestock producers. USDA also seeks comments and information from Tribal organizations concerning impact on individual American Indian/Alaska Native livestock producers. Additional details on the date and manner of the consultations will be announced in a ''Dear Tribal Leader Letter,'' to be sent individually to tribes and published on the USDA Office of Tribal Relations website at *https://www.usda.gov/tribalrelations/tribal-consultations.*

Civil Rights Impact Analysis

AMS has considered the potential civil rights implications of this proposed rule on members of protected groups to ensure that no person or group would be adversely or disproportionately at risk or discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, or protected genetic information. This

rulemaking does not contain any requirements related to eligibility, benefits, or services that would have the purpose or effect of excluding, limiting, or otherwise disadvantaging any individual, group, or class of persons on one or more prohibited bases. In fact, the proposed regulation would create means by which AMS may be able to address potential civil rights issues in violation of the Act.

In its review, AMS conducted a disparate impact analysis, using the required calculations, which resulted in a finding that Asian Americans, American Indian/Alaskan Natives, Pacific Islanders, and Native Hawaiians were disproportionately impacted. AMS analysis reflects that most producers and poultry growers will experience greater access to information regarding acquiring, handling, and processing quality livestock. The proposed regulation provides clearer standards to address market disadvantages to small and medium scale producers and growers, contributing to favorable contract terms and equitable price premiums.

AMS will institute enhance efforts to notify the groups found to be more significantly impacted of the regulations and their implications. AMS outreach will specifically target several organizations that regularly engage with or otherwise may represent the interests of these impacted groups. As a result of this outreach, if AMS detects the possibility of the new regulation causing a potential disparate impact on any protected individual or group, AMS will develop a mitigation strategy.

Executive Order 12988—Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rulemaking. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule. Nothing in this proposed rule is intended to interfere with a person's right to enforce liability against any person subject to the Act under authority granted in sec. 308 of the Act.

VI. Request for Comments

Comments submitted on or before December 2, 2022 will be considered. Comments should reference Docket No. AMS–FTPP–21–0045 and the date and page number of this issue of the **Federal Register**. Comments can be submitted by either of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Enter AMS–FTPP–21–0045 in the Search filed. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. AMS–FTPP–21–0045, S. Brett Offutt, Chief Legal Officer, Packers and Stockyards Division, USDA, AMS, FTPP; Room 2097–S, Mail Stop 3601, 1400 Independence Ave. SW, Washington, DC 20250–3601.

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

For the reasons set forth in the preamble, AMS proposes to amend 9 CFR part 201 as follows:

PART 201—ADMINISTERING THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for 9 CFR part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Add subpart O, consisting of §§ 201.300 through 201.390, to read as follows:

Subpart O—Competition and Market Integrity

Sec.
201.300–201.301 [Reserved]
201.302 Definitions.
201.304 Undue prejudices or disadvantages and unjust discriminatory practices.
201.306 Deceptive practices.
201.307–201.389 [Reserved]
201.390 Severability.

§§ 201.300–201.301 [Reserved]

§ 201.302 Definitions.

For purposes of this subpart, the following definitions apply:

Covered producer means a livestock producer as defined in this section or a swine production contract grower or poultry grower as defined in section 2(a) of the Act (7 U.S.C. 182(8), (14)).

Livestock producer means any person engaged in the raising and caring for livestock by the producer or another person, whether the livestock is owned by the producer or by another person, but not an employee of the owner of the livestock.

Market vulnerable individual means a person who is a member, or who a regulated entity perceives to be a member, of a group whose members have been subjected to, or are at heightened risk of, adverse treatment because of their identity as a member or perceived member of the group without regard to their individual qualities. A market vulnerable individual includes a company or organization where one or more of the principal owners, executives, or members would otherwise be a market vulnerable individual.

Regulated entity means a swine contractor or live poultry dealer as defined in section 2(a) of the Act (7 U.S.C. 182(8)) or a packer as defined in section 201 of the Act (7 U.S.C. 191).

§ 201.304 Undue prejudices or disadvantages and unjust discriminatory practices.

(a) *Prohibited bases.* (1) A regulated entity may not prejudice, disadvantage, inhibit market access, or otherwise take adverse action against a covered producer with respect to any matter related to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry based upon the covered producer's status as a market vulnerable individual or as a cooperative.

(2) Prejudice or disadvantage with respect to paragraph (a)(1) of this section includes the following actions:

(i) Offering contract terms that are less favorable than those generally or ordinarily offered.

(ii) Refusing to deal.

(iii) Differential contract performance or enforcement.

(iv) Termination of a contract or non-renewal of a contract.

(b) *Retaliation prohibited.* (1) A regulated entity may not retaliate or otherwise take an adverse action against a covered producer because of the covered producer's participation in the activities described in paragraph (b)(2) of this section to the extent that these activities are not otherwise prohibited by Federal or state law, including antitrust laws.

(2) The following activities are protected under paragraph (b)(1) of this section:

(i) A covered producer communicates with a government agency with respect to any matter related to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry or petitions for redress of grievances before a court, legislature, or government agency.

(ii) A covered producer asserts any of the rights granted under the Act or this part, or asserts contract rights.

(iii) A covered producer asserts the right to form or join a producer or grower association or organization, or to collectively process, prepare for market, handle, or market livestock or poultry.

(iv) A covered producer communicates or cooperates with a person for the purposes of improving production or marketing of livestock or poultry.

(v) A covered producer communicates or negotiates with a regulated entity for the purpose of exploring a business relationship.

(vi) A covered producer supports or participates as a witness in any proceeding under the Act, or a proceeding that relates to an alleged violation of law by a regulated entity.

(3) For purposes of paragraph (b)(1) of this section, retaliation includes the following actions:

(i) Termination of contracts or non-renewal of contracts.

(ii) Adversely differential performance or enforcement of a contract.

(iii) Refusing to deal with a covered producer.

(iv) Interference in farm real estate transactions or contracts with third parties.

(c) *Recordkeeping of compliance practices.* (1) The regulated entity shall retain all records relevant to its compliance with paragraphs (a) and (b) of this section for no less than 5 years from the date of record creation.

(2) Records that may be relevant under paragraph (c)(1) of this section include, if any, policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, board of directors' oversight materials, and the number and nature of complaints received relevant to this section.

§ 201.306 Deceptive practices.

(a) *Prohibited practices.* A regulated entity may not engage in the specific deceptive practices prohibited in paragraphs (b) through (e) of this section with respect to any matter related to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry.

(b) *Contract formation.* A regulated entity may not make or modify a contract by employing a pretext, false or misleading statement, or omission of material fact necessary to make a statement not false or misleading.

(c) *Contract performance.* A regulated entity may not perform under or enforce a contract by employing a pretext, false or misleading statement, or omission of material fact necessary to make a statement not false or misleading.

(d) *Contract termination.* A regulated entity may not terminate a contract or take any other adverse action against a covered producer by employing a pretext, false or misleading statement, or omission of material fact necessary to make a statement not false or misleading.

(e) *Contract refusal.* A regulated entity may not provide false or misleading information to a covered producer or association of covered producers concerning a refusal to contract.

§§ 201.307–201.389 [Reserved]

§ 201.390 Severability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–21114 Filed 9–30–22; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws/current.html*.

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S. 2293/P.L. 117–178
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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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